



Submission in response to a questionnaire  
for the Report of the Special Rapporteur  
on Torture - The Focus Country: TURKEY

### 1. How is torture criminalized in your national legislation?

Article 17 of the Constitution of the Republic of Turkey prohibits torture in a non-derogable way.<sup>1</sup> The offences of torture and torment are stipulated in Articles 94-96 of the Turkish Penal Code, which reads as follows:<sup>2</sup>

#### Part 3

##### Torture and Torment Torture

Article 94 (1) A public officer who performs any act towards a person that is incompatible with human dignity, and which causes that person to suffer physically or mentally or affects the person's capacity to perceive or his ability to act of his own will or insults them shall be sentenced to a penalty of imprisonment for a term of three to twelve years.

(2) If the offence is committed against a) a child, a person who is physically or mentally incapable of defending himself or pregnant women; or b) a public officer or an advocate on account of the performance of his duty, a penalty of imprisonment for a term of eight to fifteen years shall be imposed.

(3) If the act is conducted in the manner of sexual harassment, the offender shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years,

(4) Any other person who participates in the commission of this offence shall be sentenced in a manner equivalent to the public officer.

(5) If the offence is committed by way of omission there shall be no reduction in the sentence.

(6) No statute of limitation shall apply to this offence.

##### Aggravated Torture on Account of its Consequences

Article 95 (1) Where the act of torture causes (of the victim); a) a permanent impairment of the functioning of any one of the senses or an organ, b) a permanent speech defect; c) a distinct

---

<sup>1</sup> Article 17 - No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity.

<sup>2</sup> Translation of Turkish Penal Code, [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)

and permanent scar on the face, d) a situation which endangers a person's life, or e) the premature birth of a child, where the victim is a pregnant woman the penalty determined in accordance with the above article shall be increased by one half.

(2) Where the act of torture causes (of the victim): a) an incurable illness or if it has caused the victim to enter a vegetative state, b) the complete loss of functioning of one of the senses or organs, c) The loss of the ability to speak or loss of fertility, d) a permanent disfigurement of the face, or e) the loss of an unborn child, where the victim is a pregnant woman The penalty determined in accordance with the article above shall be doubled.

(3) Where an act of torture results in the breaking of a bone, the offender shall be sentenced to a penalty of imprisonment for a term one to six years according to the effect of the broken bone on his ability to function in life.

(4) Where an act of torture causes the death of the victim, the penalty to be imposed shall be aggravated life imprisonment.

#### Torment

Article 96 (1) Any person who performs any act which results in the torment of another person shall be sentenced to a penalty of imprisonment for a term of two to five years

(2) Where the acts falling under the above paragraph are committed against a) a child, a person who is physically or mentally incapable of defending himself or pregnant women; or b) a direct ascendant, direct descendant, adoptive parent or spouse, a penalty of imprisonment for a term of three to eight years shall be imposed.

## 2. What are the main impediments preventing full and prompt investigations into allegations of torture?

### TURKISH LAWS PROVIDING IMPUNITY<sup>3</sup>

#### a) Law no. 2937 on the State Intelligence Services and the National Intelligence Agency

Under the Turkish Code of Criminal Procedure and Law no. 4483 on the Prosecution of Civil Servants and Other Public Officials, public prosecutors shall, *ipso facto*, investigate offences such as murder, torture, enforced disappearances. However, under Law no. 2937 on the State Intelligence Services and the National Intelligence Agency (MIT), personnel of the MIT and those commissioned for duty by the President of the Republic, have full immunity from criminal proceedings unless an authorization of prosecution is issued by the President of the National Intelligence Agency.<sup>4</sup> Likewise, the President of the National Intelligence Agency may only be prosecuted if the President of the Republic issues an authorization for prosecution.

---

<sup>3</sup> This part is copied from our report titled Impunity: An Unchanging Rule in Turkey, <https://arrestedlawyers.org/2020/06/19/joint-report-impunity-an-unchanging-rule-in-turkey/>

<sup>4</sup> Turkey: Spy Agency Law Opens Door to Abuse, <https://www.hrw.org/news/2014/04/29/turkey-spy-agency-law-opens-door-abuse>

This legislation was passed in 2011, and since then, it has been alleged the National Intelligence Agency and its personnel have been involved in a high number of crimes, including enforced disappearance, torture, smuggling of arms, wide-scale unlawful profiling, and so on. There are credible reports that enforced disappearance incidents that have taken place since 2015 were carried out by MIT agents, and the victims were interrogated under torture at black sites belonging to MIT.<sup>5 6 7</sup>

Due to Law no. 2937, these allegations have not been investigated. What is worse, incidents of enforced disappearances continue with impunity. The latest victims are Yusuf Bilge Tunç, who has been missing since 6 August 2019<sup>8</sup> and Orhan Inandi.

#### b) Laws on Senior Military Commanders and Security Forces

Under Article 15/A of Law no:353 (dated 11 February 2014), the Chief of the General Staff and Chief of Staff of the Land, Sea and Air Forces, may only be prosecuted if the President of the Republic issues an authorization for prosecution.

In addition, Law No. 6722 (amending Law no. 5442 on Provincial Administration) which was adopted on 23 June 2016, has created an atmosphere of "systematic impunity" for the security forces.<sup>9</sup> The law requires the authorization of the political authorities for the investigation of soldiers or public officials who are suspected of having committed crimes in the context of counter-terrorism operations. According to the Special Rapporteur on torture and other cruel, inhumane and degrading treatment or punishment, the law grants counter-terrorism forces immunity from prosecution for acts carried out in the course of their operations, thus rendering investigations into allegations of torture and ill-treatment by the security forces involved more difficult, if not impossible.<sup>10</sup>

These two laws are amongst the main reasons for the destruction of several cities and for gross human rights violations in Turkey's South-Eastern region during military operations against the PKK in 2015 and 2016.<sup>11</sup>

#### c) Decree Laws Nos. 667, 668, 696

---

<sup>5</sup> Extradition to Turkey: One-way Ticket to Torture and Unfair Trial, para.108

<https://boldmedya.com/en/2019/06/21/ayten-ozturk-who-survived-the-secret-torture-center-inankara-i-was-tortured-for-6-months/>

<http://bianet.org/english/print/209800-joint-statement-by-rights-organizations-investigate-allegationsof-torture>

<sup>6</sup> <https://arrestedlawyers.files.wordpress.com/2019/07/factsheet.pdf>

<sup>7</sup> <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>

<sup>8</sup> Where is Yusuf Bilge Tunç? <https://stockholmcf.org/where-is-yusuf-bilge-tunc/>

<sup>9</sup> OHCHR, Report on the human rights situation in South-East Turkey July 2015 to December 2016, [https://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](https://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf)

<sup>10</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E>

<sup>11</sup> UN report details massive destruction and serious rights violations since July 2015 in southeast Turkey <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21342>

After the declaration of the State of Emergency in 2016, the very first Emergency Decree (dated 21 July 2016; no. 667, Art. 9 § 1) stipulated that “legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and who fulfil their duties within the scope of this Decree-Law”. Later, Emergency Decree no. 668 (Art. 37) further expanded upon this principle of impunity, specifying that there will be no criminal, legal, administrative or financial responsibility for those making decisions, implementing actions or measures, or assuming duties, as per judiciary or administrative measures for suppressing coup attempts or terror incidents, as well as individuals taking decisions or fulfilling duties as per State of Emergency Executive Decrees.<sup>12 13</sup> By Emergency Decree no. 696 (Art. 121), the impunity provided to public servants under Emergency Decrees nos. 667-668, was also extended to civilians. More precisely, it was stipulated that those civilians acting to suppress the coup attempt of 15/7/2016 and the ensuing events, will have no legal, administrative, financial or criminal responsibility. What is more, all these three decrees were approved by the Parliament and have become ordinary laws (Laws Nos. 6749, 6755 and 7079).<sup>14</sup> On top of this, the Turkish Constitutional Court (TCC) dismissed two cases that were lodged for the annulment of the impunity clause that was enacted with Decree-Law no. 667 and Law no. 6749. **TCC concluded that** such impunity clauses were necessary in order to encourage public servants so they could perform their duties effectively to overcome the threats that had arisen from the State of Emergency.<sup>15</sup>

### 3. Observations: Reluctance of the Turkish Judiciary in Relation to Torture Cases<sup>16</sup>

Within the scope of this report, we examined official statistics on torture cases for the years 2013 and 2018 in relation to the Turkish Ministry of Justice.

Statistic on Article 94 of the Turkish Penal Code (Offence of Torture) <sup>118</sup>				
Year	Investigation Phase		Prosecution (Trial) Phase	
	The Number of Non-Prosecution Decision	The Number of Decision to Prosecute / Indict	The Number of Acquittals	The Number of Decisions for Incarceration
2013	1111	210	86	20
2014	1004	246	88	8
2015	868	293	65	14
2016	901	118	52	11
2017	795	98	144	7
2018	646	83	38	10
<b>Total</b>	<b>5295</b>	<b>1048</b>	<b>473</b>	<b>70</b>

<sup>12</sup> Turkey's Recent Emergency Rule (2016-2018) and its Legality Under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (April 29, 2019). Institute for European Studies, 2019, <https://ssrn.com/abstract=3567095>

<sup>13</sup> Did Turkey's Recent Emergency Decrees Derogate from the Absolute Rights?, VerfBlog, 2019/9/28, <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

<sup>14</sup> Ibid.

<sup>15</sup> Docket No: 2016/2025, Decision No: 2016/93

<sup>16</sup> This part is copied from our report titled Impunity: An Unchanging Rule in Turkey, <https://arrestedlawyers.org/2020/06/19/joint-report-impunity-an-unchanging-rule-in-turkey/>

The statistics show the reluctance of Turkish prosecutors to push charges on torture complaints, given that only 20% of complaints resulted in a criminal charge. Statistics regarding the trial phase indicate a much worse pattern. Only 70 of 1048 charges resulted in a decision for incarceration. The remainder of the charges either resulted in an acquittal or a suspended punishment, or in the dismissal of the case due to the statute of limitation.

These statistics concur with following conclusions which were made by the UN Special Rapporteur, the European Commission, the US State Department, Human Rights Watch and other credible organisations:

- (i) there seemed to be a serious disconnect between declared government policy (zero-tolerance to torture) and its implementation in practice<sup>17</sup>,
- (ii) formal investigations and prosecutions in respect of torture and ill-treatment allegations appear to be extremely rare, thus creating a strong perception of *de facto* impunity<sup>18</sup>,
- (iii) the number of investigations carried out into allegations of torture was '*grossly disproportionate to the alleged frequency of violations*',<sup>19</sup>
- (iv) the Government failed to take steps to investigate, prosecute, and punish members of the security forces and other officials who were accused of human rights abuses<sup>20</sup>
- (v) there have been no effective investigations into abductions, which were allegedly carried out by state agents, of at least six men who were held in undisclosed places of detention before their release, months later, in circumstances that amount to their being possible enforced disappearances.<sup>21</sup>

#### 4. Evidence collection and innovation: application of the Istanbul Protocol

According to Article 99 of the Turkish Code of Criminal Procedures and Article 9 of the **Regulation on Apprehension, Detention and Questioning**:

- The health status of the detainee shall be determined by a medical report before he/she was put into the law enforcement force's detention cell. It is also required in cases where the detainee is relocated for any reason, the detention period is extended, and the detainee is released or referred to the judicial authorities,

---

<sup>17</sup> Report of the Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment on his mission to Turkey, 18 December 2017, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/362/52/PDF/G1736252.pdf?OpenElement>

<sup>18</sup> Ibid.

<sup>19</sup> [https://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

<sup>20</sup> European Commission, 2019 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.

<sup>21</sup> <https://www.hrw.org/world-report/2019/country-chapters/turkey>

- It is mandatory that the law enforcement officer who takes the detainee's statement or conducts the investigation and the law enforcement officer who takes the detainee for medical examination must be different,
- Medical examination, control and treatment shall be performed by the forensic medical institution or official health institutions,
- In case the physician finds any evidence of torture and ill-treatment have been committed, he/she immediately notifies the public prosecutor,
- It is essential that the physician and the person examined remain alone and that the examination is carried out within the framework of the physician-patient relationship.

However, according to several reports, this medical control is often a pure formality and inadequate. According to torture victims, police officers who tortured them were present during medical controls, and there was no patient-doctor confidentiality. The CPT's findings in its 2019<sup>22</sup> endorse these complaints:

... the system of mandatory medical controls has remained fundamentally flawed. In particular, the visit brought to light that the confidentiality of such controls was still far from being guaranteed; ... law enforcement officials continued to be present during medical controls in the vast majority of cases, which meant that the persons concerned had no opportunity to speak with the doctor in private. ... many detained persons interviewed ... who claimed to have sustained injuries as a result of police ill-treatment stated that they did not want to inform the doctor thereof. Moreover, several persons ... claimed that they had been threatened by police officers present during the medical control not to show their injuries. The delegation also received a few allegations from detained persons that they had not been subjected to medical control at all; ... they were obliged to wait in the police van outside the hospital, while a police officer went inside to obtain a medical report signed by a doctor. It also appeared that such medical controls were often limited to the posing of a question by the doctor about possible ill-treatment (if at all), and only rarely did they entail a physical examination. (Page 15). ... the CPT cannot but conclude that the system of mandatory medical controls, in its current form, constitutes a mere formality and fails to serve its intended purpose. (Page 16)

Finally, according to our report dated 2021 December and titled [The Crackdown](#), more than 1,600 lawyers have been arrested and prosecuted while 615 lawyers have been remanded to pretrial detention.<sup>23</sup> Subsequently, 474 lawyers have been sentenced to a total of 2,966 years in prison on the grounds of membership in an armed terrorist organization (Art. 314 of Penal Code) or of spreading terrorist propaganda. The number of convicted lawyers is currently at least 529. The Turkish Government's ongoing crackdown against lawyers abolishes safeguards

---

<sup>22</sup> CPT report on the visit to Turkey carried from 6 to 17 May 2019, <https://rm.coe.int/16809f20a1>  
CPT's 2017 Report includes similar findings: CPT report on the visit to Turkey carried from 10 to 23 May 2017, p.4 <https://rm.coe.int/16809f209e>

<sup>23</sup> <https://arrestedlawyers.org/2021/12/10/new-report-the-crackdown-against-lawyers-in-turkey/>

against torture. In one striking instance, a lawyer admitted to Human Rights Watch that he/she witnessed the client being tortured but he/she remained silent out of fear.<sup>24</sup>

###

**The Arrested Lawyers Initiative (TALI)** began its activities in 2016, in Brussels, Belgium. Since then, TALI has been monitoring the situation of lawyers and human rights defenders in Turkey and publishing periodic news reports and legal reports. TALI circulates these reports through bar associations in Europe, as well as UN Special Rapporteurs. TALI published reports in English, Italian and Spanish. TALI is a member of the International Observatory for Lawyers.

##End##

Appendices: Report titled Impunity: An Unchanging Rule in Turkey



---

<sup>24</sup> [https://www.hrw.org/sites/default/files/report\\_pdf/turkey1016\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf), 32