



**REPORT ON THE VIOLATIONS OF THE CONVENTION AGAINST TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT BY TÜRKIYE**

**SUBMITTED ON THE OCCASION OF THE EXAMINATION OF THE TURKISH
5TH PERIODIC REPORT TO BE CONSIDERED AT THE 80TH SESSION OF THE
UN COMMITTEE AGAINST TORTURE**

MOUVEMENT CONTRE LE RACISME ET POUR L'AMITIÉ ENTRE LES PEUPLES (MRAP)

Is a French organisation born of underground resistance to Nazism and fascism, it was officially founded in 1949 on the initiative of former members of the Resistance and deportees. MRAP is member of the French National Human Rights Institution (Commission Nationale Consultative des Droits de l'Homme – CNCDH) and it enjoys UN-ECOSOC status since 1974.

The objectives of the organisation are to combat all forms of racism, promote friendship among peoples and equal rights for all human beings.

KURDISH CENTRE FOR HUMAN RIGHTS (Kurd-CHR)

Is a Swiss organisation created in 2000, whose main objective is to collect and analyse information about the violation of human rights of the Kurdish people in Türkiye, Syria, Irak and Iran and to inform the public, as well as the UN Human Rights mechanisms.

The organisation also develops cultural projects aiming to raise awareness of Kurdish culture and support the integration of the Kurdish population in Switzerland.

INTRODUCTION

Torture is defined in Article 1 of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".

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.

Article 2 of the Convention states: "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. 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 for torture."

1/ TORTURE AND OTHER ILL-TREATMENT PRACTICES IN OFFICIAL DETENTION CENTERS

In recent years, due to factors such as evading law, rule, and norm supervision, arbitrariness, and deliberate neglect, there has been a significant increase in torture and other ill-treatment practices in official detention centers. This increase is attributed to the violation of procedural safeguards, prolonged detention periods, the ineffectiveness or absence of monitoring and prevention mechanisms, and the dysfunctionality or non-existence of independent monitoring and prevention. Many alarming torture practices in official detention centers have been reflected in the media, court records, and reports of national and international human rights institutions.

Despite the controlled acceptance of applications due to pandemic measures in 2020, 605 people applied to the Human Rights Foundation of Turkey (HRFT) claiming to have been subjected to torture and ill-treatment. Of these, 31 were relatives of applicants, and 12 were subjected to torture and ill-treatment outside of Turkey. Among the 562 people who applied to HRFT because they were directly subjected to torture and ill-treatment in Turkey, 283 (50%) reported being tortured in police headquarters, and 73 (13%) in police stations. Additionally, 134 (34%) reported being subjected to torture and ill-treatment by law enforcement in detention and transfer vehicles.

According to the Human Rights Association (IHD) Documentation Unit, in 2020, 383 people, including 10 children, were subjected to torture and other ill-treatment in official detention places.

According to the HRFT Documentation Center, at least 192 people were subjected to torture and other ill-treatment in official detention places in 2020, and one person died suspiciously in detention. In the first five months of 2021, at least 86 people were subjected to torture and other ill-treatment in detention, and one person died suspiciously while performing mandatory military service.

2/ TORTURE AND OTHER ILL-TREATMENT PRACTICES IN UNOFFICIAL DETENTION CENTERS AND OUTSIDE DETENTION ENVIRONMENTS

During peaceful protests and interventions by law enforcement, torture and other ill-treatment practices in unofficial detention centers or outside detention environments, such as streets and open areas or places like homes and workplaces, have gained a new dimension and intensity under pandemic conditions. The right to peaceful assembly and demonstration, along with freedom of expression, forms the foundation of a democratic society. Unfortunately, in recent years, the use of this right in Türkiye has become an exception, while interventions and bans have become the rule. Police violence reaching the level of torture and other ill-treatment against individuals exercising their right to peaceful assembly and demonstration has almost been normalized.

In 2020, among those who applied to HRFT, 229 (41%) reported being subjected to torture and ill-treatment during open space and protest, and 110 (20%) reported being subjected to torture and ill-treatment in places like homes and workplaces.

According to the IHD Documentation Unit, in 2020, 397 people, including 28 children, claimed to have been subjected to torture and other ill-treatment in unofficial detention places and outside detention environments. At least 2'980 people were subjected to torture and other ill-treatment due to law enforcement intervention in public demonstrations.

According to the HRFT Documentation Center, in 2020, at least 2'014 people were subjected to torture and other ill-treatment due to law enforcement intervention in peaceful actions and events related to freedom of assembly and demonstration and 65 people were injured. In the first five months of 2021, at least 2'153 people were subjected to torture and other ill-treatment due to law enforcement intervention, and 23 people were injured.

Again, according to the HRFT Documentation Center, at least 170 people in 2020 and at least 161 people in the first five months of 2021 were subjected to torture and other ill-treatment in open spaces, while at least 40 people in 2020 and at least 10 people in the first five months of 2021 were subjected to torture and other ill-treatment during home raids.

3/ TORTURE AND ILL-TREATMENT IN PRISONS:

As a result of the political power using law as a tool of oppression and intimidation, there has been a significant increase in prison population over the years, and the number of detainees and convicts far exceeds capacity.

According to the Ministry of Justice's data, the number of detainees and convicts in prisons was 55'870 in 2005. As of 31 May 2021, a total of 283'481 detainees and convicts are held in 371 penal institutions with a total capacity of 250'576. This number includes convicts released on COVID-19 leave under Law No. 7242.

As can be seen, the number of detainees and convicts has increased approximately fivefold in 16 years. As of 31 May 2021, there were 32'905 detainees and convicts in excess of prison capacity.

Considering the records of entries and exits throughout the year, it is seen that there is a much more intense population movement in prisons. According to the Turkish Statistical Institute (TÜİK), in 2019, 281'605 people were registered as convicts entering penal institutions, while 291'212 people were registered as convicts leaving during the same period.

Additionally, as of 30 April 2021, there were 408'864 people under probation nationwide. When this number is combined with the number of detainees and convicts in prisons, the number of citizens deprived of their freedom reaches approximately 692'000. This means that approximately one out of every hundred citizens is under direct supervision, not considering other indirect surveillance/control mechanisms.

Due to the threat posed by the COVID-19 pandemic, international human rights authorities have made urgent calls and statements, inviting governments to take very special measures for prisons. On 20 March 2020, the European Committee for the Prevention of Torture (CPT) published a series of principles regarding prisoners. On 25 March 2020, the UN High Commissioner for Human Rights (HCHR) made a call, followed by the Council of Europe's Commissioner for Human Rights on 6 April 2020. The common point of these principles and calls was to reduce the number of prisoners in prisons and ensure that measures taken to prevent the pandemic do not restrict existing freedoms.

On the other hand, HCHR Michelle Bachelet, made a significant and guiding call, stating that "Governments should release everyone detained without sufficient legal grounds, including political prisoners and those detained simply for expressing critical or dissenting views." Additionally, she emphasized that those particularly vulnerable to COVID-19, such as the elderly and severely ill prisoners, should be included in the list of those to be urgently released. Madam Bachelet also warned that "Measures taken during a health crisis should not undermine the basic rights of detainees, including the right to adequate food and water. Measures to prevent ill-treatment of detainees, including access to a lawyer and a doctor, must also be fully adhered to."

See: <https://cte.adalet.gov.tr/Resimler/Dokuman/istatistik/istatistik-1.pdf>, last accessed on 22 June 2021.

Holding prisoners in quarantine wards upon their return from hospital transfers is also a problem in itself. In some prisons, when each new prisoner is placed in the quarantine ward, the quarantine period is restarted, causing prisoners to refrain from going to the hospital and to be deprived of their right to access healthcare services. When the limited information and complaints obtained from prisons are evaluated together with the warnings of HCHR Michelle Bachelet, it is understood that the violations experienced by prisoners in terms of access to health, food and water, and hygiene materials during the pandemic conditions are of the nature of ill-treatment.

Despite the warnings and calls made by international human rights authorities, such as the European Committee for the Prevention of Torture (CPT) and HCHR Michelle Bachelet, recalling universal standards and norms, the amendments made in Law No. 7242 on the Execution of Sentences and Security Measures, published in the Official Gazette on 15 April 2020, did not benefit journalists, academics, human rights defenders, lawyers, elected politicians, and especially elderly and severely ill prisoners vulnerable to COVID-19, who are detained without sufficient legal grounds, including those detained simply for expressing critical or dissenting views.

Prisons in Turkey have always been places where torture and other ill-treatment practices are intensely experienced. Particularly in the process that started with Türkiye re-entering a conflict environment in July 2015, continuing with the suppression of the military coup attempt and the subsequent declaration of a state of emergency (OHAL), there have been extraordinary increases in torture and other ill-treatment practices against detainees and convicts in prisons.

From the moment of entry into prisons, various forms of physical violence (such as strip searches, handcuffed medical examinations, standing roll calls), arbitrary treatments and arbitrary disciplinary penalties, cell penalties, exile and transfers have reached unprecedented levels in recent history.

Restriction of access to healthcare services, refusal of the right to visit the prison infirmary, mistreatment, including being handcuffed while being taken to the Forensic Medicine Institute, courthouse, and hospital, and the inability to effectively and timely resolve health problems of prisoners have been another ongoing issue for a long time. Especially in the recent period, the transfer of a large number of prisoners who have been struggling to continue their treatments to other prisons has significantly harmed the right to access healthcare services.

According to the HRFT Documentation Unit, at least 14 prisoners died under suspicious circumstances in prisons in 2020. Despite the presence of allegations related to these suspicious deaths, there are no effective investigation processes known to us.

According to the IHD Documentation Unit, at least 37 prisoners died under suspicious circumstances, and 16 prisoners allegedly committed suicide in prisons in 2020.

The practice of isolation/solitary confinement of single persons or small groups, which has been implemented since 2000 causing serious harm to the physical and psychological integrity of detainees and convicts, has become a chronic problem that cannot be resolved.

The Ministry of Justice's circular (45/1) dated 22 January 2007, which envisages the socialization of 10 detainees and convicts by coming together for 10 hours a week, it is yet not implemented. Once again, it is worth recalling the standard principle expressed by the European Committee for the Prevention of Torture (CPT) that "prisoners in detention centers should spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful and varied activities. Naturally, programs in institutions where convicted prisoners are held should be even more appropriate."

A special form of isolation practice is experienced in İmralı Prison. Despite the family members and lawyers visits bans, which have been continuously ongoing since 2011, family visits took place three times in 2019 and once more on 3 March 2020. Lawyers visits took place five times in 2019. However, the recommendations in the reports of CPT visits to Turkish prisons in 2017 and 2019 have not been implemented.

Various reasons, including increasing human rights violations in prisons, have made hunger strikes, which have been ongoing since November 2018, a special agenda for the country. The initiation of hunger strikes in prisons with demands for the resolution of various problems that can be addressed in the context of human rights is an indication of how unbearable the problems have become for prisoners.

The primary responsibility for forcing people to risk their lives by going on hunger strikes lies with those who govern the country. Eventhough it is possible to find solutions based on humanity and life to end hunger strikes, the result of the political power's insensitivity, to say the least, leads to the loss of lives and causes incurable wounds in the conscience of society.

As of 27 November 2020, the ongoing hunger strikes in 107 prisons, initiated to lift the isolation imposed in İmralı Prison and to end the human rights violations experienced in prisons, should be intensified to find humane solutions and end without causing permanent damage to the health of the prisoners.

4/ PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT AND PROCEDURAL SAFEGUARDS IN LEGISLATION VS. IMPUNITY

Many negative regulations that would undermine the absolute nature of the prohibition of torture have been made in the legislation in different periods since 2005. With the process that started in July 2015, especially during the state of emergency (OHAL) period, these legislative changes have become systematic. This approach has continued even after the end of the OHAL implementation.

According to Law No. 6722, issued on 14 July 2016, the investigation of military personnel participating in operations regarding allegations of torture and other ill-treatment was subjected to a special permission procedure, and a shield of impunity was established retrospectively. Similarly, with the OHAL Decree, it was regulated that those who made decisions and performed duties related to OHAL would not have legal, administrative, financial, and criminal responsibilities due to these duties, providing absolute immunity.

Procedural safeguards that play an important role in preventing torture have been largely neglected in practice for years, this includes informing the detainee about detention, informing third parties, access to a lawyer, access to a doctor, conducting appropriate examinations in appropriate environments, preparing reports in accordance with procedures, the possibility of promptly applying to a judicial authority for legality control, keeping proper detention records, and allowing independent monitoring, were significantly damaged as a result of legal regulations made with KHKs during the OHAL period. The effects of this destruction continue today.

With the decision of the Constitutional Court published in the Official Gazette on 29 November 2019, regarding the negative regulations made during the OHAL period and later made permanent, only the articles regulating some restrictions on meetings between detainees and their lawyers were annulled, while the validity of the others was maintained. The annulled articles were those in paragraphs (5) and (10) of Article 59 of the Law No. 5275 on the Execution of Sentences and Security Measures, which regulated "Recording meetings with technical devices, placing an official to monitor meetings between the detainee and the lawyer, and seizing the documents or records kept by the detainee and the lawyer." However, just four months after this decision, the "Regulation on the Management of Penal Institutions and the Execution of Security Measures" published in the Official Gazette on 29 March 2020, included all the annulled articles almost verbatim. This short story, which is an indicator of the unlawful approach and arbitrariness in legislative regulations, also reveals the extent of the damage to respect for the law and values.

By using the threat posed by the COVID-19 pandemic as a pretext, the "Law No. 7242 on the Execution of Sentences and Security Measures and Amending Certain Laws," which was rapidly passed through the Grand National Assembly of Turkey (TBMM), paved the way for numerous human rights violations, particularly the violation of the prohibition of torture, to go unpunished. Although the crimes of "intentional killing and torture" were excluded from the regulation, the conditional release rates for those convicted of "causing death by intentional injury" and "causing death by negligence" were reduced, and they were provided with easy access to probation provisions.

This means that many law enforcement officers who have been or are likely to be convicted for violating the right to life by using force unlawfully could regain their freedom in a short time. As a result of the systematic impunity in practice, cases are usually filed against law enforcement officers who commit torture for the lesser crime of "intentional injury." With this regulation, the crime of torture was also excluded, thus further reinforcing impunity.

The powers and duties of the Execution Judge have been expanded, and many issues, such as the execution of sentences, statute of limitations, conditional release, probation, transfer to open penal institutions, and appeals against disciplinary penalties, which were within the jurisdiction of the courts under the current legislation, were brought under the jurisdiction of the Execution Judge. Furthermore, many regulations that could arbitrarily prevent the rights of prisoners were included in this law.

The Law No. 7245 on the Market and Neighborhood Guards, which was passed by the TBMM and published in the Official Gazette on 18 June 2020, grants guards the authority to use force and firearms, take preventive measures until the arrival of general law enforcement forces to prevent demonstrations and disturbances that may disrupt public order, stop individuals for a reasonable cause, request identification or other documents, conduct searches on individuals if they arouse suspicion, and request the opening of hidden compartments of vehicles. This has raised concerns that similar increases in "right to life" and "personal security" violations, as seen after the amendments to the Police Duties and Authorities Law in 2007, will further spread the violations of the "absolute prohibition of torture."

The regulation titled "Regulation on the Amendment of the Regulation on Movable Property Management of the Turkish Armed Forces, National Intelligence Organization, and General Directorate of Security (EGM)," published in the Official Gazette on 6 January 2021, grants law enforcement officers the authority to use heavy weapons intended for use in external threats in social incidents. The thought of the destructive impact and consequences that heavy weapons, which should only be available to the TSK, could have on citizens, other living beings, and natural and cultural environments within residential areas in the country is extremely concerning.

On 27 April 2021, the General Directorate of Security issued a circular banning the recording of audio and video of law enforcement interventions in meetings and demonstrations, citing "violation of privacy." Although this circular was not accessible on the official websites of the Ministry of Interior and the General Directorate of Security, it was covered in the press on 30 April 2021. This allows the cover-up of torture, ill-treatment, injury, and even killing crimes committed during illegal interventions by law enforcement forces against peaceful assemblies and demonstrations, which are constitutionally guaranteed.

5/ THE REALITY OF TORTURE IN TÜRKIYE REFLECTED IN REPORTS OF INTERNATIONAL PREVENTION MECHANISMS

The reality of torture in Türkiye, as described above, is comprehensively addressed in reports prepared by international mechanisms and bodies. However, the political power, which does not want to limit itself with any law, rule, or norm, especially the Constitution, does not take into account the criticisms and warnings made by international prevention and monitoring mechanisms.

The European Committee for the Prevention of Torture (CPT), established in 1987 under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, is a proactive non-judicial mechanism that works to prevent torture and other ill-treatment practices in Council member countries. CPT performs its preventive function through two types of visits: regular and special (ad hoc) visits.

Regular visits are made to member states at certain intervals. Special purpose visits are conducted when the Committee deems necessary under current conditions. CPT prepares a report after each visit, including its findings, recommendations and other suggestions on the issue of torture and ill-treatment. The Committee's visit report remains confidential unless permission is given to publish it by the visited State.

CPT conducted three special/ad-hoc visits to Türkiye from 29 August to 6 September 2016, from 4 to 13 April 2018, and from 6 to 17 May 2019, and two periodic/regular visits on from 10 to 23 May 2017 and from 11 to 25 January 2021. The completed reports from the visits from 10 to 23 May 2017 and from 6 to 17 May 2019 were published on 5 August 2020, with Turkish authorities' permission. It is understood that the recommendations in both published reports were not essentially implemented.

As an indicator of the seriousness and determination of states in preventing torture, Türkiye has not even considered, let alone ratified, the new regulation approved by 12 Council of Europe member states, which provides for the automatic publication of CPT reports after their visits (without waiting for state permission).

The European Parliament's Türkiye report, accepted on 19 May 2021, in the form of a non-binding recommendation decision for the years 2019-2020, also included similar recommendations on the prevention of torture.

The Universal Periodic Review Mechanism (UPR) is currently the most comprehensive international human rights monitoring mechanism, where the human rights situation in 193 UN member countries is periodically reviewed/examined within the framework of the UN Human Rights Council (HRC). Türkiye's third cycle review under this mechanism took place in January 2020. One of the topics in the report prepared by OHCHR as part of the periodic review was torture. The reality of torture in Türkiye was comprehensively addressed in the report, and criticisms and recommendations were conveyed to the authorities.

The Human Rights and Equality Institution of Turkey (TİHEK), which is authorized to fulfill the functions of the National Prevention Mechanism, an effective and important tool in preventing torture, has not taken any concrete steps to ensure its structural, functional, and financial independence in line with OPCAT and Paris Principles despite the criticisms and recommendations made in the report of the UN Subcommittee on Prevention of Torture published on 12 December 2019 and during the UPR held in January 2020.

The visit reports published by the institution contain principle and method errors. When the reports published in 2020 are evaluated, it is understood that the preventive visits to detention places did not meet the minimum standards and that the visits were only carried out formally. The fact that the institution did not effectively monitor and investigate the widespread and intense human rights violations that occurred in Türkiye during the conflict environment that emerged after 2015 and the OHAL period declared after the military coup attempt is also an important indicator of its ineffectiveness.

Another significant indicator of ineffectiveness is that, during the COVID-19 pandemic, the institution made no concrete initiatives regarding prisons and other detention facilities, which carry extremely high risks due to the pandemic, other than posting summaries of some statements from UN bodies on its website.

6/ CULTURE OF IMPUNITY

Impunity is a Turkish state policy that is incompatible with the absolute nature of the prohibition of torture. For years, state and government officials at all levels have protected and even encouraged violence by law enforcement, legitimizing torture through their statements and actions. Recently, the political power that has further emphasized such statements and actions is also trying to guarantee impunity through legislative changes and regulations.

As a result, it becomes impossible to discuss or debate the reasons leading to impunity, such as the lack of independent investigations into allegations of torture, the ineffectiveness and lack of independence of investigations conducted, the requirement to apply for permission to prosecute public officials who commit torture, suspended sentences, and the subjective and biased mindset of prosecutors and judges.

Instead, judicial investigations and prosecutions are launched against journalists, lawyers, and human rights defenders who bring torture and ill-treatment allegations to the agenda. A very typical example of the government's stance on torture and ill-treatment allegations and the culture of impunity is the arrest of journalists who reported on the incident in Van in 2020, where two people were subjected to torture and other ill-treatment and thrown from a helicopter, resulting in one person's death and another's injury.

Another example is the rejection of questions and research proposals related to allegations of torture and ill-treatment submitted to the TBMM, theoretically the most important oversight body of democracy, on the grounds that the word "torture" is "hurtful."

The ambiguity in the law regarding the prosecution of the crime of torture remains. Complaints filed for the crime of torture are either dismissed for various reasons or investigated as lesser offenses that carry lighter penalties and are subject to the statute of limitations, such as 'simple injury,' 'exceeding the limits of force,' or 'abuse of office.'

Moreover, when complaints, investigations, or lawsuits are filed against law enforcement officers who commit torture, counter-lawsuits are immediately filed against the victims of torture for reasons such as "insulting an officer, resisting an officer, injuring an officer during resistance, or damaging public property."

While lawsuits against torturers result in impunity, lawsuits against victims of torture are quickly concluded with heavy penalties. Indeed, in 2019, public prosecutors initiated investigations against 38'582 people for the crime of 'resisting a public official,' as defined in Article 265 of the Turkish Penal Code (TCK), and 28'843 of these investigations resulted in public prosecutions. In contrast, only 1'098 investigations were initiated for the crime of torture, as defined in Article 94 of the TCK, and only 97 public prosecutions were initiated.

The significant difference in the number of lawsuits filed for the crimes of torture and resisting a public official clearly demonstrates the extent of impunity and its continuation as a systematic policy.

QUESTIONS

1. Since the CPT's visit to Turkey on 21.09.2022, has there been any progress on the issues mentioned in the report?
2. Specifically, have any efforts been made to prevent torture and ill-treatment at the beginning of the detention process?
3. Is there any numerical data on public officials who have received disciplinary sanctions for committing acts of torture?
4. How many cases have been filed regarding the excessive use of force during protests since September 2022? How many disciplinary sanctions have been issued?
5. How many independent and unannounced visits have independent NGOs made to detention centers?
6. Are there any statistics on the number and causes of deaths in custody and prisons?
7. Has an effective investigation been conducted into the suspicious death of Garibe Gezer, who died in Kandira Prison in December 2021? Why is Garibe Gezer's autopsy report not included in her file? Are there any public officials who have been prosecuted for Garibe Gezer's death?
8. How many complaints have been submitted to the Ministry of Justice and the Ministry of Interior regarding excessive use of force? What were the outcomes of these complaints?
9. How many complaints have been submitted to CIMER (Presidential Communication Center) and what were their outcomes?
10. What are the conditions of those detained under the Anti-Terror Law, and is there effective oversight?
11. Are there any statistics on serious allegations of torture and ill-treatment in newly opened High Security Prisons? What are the outcomes of the investigations into these allegations?
12. Family and lawyer visits have not been allowed for long time in Imrali prison. This severe isolation is a rare situation globally. It is strongly recommended that an independent delegation visit Imrali prison and that families and lawyers are allowed to conduct their legal visits. Are the Turkish authorities ready to accept an independent international visit to Imrali prison before the end of 2024?
13. It is widely admitted that the Turkish Human Rights Institution and the subsequently established Turkish Human Rights and Equality Institution not fulfilling their functions. Are the Turkish authorities considering adopting any legal or administrative initiative to make these institutions independent from the executive power?
14. Why have peaceful demonstrations not been allowed in the Southeast for a long time? How many people have been subjected to torture and ill-treatment for participating in peaceful manifestations? How many security personnel have been subjected to judicial and administrative investigations for this reason?