Alternative Report to the United Nations Committee against Torture for its Consideration of the 4th Periodic Report of Turkey

and

United Nations Committee against Torture Concluding Observations on the Fourth Periodic Reports of Turkey (02 June 2016-CAT/C/TUR/CO/4)

Human Rights Foundation of Turkey Publications 112

HRFT
Human Rights Foundation of Turkey

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Abbreviations:

Art.	: Article
ATL	: Anti-Terror Law
ATUD	: Forensic Medicine Specialists Association
CCP	: Code of Criminal Procedure
CPT	: European Committee for the Prevention of Torture
ÇHD	: Progressive Lawyers Association
ECHR	: European Convention of Human Rights
ECtHR	: European Court of Human Rights
EPSM	: Execution of Penalties and Security Measures
HAH	: Truth Justice Memory Centre
HRFT	: Human Rights Foundation of Turkey
HSYK	: The Supreme Council of Judges and Prosecutors
ICRC	: International Committee of the Red Cross
İHD	: Human Rights Association
Lambda	: Lambdaistanbul LGBTT Solidarity Association
LDPP	: Law on the Duties and Powers of the Police
LFMI	: Law on Forensic Medicine Institution
LMD	: Law on Meetings and Demonstrations
LoIPR	: List of Issues Prior to the Submission of Periodic Report
LPA	: Law of Provincial Administration
NPM	: National Preventive Mechanism
OPCAT	: Optional Protocol to the UNCAT
ÖHD	: Association of Lawyers for Freedom
Para	: Paragraph
SPT	: Subcommittee on Prevention of Torture
SSI	: Social Security Institution
TNHRI	: National Human Rights Institution of Turkey
TPC	: Turkish Penal Code
TTB	: Turkish Medical Association
UN	: United Nations
UNCAT	: The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I. INTRODUCTORY REMARKS

1. This report is alternative to the Replies of the Government of Turkey to the list of issues prior to the submission of the fourth periodic report (LoIPR), distributed on 26 January 2014. On the other hand this report aims to bring the concerning issues to the Committee's attention within the period of review.

2. Human Rights Foundation of Turkey (HRFT) has been providing treatment and rehabilitation services to torture survivors and their relatives since 1990. HRFT submitted its report focussing on a wide range of topics in regards to Turkey's 3rd Periodic Report to the Committee which was well reflected in its Concluding Observations (CAT/C/TUR/3).

This submission for the fourth period shall be considered as an output of not only HRFT but the relevant human rights organisations[1] and numbers of human rights defenders.

3. The report follows the structure of the LoIPR and State's Report focusing on the implementation of individual provisions of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). In addition, the report will address specific recent issues and events that have taken place after the issuance of the LoIPR.

4. The incidents introduced in this report were chosen based on verified cases and data, which provide examples of general pattern and problems of implementation of UNCAT. Therefore the case samples are to seen as examples of broader problems.

II. ISSUES REGARDING ARTICLE 2

5. Issue on the allegations of torture or ill-treatment in **unofficial places of detention** (para.1):

There has been a significant increase in cases of torture and other forms of ill treatment in places described as unofficial places of detention experienced in Turkey as police vehicles, home, workplace, confined areas, streets, areas of demonstrations and so forth since the Committee's last Concluding Observations. Although the Government of Turkey has stated in its Follow Up Report (CAT/C/TUR/CO/3/Add.1) that the requisite steps were taken, neither legislation nor new measures have been adopted in order to prevent these incidents.

1 Thanks to numerous human rights defenders and distinguished members of Forensic Medicine Specialists Association (ATUD), Association of Civil Society in Criminal Execution System (CİİST), Progressive Lawyers Association (ÇHD), Truth Justice Memory Centre (HAH), Human Rights Association (İHD), Lambda Istanbul LGBTT Solidarity Association (Lambda), Association of Lawyers for Freedom (ÖHD), Turkish Medical Association (TTB)

6. On the contrary, the enactment of the so-called "Homeland Security Package[2]" Law No 6638, in 04 April 2015 was among the first steps to legitimize the unofficial places of detention. There has been an amendment to article 91 of Code of Criminal Procedure (CCP) that gives security chiefs, who are appointed by administrative chiefs, the authority to implement preventive detention up to 24 hours in "crimes involving force and violence during social events", "all crimes within the scope of the Anti-Terror Law (ATL)" and "crimes detailed in changes to the Law on Meetings and Demonstrations (LMD)", and up to 48 hours in crimes committed during social events in which violent incidents may spread in a manner that may lead to the serious deterioration of public order, and in crimes that are allegedly perpetrated collectively. The amendment stipulates that security forces will notify the Public Prosecutor about the procedures carried out at the end of the durations stated above. It also stipulates that person(s) will appear before a judge in 48 hours at the latest, and within 4 days in collective crimes. The broadening of the detention powers of law enforcement officials with no judicial review in this manner will lead to risk of violation of the absolute prohibition of torture and ill-treatment.

7. According to the addendum to the article 11 of "Law of Provincial Administration (LPA)", a Governor, who occupies a position directly tied to the political authority, will be authorized "if he/she deems necessary" to issue direct orders to security chiefs and officials to take urgent measures "to throw light upon the crime and find the perpetrators". This completely eliminates the inspection of Prosecutor and Judge regarding urgent measures such as arrest, search and confiscation. In other words a governor order for establishing unofficial detention places is adequate and legalized.

8. With the amendment and addendum to "Law on the Duties and Powers of the Police (LDPP)", for the stop-and-search of the bodies, belongings and vehicles of persons, described as "preventive enforcement" and which merely requires "reasonable doubt based on the experience of the police officer", the verbal order of a security chief alone will suffice. Besides, it is proposed that the "security chiefs", who will possess the stop-and-search authority, will be "assigned by administrative chiefs within the guidelines to be determined by the Ministry of Internal Affairs". The allocation of a period of 24 hours for the decision of the security chief to be presented to the judge on duty clearly provides an opportunity to carry out undeclared detentions. With this arrangement, which excludes the Public Prosecutor and the will of the Judge from the system, the powers and functions of the judiciary are being usurped, and a highly important 'preventive measure' that orients the judicial inquest is exposed to the influence of the executive power. According to Article 119 of the current CCP, a judicial decision is required for the implementation of the measure of

2 Law No 6638, This law made changes to a total of 21 Laws, among them first and foremost the "Law on the Duties and Powers of the Police", "Law on the Organization, Duties and Powers of the Gendarmerie", "Law on Meetings and Demonstrations", "Anti-Terror Law", "Turkish Penal Code", "Code of Criminal Procedure" and "Law of Provincial Administration" available at : http://www.resmigazete.gov.tr/eskiler/2015/04/20150404-26.pdf

searching a person, his or her belongings or his or her vehicle. Law enforcement officials may use this authority only in non-delayable cases with the order of the Public Prosecutor, and in cases when the Public Prosecutor is inaccessible, as an exception and only by the written order of the law enforcement chief. Yet with this exceptional power becoming the rule, Public Prosecutors will no longer act as the executive, and Judges will no longer act as supervisors in judicial inquests, and the split of authority between security forces and the Prosecutor's Office will result in serious failings in the judicial security of citizens.

In addition to the power to apprehend as included in the current LDDP, the Law No. 6638 entrusts the police with two new powers, "to take persons under protection" or "to move persons away" depending on the particularities of the action and condition. It is clear that these ambiguous powers will mean relinquishment of procedural safeguards against torture that must be carried out from the moment of detainment on, and thus render unofficial detention effective.

9. There aren't any official statistics genuine to the question of detention places as annexed to the Replies of the Government. Moreover, Annex I to the State Report does not mention the unofficial detention places. The data below relies on individual complaints of torture and ill-treatment received by HRFT, which only provides a snapshot of the a much larger picture of the link between unofficial detention and torture and ill-treatment.

Table 1

Place of Most Recent Torture in Detention	**Number of Applicants to HRFT**				
	2015	**2014**	**2013**	**2012**	**2011**
Outdoors	250[3]	176	410	113	71
Security directorate	293	418	242	207	226
Police station	41	51	43	41	58
In the vehicle	206	15	29	37	31
Gendarmerie station	1	9	8	9	9
Gendarmerie headquarters	4	8	19	8	8
Home/workplace	38	7	13	3	7
Other	34	32	29	49	24
Unknown/not remembered	14	9	14	8	7
Empty[4]		31	37	31	43
Total	**597**	**756**	**844**	**506**	484

3 In 2015 HRFT the item "during demonstrations" was added as a parameter to annual recordings. Therefore 75 people stated that they were subjected to torture in the demonstrations. In order to avoid the duplication 75 people wasn't added to this number. Therefore total number of applicants should be considered based on this possible duplication.

4 People who were not subjected to torture during their last detention but applied on the basis of torture experienced in former detention periods or prison.

As can be seen in the Table 1 above the percentage of the applicants who had been tortured even just only in outdoors in terms of unofficial detention places reached its peak in 2013 with 48%. In 2014, it was slightly over the average of the last three years except 2013 (15% in 2011, 22 % in 2012, and the average is 19 %). In 2015 it is %42. Considering the current political atmosphere of Turkey, 2015 has also closed up 2013, which will be assessed below in light of the new period of state of emergency in Turkey[5].

10. The incidents which one of them has already been raised by the Committee are accurate expressions and indications of the punitive and prohibitionist approach of the State and that the increasing intensity of law enforcement has become routine. Concerning the case of Ahmet Koca it has to be mentioned that he was also one of the suspects with an allegation of "defaming police" and "resisting against public officials". As of 30 October 2014, İstanbul 2nd Assize Court gave its verdict on acquittal of him. But also four police officers acquitted who were tried with an allegation of torture. And the rest were convicted relying on the offence of "torment"[6], not torture, and the Court decided to suspend the pronouncement of the judgment for five years[7]. The case is still before the Supreme Court.

The use of force during demonstrations, which amounts to torture, has already been a prior issue[8]. Considering the use of force in unofficial detention places, from the largest to the smallest one, demonstrations have been suppressed by use of force in outdoors. The so-called Gezi Park Events in 2013 saw participation of hundreds of thousands in 81 provinces of Turkey[9].

The leading international human rights organisations as well as both international and regional mechanisms have urged authorities in Turkey against the violations of human rights, particularly the use of force by law enforcement officials[10]. The interventions directed at the freedom of expression and assembly of citizens within the scope of the Gezi Park Events were carried

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5 See curfew under para 130

6 Article 96 of the Turkish Penal Code states:
"(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."

7 Istanbul Second Assize Court, 30/10/2014; file N. 2013/121-2014/339

8 See also excessive use of force under para 18

9 According to Ministry of Interior's formal response to National Human Rights Institution " between 28 May and 06 September 2013 in the 80 provinces of Turkey, there have been 5.532 protests/demonstrations held to which approximately 3.611.208 people attended.", See: Report on Gezi Park Events, 30 October 2014, available at: http://www.tihk.gov.tr/www/files/54b3df46416dd.pdf (page 17)

10 See also para 22

out via the use of intense and widespread violence by the security forces countrywide. However, in further stages of the events, security forces were observed using their force tools independently of the restrictions that set out the purpose of use, and in clear violation of the prohibition on torture.

One of the cities where protest took place was Antalya, a southern province[11]. Three young people named Ezgi Sultan Onat, Barış Özyüceer and İsmail Akbaş were in a parking lot when at least seventeen policemen approached and started to beat and kick them on 02 June 2013[12]. The indictment dated 20 March 2014 was submitted to the Antalya 18th Court of First Instance with an allegation of intentional injury on account of public officer misusing his duty[13]. As seen, the only acknowledged prosecution against the police officers doesn't even have any dimension regarding unofficial detention places. Not only streets but also such confined places are commonly used as detention places with denial of safe guards.

The representation of "Sports Hall" as centres of torture during the military coups has been historically significant worldwide. In the beginning of 2016, on the 15th day of curfew that has been imposed in Silopi district of Şırnak province where Kurds are residing. Here, inhabitants were forced to leave their houses and sent to the Sports Hall of Silopi. More than hundreds of people were detained at the Hall and most of the young people were exposed to torture[14]. Mehmet Ernal (1987) is one of these people who were kept at the hall on 05 January 2016. He reported that he was punched and kicked to head, eyes, and rib. Tennis rockets were used as tools to beat him and also he was exposed to cold water where showers are located[15]. There have been lots of incidents reported under the curfew areas including the places in front of their own houses, hospitals and in neighbourhood they live, have become the unofficial detention place where most of the citizens were exposed to torture or other forms of ill-treatment.

11. Issue on **counter-charges** brought against victims of alleged torture and ill-treatment (para 2)

As revealed by the Replies of Government there aren't any official statics regarding the counter-charges. Indeed there isn't any legislative or judicial attitude which accepts the counter-charge phenomena. The Government's

11 See explanation under para. 4

12 See the news and video footage available at: http://www.hurriyetdailynews.com/video-shows-turkish-police-badly-beating-gezi-protesters-for-minutes-in-antalya.aspx?pageID=238&nID=49355&NewsCatID=341; https://www.cihan.com.tr/en/investigation-started-in-police-beating-of-gezi-protesters-1066522.htm

13 Antalya 18th Court of First Instance; 2014-246

14 See curfew under para 130. See the stories revealed available at: http://bianet.org/english/freedom-of-expression/170860-reporter-nedim-oruc-arrested; http://ekurd.net/kurds-return-shattered-town-turkey-2016-01-20; http://en.ihd.org.tr/index.php/2016/02/02/violations-of-human-rights-during-the-on-going-curfew-since-11-00-pm-on-december-14-2015-in-cizre-and-silopi-covering-15-days-of-curfew/

15 The information was released by Human Rights Association Şırnak Branch relying on the interview notes of lawyers at the Şırnak T Type Prison.

approach concerning the collection of statistical data in regards to torture and ill-treatment and its results, and its continual ignoring of the obligation to provide visible data therefore indicates a concept of "ignoring and hiding". This approach creates a serious weakness in the necessary measures needed for the prevention of torture and ill-treatment.

12. Moreover the numerical information on torture and related crimes has always been confusing. The basic parameters for an accurate statics haven't been established or haven't been publicly shared intentionally. For instance, considering the data on the application of article 256 of Turkish Penal Code (TPC)[16], the statists that are annexed to the Replies of Government indicates the number of decisions on acquittal is 185 whilst the official statistics of the Ministry of Justice General Directorate of Judicial Record and Statistics indicate the number of acquittal decisions rendered for accused persons in 2011 to be 389[17]. Moreover Ministry of Justice's official response to the parliamentary question states that the number of decisions on acquittal is 331[18].

Table 2

NUMBER OF CONVICTIONS IN THE RELATED YEARS					
OFFENCE	**Article TPC**	**2011**	**2012**	**2013**	**2014**
		Conviction	**Conviction**	**Conviction**	**Conviction**
Torture	**Art. 94**	23	97	40	19
Aggravated torture	**Art. 95**	--	18	--	5
Exceeding the limits of authorisation	**Art. 256**	21	32	13	13
Resisting to prevent performance	**Art. 265**	10 059	12 641	17 426	15. 369

16 Article 256 of TPC states:
"(1)The provision relating to felonious injury are applied in case of use of force or power by a public officer against a person(s), exceeding the limits of authority."

17 See the Report available at: http://www.adlisicil.adalet.gov.tr/istatistik_2011/adalet_istatistikleri_2011.pdf

18 Ministry of Justice Response to Deputy Sezgin Tanrıkulu, 09/06/2014, No. 7/292256

As stressed in the LoIPR the articles 265[19] and 125[20] of TPC are commonly hanging over the population's head like the sword of Damocles. It is obvious that all the decisions on conviction relying on article 265 can't be referred as the counter charges solely, but as a representation of the judicial tendency with regards to the related incidents the Ministry of Justice statics under Table 2 give the point of view:

The available statics reached out for the years of 2010 and 2011 show, keeping the standard deviation in mind, the ratios between counter-charges and related offences committed by public officials.

19 Article 265 of TPC states:
(1) Any person who uses force or threat against a public officer to prevent him from performing a duty is punished with imprisonment from six months to three years.
(2) In case of commission of this offense against judicial authorities, the offender is punished with imprisonment from two years to four years.
(3) In case of commission of this offense by concealing one's identity, or jointly by more than one person, the punishment to be imposed is increased by one third.
(4) In case of commission of offense by use of a weapon or taking advantage of a terror activities of organized criminal groups, the punishment to be imposed according to the above subsections is increased by one half.
(5) In case aggravated form of felonious injury is created during performance of the acts defined herein above, offender is additionally subject to provisions relating to offense committed through felonious injury.

20 Article 125 of TPC states that:
1) Any person who acts with the intention to harm the honour, reputation or dignity of another person through concrete performance or giving impression of intent, is sentenced to imprisonment from three months to two years or imposed punitive fine. In order to punish the offense committed in absentia of the victim, the act should be committed in presence of least three persons.
(2) The offender is subject to above stipulated punishment in case of commission of offense in writing or by use of audio or visual means directed to the aggrieved party.
(3) In case of commission of offense with defamatory intent;
a) Against a public officer,
b) Due to disclosure, change or attempt to spread religious, social, philosophical belief, opinion and convictions and to obey the orders and restriction of the one's religion,
c) By mentioning sacred values in view of the religion with which a person is connected, the minimum limit of punishment may not be less than one year.
(4) The punishment is increased by one sixth in case of performance of defamation act openly; if the offense is committed through press and use of any one of publication organs, then the punishment is increased up to one third.
(5) In case of defamation of public officers working as a committee to perform a duty, the offense is considered to have committed against the members forming the committee.

Table 3

Regarding Public Officials Number of Defendants Under the Former and New Penal Code			
OFFENCE	**Relevant Code and Article**	**2010**	**2011**
		Number of Defendants	
Exceeding the limits of authorisation	NTPC Art. 256	800	729
Public officials' abusing influence to cause harm/injury	NTPC Art. 86/3-d	9	3
Simple form of torture crime	NTPC Art. 94/1	165	135
Aggravated form of torture due to survivor's character and attribute	NTPC Art. 94/2	11	9
Torture by sexual harassment	NTPC Art. 94/3	10	9
Torture causing broken bones	NTPC Art. 95/3	24	4
Torture causing death	NTPC Art. 95/4	7	4
Torture	FTPC Art. 243/1	42	52
Torture causing death	FTPC Art. 243/2	0	2
Ill- treatment	FTPC Art. 245	97	55
TOTAL		**1165**	**1002**
Number of Offences Used As Counter Charges			
OFFENCE	**Relevant code and Article**	**2010**	**2011**
		Number of Offences	
Resisting to prevent performance	NTPC Art. 265/1	24699	27024
Resisting against judicial authorities	NTPC Art. 265/2	774	707
Aggravated form due to perpetrator's attribute	NTPC Art. 265/3	9	18
Resisting by use of arms or threating force	NTPC Art. 265/4	13	2
Aggravated form of intentional injury	NTPC Art. 265/5	2	2
Defamation of public officials	NTPC Art. 125/3-a	496	248
TOTAL		**25993**	**28001**

As demonstrated under Table 3 and under Figure 1 below, the ratio of the number of public officials that are prosecuted with an allegation of committing crimes of torture and other forms of ill-treatment to the number of offences that are brought with an allegation of committing against public officials in terms of counter charges in 2010 is approximately 1 to 26 whilst in 2011 it is 1 to 28.

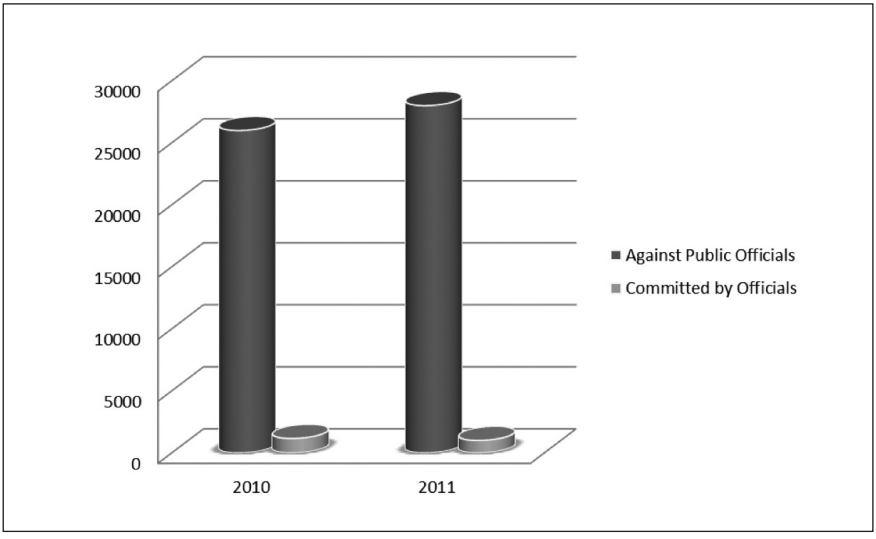

Figure 1

13. The counter-charges are mostly experienced during protests. Although there was not any investigation against perpetrators during Gezi Park Event, counter cases were opened to people who attended to Gezi Park Events. As of December 2013, 46 counter cases were opened against 1811 demonstrators all around Turkey. This also showed that practice of law enforcement bodies to bring "counter-cases" when allegations of torture or other forms of ill-treatment are made has continued in 2013. According to HRFT Documentation Centre Annual Report of 2013, there have been 5685 persons taken under custody where 182 of them got detained based on Gezi Park events. 3894 people were injured and 8 people died[21]. Consecutively, due to the data in its Annual Report of 2014, HRFT has detected that totally 5732 persons were put on trial where 74 of them were pre-trail detainees. 1486 people's trials were on-going in 2014[22]. As of the end of 2015 HRFT Documentation Centre has determined that 121 indictments were brought before the Courts where 6377 people are still tried.

14. The everyday encounters of individuals with the law enforcement officials must also be subjected to assessment from this viewpoint. This counter-charge practice is used from the first encounter with the individual until the last moment of all forms of detention in a great variety of situations. **The incidents** which Committee has already pointed out also follow these paths.

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21 See The Annual Report (2013) available at: http://www.tihv.org.tr/wp-content/uploads/2015/04/2013ihr.pdf

22 See The Annual Report (2014) available at: http://www.tihv.org.tr/wp-content/uploads/2015/04/TIHV_Dokumantasyon_Merkezi_2014_Yillik_Insan_Haklari_Raporu1.pdf

The counter charges against Fevziye Cengiz have actually ended with a decision on conviction. The Court decided to suspend the pronouncement of the judgment but due to the objection of the police officers the judgement will be reviewed again[23]. Regarding the criminal case before the İzmir Assize Criminal Court, the acts of the police officers as a whole weren't identified as the crime of torture in contrary to indictment and the perpetrators were convicted of "intentional injury"[24]. The case is before the Supreme Court.

15. Counter-charges aren't only used as a means of intimidation but in such cases they are imposed in the form of discrimination. Sude (nick name) is a transgender sex worker who was beaten by police officers on 22 February 2012. She was allegedly "endangering the traffic safety" and was forced to take in the police vehicle by beating and insulting. Her complaint was ended with a decision of not to prosecute while Bakırköy 29th Court of First Instance convicted her of TPC article 265 and 125[25]. The case is before the Supreme Court. Also LGBTI organisations have already reported that the use of Code on Misdemeanour to stop and search, to arrest and to intimidate the survivors who lodge complaints has to be mentioned as a category of counter-charges[26].

Volkan Karakuş's case is also underlying another aspect of the counter charges. He was exposed to forcefully strip-search in Tekirdağ Prison in December, 2012. A complaint was filed against guards. Tekirdağ Public Prosecutor brought the case by 3rd Criminal Court of First Instance against guards with an accusation of "using excessive force against inmate". In parallel, the counter case has been launched against him on charges of "resisting against public officials" and "defaming the guards"**.** The case ended with a decision on acquittal for both parties[27]. It is before the Supreme Court. The critical point of this case is about a prevalent violation in the prisons and the judicial tendency for the allegations of forcefully strip-search is legitimized with counter charges.

16. The State is failing to implement decisions including remedies and compensations awards from the European Court of Human Rights (ECtHR)[28]. As illustrated in the ECtHR ruling on Veli Saçılık and Others v. Turkey and the subsequent implementation, the State has introduced a new approach to counter charges by means of recourse of rewards based claims that the survivor had personal fault in the torture and ill-treatment incident that prompted the compensation award. This situation gives immunity to perpetrators and thus avoids torture survivors to bring cases. On 05 July 2000 a military operation was launched against the

23 İzmir 15th Magistrates' Court, 2011/869

24 İzmir 6th Assize Court

25 Bakırköy 29th Court of First Instance, 2012/529-2013/270

26 See http://www.pembehayat.org/kabahatsiz/anasayfa.php; http://www.kaosgldernegi.org/resim/yayin/dl/upr_submission_on_lgbt_ppl_in_turkey.pdf; https://www.outrightinternational.org/content/turkey-campaigning-lgbti-rights-school-work-and-parliament

27 Tekirdağ 3rd Court of First Instance, 2012/284

28 See para 103 and rest

inmates in Burdur Prison where Veli Saçılık's arm was severed by a bulldozer. On 05 July 2011, ECtHR gave a verdict on the breach of article 3 and awarded the applicants[29]. In the same judgment the Court set apart the verdict on satisfaction as he has brought compensation case by domestic authorities. On 14 April 2015 ECtHR gave its decision on satisfaction. ECtHR observed that; "as a result of his injury Mr Saçılık was deemed to have a 66% reduced capacity and his pecuniary damages were assessed by an expert appointed by the Antalya Administrative Court. Taking into account the report prepared by that expert, the Antalya Administrative Court awarded Mr Saçılık the sum claimed by him in full in respect of his pecuniary damage and that sum was paid to him". Subsequently the decision of the Antalya Administrative Court was quashed and Mr Saçılık's claim for compensation was rejected and he was claimed to recourse the sum he was paid. Although ECtHR announced its decision as: "Turkey is to renounce, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, any claim for reimbursement of the sum paid to Mr Saçılık in respect of his pecuniary and non-pecuniary damage and any claim for any additional amounts which may have been incurred by the Ministry of Justice and the Ministry of the Interior in respect of the costs and expenses in defending themselves in the administrative proceedings brought by Mr Saçılık; in the event that Mr Saçılık has reimbursed the sums, the Government is to pay the same amount to him, within the said three-month period and together with interest from the date of such reimbursement at the rate" the recourse process against him is still ongoing and he is under a fiscal threat.

17. At that point it has to be expressed that aforementioned Law No 6638 introduces provisions that expand the statute of limitations regarding recourse claims both in LMD and the Law on the Compensation of Damages that Occurred due to Terror and the Fight against Terror. Recourse lawsuits that have virtually turned into a revenge tool of the State regarding files that have been awarded compensations by, for instance, the European Court of Human Rights, because of violations carried out by the State, will now hound relevant survivors for years.

18. Issue on **excessive use of force** during demonstrations (para 3):

According to Ministry of Interior's Response[30] to the parliamentary question[31] regarding the intervention to the demonstrations between 2002 and 2013, it has been stated that only %3.58 of them were dispersed. In its Performance Report of 2013 the General Security Directorate states that there have been 38079 demonstrations throughout the year of which 3423 has been declared unlawful and 1070 "episodic"[32]. In 2014 there have been 21.826 demonstrations in which

29 Saçılık and others v. Turkey, App. Nos. 43044/05 and 45001/05, 05 July 2011

30 15 August 2013 dated Response, http://www2.tbmm.gov.tr/d24/7/7-20015sgc.pdf

31 19 March 2013 dated parliamentary question, http://www2.tbmm.gov.tr/d24/7/7-20015s.pdf

32 See the Report available at: https://www.egm.gov.tr/SiteAssets/Sayfalar/StratejiGelistirmeFaaliyetleri/EGM_2013_Yili_FAALiYET_RAPORU.pdf

5.514 people were arrested[33]. The interventions and use of force have been long standing determining factors for demonstrations. The reporting period has also been pinned with such exercises of the State. According to HRFT documentation Centre's data, between 2007 and 2015 183 people, only in 2015 222 people have lost their lives due to the use of firearms by the police[34]. Just for the period of 2015, 222 people have been reported to be killed by the use of fire arms whilst 217 of them are reported after the Law no 6638, entered into force.

It has to be stated before proceeding with the incidents, without any exception, the excessive use of force has been the absolute practice regarding the demonstrations even in small gatherings.

19. International human rights law recognises that torture and other forms of ill-treatment do not only occur in formal detention centres[35]. In this context, the jurisprudence of ECtHR also indicates that violations of Article 3 of European Convention of Human Rights (ECHR) can occur during demonstrations[36]. However, such cases are mainly decided on whether the force used by security officials was "necessary" and "proportionate" to pursue a legitimate aim in a democratic society[37]. On the other hand, relying on the effects of "use of force" during demonstrations by security officials on individuals, it is getting harder to interpret "the use of force" by state authorities just as "unnecessary" and disproportionate". Rather, it can be considered as purposeful tool to punish protest movements, to humiliate particular social and political groups, and to intimidate individuals from exercising their rights to freedom of assembly, association and expression.[38] Each of these contains distinctive features of the prohibited purposes found in international interpretation of torture and ill-treatment[39]. Very recently, UN General Assembly also pointed out the significance of this issue by stating that it is *"deeply concerned about all acts*

33 See the Report available at: https://www.egm.gov.tr/SiteAssets/Sayfalar/StratejiGelistirmeFaaliyetleri/EGM_2014_yili_idare_faaliyet_raporu.pdf

34 The number of people who lost their lives in the armed conflict isn't included.

35 See, UN Committee Against Torture, VL v. Switzerland (2006) Comm. No. 262/2005, 20 November 2006, CAT/C/37/D/262/2005 at para.8.10; ECtHR, A v. United Kingdom (1998), 23 September 1998, 1998-VI, p. 2699, § 22; UN Human Rights Committee, General Comment No.20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para.2

36 See, Oya Ataman v. Turkey, No.74552/01, 5 December 2006

37 Yaşa and others v. Turkey (2013), No. 44827/08, 16 July 2013, para. 49. Or in alternative terminology, is "indispensable" and "not excessive": see, Izci v. Turkey (2013), No. 42606/05, 23 July 2013, para. 54. ; Cestaro v. Italy, No. 6884/11, 07 April 2015

38 See, Egyptian Initiative for Personal Rights and Interights v. Egypt (2011), Comm. No. 323/06, 16 December 2011, in particular para. 192, discussed further in Part B. , See also Gamarra v. Paraguay, Comm. No 1829/2008, 30 May 2012 (where the force used was held to have been disproportionate)

39 UNCAT, Art. 1;, Ilhan v Turkey (2000) 26 June 2000, ECHR 2000-VII, para. 85; El Masri [GC] (2012) App. No. 39630/09, 13 December 2012, para. 197. The UN Human Rights Committee has explained that it draws the distinction between torture and other ill-treatment on "the presence or otherwise of a relevant purposive element": HRC, Giri v. Nepal (2011), Comm. No. 28 April 2011, 1761/2008, para. 7.5

which can amount to torture and other cruel, inhuman or degrading treatment or punishment committed against persons exercising their rights of peaceful assembly and freedom of expression in all regions of the world."[40] These concerns have also been manifested through resolutions at the UN Human Rights Council on the "Promotion and Protection of Human Rights in the Context of Peaceful Protests" adopted in 2013 and 2014[41]. The tools of force deployed against protestors have also another significant dimension in terms of excessive use of force. The use of weapons at any level which have a proven track of lethal effect needs to be involved under this topic.

20. Regarding Committee's questions it has to be expressed that the Law No. 6638 has also amended the Laws related to demonstrations. The Law further broadens the police's existing power to use firearms. The current LLDP states that this power, in essence, can be exercised in the event that there is an attack on the police officer or some other person, and seeks conditions of legitimate self-defence. According to the Law, other than an attack on the police officer or another civilian, the police is given the authority to use firearms in the event of attacks against work places, residence, public buildings, temples, schools, dormitories and vehicles, and no reference is made to the concept of legitimate self-defence, with only an emphasis on "moderation". In addition to this, legal grounds are brought to the use of firearms if there exists a possibility of an attempt to attack. Another issue worth mentioning is that the attacker's possession of a firearm is not set as a condition for the police to use firearms. Fireworks, Molotov cocktails and similar explosive devices, piercing and sharp objects, stones, sticks, iron and elastic bars, bruising tools such as iron balls, and catapults are included within the scope of weapons against which the police will be authorized to use firearms.

The amendment to LMD broadens the definition of the concept of weapon. As stated above, tools such as fireworks, Molotov cocktails and similar explosive devices, piercing and sharp objects, stones, sticks, iron and elastic bars, bruising tools such as iron balls, and catapults are included within the scope of the definition of weapon, and taking part in meetings and demonstration rallies in possession of such tools, and participating in such events by wholly or partially covering the face with fabrics etc. are regulated as crimes punishable with a minimum prison sentence of two years and six months. In addition to this, criminal acts punishable with prison sentences from six months to three years are defined for persons bearing emblems of organizations, or clothing resembling uniforms featuring emblems, and for carrying posters, banners or placards "inconsistent with the law" or chanting slogans of this nature while taking part in meetings and demonstration rallies, all regulations that clearly will be implemented with no restriction. The LDP before the amendment, which renders the right impracticable, and serves to declare any protest

40 UN General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment: Resolution adopted by the General Assembly , 14 February 2014, A/RES/68/156, available at: http://www.refworld.org/docid/5321b7894.html [accessed 16 June 2014]

41 UN HRC, Res. 25/38, 24 March 2014; UN HRC, Res. 22/10, 9 April 2013.

unlawful in breach of universal and international human rights standards is now additionally making it possible to inflict prison sentences.

The amendment to the ATL proposes, on the other hand, departs from a conviction described as "meetings and demonstration rallies that turn into the propaganda of terror organizations" thus stipulating a prison sentence of three to five years in the event that persons wholly or partially covering their faces during such events without resorting to violence; and in the event of the occurrence of any type of violence, or the possession of persons of weapons under the new broadened scope of that term, a minimum prison sentence of four years. As is seen, those who completely or partially conceal their faces during assemblies and demonstrations will potentially face heavy sentences, even if they do not resort to violence.

In addition to this, according to the addendum to the CCP included, all the acts listed above, in other words, acts such as the use of the right to congregate and demonstrate and the act of propaganda, are included within the scope of the catalogue crime known as automatic arrest.

21. The **mass demonstrations** such as Hopa Events, Gezi Events and Kobane Events have already revealed the impunity of perpetrators. As stated in the Replies of Government the excessive use of force during Hopa events has gone unpunished. In contrary the counter-charges against the protestors are still on going. In the late 2015, all the complaints based on torture and ill treatment during Hopa Protests taken place in Ankara, apart from Dilşat Aktaş's complaint[42], were resulted with a decision of not to prosecute. Ankara Prosecution Office found the police officer's conducts outdoors in line with the Law and found the victim's statements abstract, in spite of the medical evidence and video footage, and witness statements not reliable. The objections to The Magistrates' Courts also resulted with rejection. Cases are pending before the Constitutional Court.

The investigation standards regarding the excessive use of force have been violated and the basic standards for a criminal procedure weren't followed. The investigation took almost four years and considering the decision it wasn't impartial and independent. According to Replies of Government the routine trainings are provided to Agile Forces Department. The content of these trainings are concerning as it has been experienced following years after these so called trainings, there has been increasing violence of Agile Forces. Especially in the beginning of 2016, the Artvin, Cerrattepe[43] Anti-mining Protests has to be underlined in relation with these trained security officials[44]. Both gendarmerie and Police officials have used tear gas, plastic bullets to restrict the marches which resulted in serious harm to peaceful protesters.

42 She was beaten to bone fracture and the investigation is still pending.

43 Cerattepe is one of the most important 41 sites in Turkey; all of Artvin's drinking water comes from Cerattepe.

44 See the news available at http://turkey.liveuamap.com/en/2016/16-february-turkey-resistance-against-goldmining-in-artvin; http://www.hurriyetdailynews.com/activist-becomes-symbol-of-turkeys-green-artvin-association-.aspx?PageID=238&NID=95717&NewsCatID=528

22. As Committee has already manifested the excessive use of force has been the prevalent countrywide issue. The Gezi Park Events and Kobane Events which were pointed above under unofficial detention places section shall be interpreted with the excessive use of force condition.

There was so called boost in the violations of right to assembly, demonstration, and prohibition of torture and other forms of ill-treatment in 2013, especially during Gezi Park Events. During the Gezi Park Protest, chemical agents such as pepper spray, tear gas, and pressurized water have been arbitrarily used against peaceful demonstrators. Protestors who were deprived of their liberty by being handcuffed, police blockage, being taken in police bus, etc. were subjected to torture and other forms of ill-treatment. During the protests, seven people lost their lives. Demonstrators lost their lives because of fire arms, beating, and gas canister. Moreover, the Turkish Medical Association reported that, as of 1 August 2013, 8163 people had been injured during the protests, of which eleven people lost an eye and 104 had serious head injuries[45]. 297 people who have claim of being tortured during the Gezi Protest (175 were men, 121 were women) applied to HRFT Treatment and Rehabilitation Centres between 31 May and 30 August 2013 and demanded treatment and rehabilitation service and forensic report of torture they were subjected to[46].

There was not prompt, thorough, independent and effective investigation for incidents of torture and other forms of ill-treatment by police officers during Gezi Park Protests and police officers who use excessive use of force, gave the order of torture, ignore the torture and encourage other police officers to use torture were not brought to justice in spite of several complaints, video recording, forensic reports, international community's reports[47] mentioning the existence of torture.

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45 See the Report available at: http://www.ttb.org.tr/index.php/Haberler/veri-3944.html

46 See The Report available at: http://en.tihv.org.tr/wp-content/uploads/2015/06/HRFT_treatment_report_2013.pdf

47 See Amnesty International's Report available at : https://www.amnesty.org/en/documents/EUR44/022/2013/en/; See Physicians for Human Rights' Report available at: http://physiciansforhumanrights.org/library/reports/contempt-for-freedom.html; Fédération Internationale des Ligues des Droits de l'Homme's Report available at: https://www.fidh.org/IMG/pdf/turkey_avril_2014_uk_web.pdf; See United States Report available at: http://www.state.gov/documents/organization/220551.pdf.; See Spindelegger's statement available at: http://www.bmeia.gv.at/en/the-ministry/press/announcements/2013/spindelegger-zur-tuerkei-meinungs-und-demonstrationsfreiheit-sind-herzstueck-jeder-demokratie/; See the brief on reactions of France, Italy and Germany available at: http://english.aawsat.com/2013/06/article55305692; See the news on UK Foreign Office announcement available at: http://news.sky.com/story/1098110/turkey-protests-rage-on-nearly-1000-arrested; See Report of Commissioner available at : https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395759&SecMode=1&DocId=2079692&Usage=2; See The Motion available at : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+P7-RC-2013-0305+0+DOC+PDF+V0//EN; See the release available at: http://www.unmultimedia.org/radio/english/2013/06/human-rights-office-expresses-concern-over-use-of-excessive-force-against-peaceful-protestors-in-turkey/index.html; See the release available at: http://www.unmultimedia.org/radio/english/2013/06/un-human-rights-heavy-handed-response-to-protests-in-turkey-unacceptable/

The cases of Ethem Sarısülük, Mehmet Ayvalıtaş and Ali İsmail Korkmaz, Abdullah Cömert who lost their lives as result of use of force by police officers during Gezi Park Events showed how the mentality of impunity still continues. Moreover, speeches of government bodies and public officers supporting and encouraging police officers during Gezi Park Event shows that government's attitude is also one of the reasons behind the culture of impunity[48]. The politic discourse on the legitimacy of uncontrolled use of force is structurally in relation with each other. PM's remarks on the use of fire arms against protestors, stating *"I don't know how the police tolerate all this?"* put forth the attitude[49].

HRFT has assessed that throughout the Gezi Park Protests, the right to obtain information as a manifestation of the freedom of expression, and the right to provide information within the scope of press freedom were clearly violated. As a matter of fact, journalists who were directly subjected to the violence of security forces because of their profession applied to HRFT, and it was observed that their activities directly related to providing reports had been obstructed, and that therefore an intervention to the right to obtain information had been carried out. Threats by the government to press and media corporations, and self-censorship carried out by press and media corporations revealed that the right to obtain information had been prevented in the widest sense. These interventions directed at the freedom of expression and assembly of citizens within the scope of the Gezi Park Protests were carried out via the use of intense and widespread violence by the security forces. However, in further stages of the events, security forces were observed using their force tools independently of the restrictions that set out the purpose of use, and in clear violation of the prohibition of torture. Subjection to chemical agents and traumatic injuries diagnosed in applications to HRFT also revealed violations of purpose and conditions in the security forces' use of their tools of force. According to the UN Code of Conduct for Law Enforcement Officials, UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and European Court of Human rights (ECtHR) case law, ECHR and the European Code of Police Ethics, Recommendation Rec (2001) 10 adopted by the Committee of Ministers of the Council of Europe, the use of force must be legal, absolutely necessary and strictly proportionate. Any other use of force that does not comply with these standards is treated as an intervention against basic rights and freedoms, and first and foremost the prohibition of torture and the right to assembly. Demonstrations for the funeral ceremony of Berkin Elvan[50] in March 2014, 1 May Labour Day, anniversary of Gezi Park Events the use of extreme force which amounted to torture has remained.

48 On 14 June 2013 the mayor of Ankara hung a poster, expressing his "gratitude to policemen", where Ethem Sarısülük was shut.

49 http://www.todayszaman.com/columnist/gunay-hilal-aygun_349379_gezi-anniversary-frightened-the-government.html

50 Berkin Elvan, a 15-year-old, was hit on the head by a tear-gas canister by a police officer during the Gezi Park Protest and he lost his life in March 2014 following a 269-day coma.

23. Between 06 and 08 October 2014 solidarity with Kobane in response to the advance of the Islamic State (IS) and those they claimed to be its supporters within Turkey and its government is also prominent example of use of violence by law enforcement bodies as instruments of punishment and intimidation. According to HRFT Documentation Centre, during Kobane Events last for three days, 51 people died, at least 401 people got wounded or injured, 1110 people were arrested and 264 people were jailed[51].

24. Despite the international community's calls on excessive use of force including chemical agents[52], the Ankara bombing attack on 10 October 2015 that resulted in 100 people to be killed and hundreds of people to get wounded will be remembered for the use of tear gas against the people who were under shock, against wounded ones and health professionals who were trying to provide emergency aid to wounded ones after the blast[53].

25. Issue on torture and ill-treatment in **prisons** (para 4):

As questioned by the Committee example of torture and ill treatment in prisons was the incidents occurred in Type M Juvenile Closed Prison, Pozantı, Adana, by deputy warden, guardians and other children in prison. Complaints filed to HRA Mersin Branch reached on 25 April, 2011, and after press coverage[54] in June 2011, a huge public reaction followed. The children tortured and raped in Pozantı Prison are those arrested under Law on Combating Terrorism and known to public as "stone throwing kids". These kids complain that they have been labelled "terrorist" from the moment they were put in prison, were discriminated, and were tortured and raped/sexually harassed by both public officials and other kids in prison (who are in for ordinary crimes) within officials' knowledge. Determined violations are listed in two categories in main opposition party Republican People's Party's (Cumhuriyet Halk Partisi) report on the issue[55]. Violations committed by public officials have been as follows: initial and continual beatings upon entering prison, arrest for political crimes are blamed to be "terrorists" and get beaten for this reason, rights to visit infirmary were denied, practice of ill-treatment by infirmary doctors, being handcuffed when taken to forensic medicine institution, courthouse and hospital. Violations committed by detainees that were either consented to or condoned by public officials are as follows: Rape, sexual assault, hitting the sole of the foot with a stick, hanging their heads from a basketball hoop to the

51 See Amnesty International Report: https://www.amnesty.org/en/documents/eur44/2017/2015/en/

52 Addition to the previously mentioned declarations, see World Medical Association's Statement on Riot Control Agents in 2015. It states that "because of the significant difficulties and risks to health and life, States should refrain from using them in any circumstances".

53 http://bianet.org/english/politics/168202-bombing-at-ankara-peace-rally-95-dead-246-wounded

54 http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=1079884&CategoryID=77

55 http://www.hurriyet.com.tr/gundem/20041465.asp

point of suffocation, disposing beatings with a mop handle, forced to perform specific tasks, such as doing laundry, giving massages and washing feet, forced to wake up early and clean the ward. Also, promoting the deputy warden, who was the person most complained about by children, as warden to Erciş Prison, Van, and Pozantı Prison warden being promoted to warden of Sincan Prison was criticised in the report.

After the torture and harassment case taking place in press, Pozantı Juvenile Prison was closed and 218 children were moved to Sincan Juvenile Prison. But there have been serious claims that torture and ill treatment continues in Sincan Juvenile Prison[56]. The visits that were taken by the lawyers of HRA to the Sincan Juvenile Prison were reported and revealed that forced strip searches have been common treatment towards the children. The toilets are locked and available if the wardens permit to use them. The wardens force the children to introduce themselves to their parents on the phone, in a military order which makes it impossible to communicate. Children have reported that they were beaten and exposed to insults. Moreover they are subjected to discrimination based on the allegations they are tried. It was also observed that children are transferred to the prisons where they aren't able to establish social relationships with their families and very far from their homes, contrary to their will and consent[57].

26. Another striking incident took place on 01 January 2014. On that date eleven children between the ages of 14 to 17, who were kept in Sincan Juvenile Prison were beaten, kicked, pepper spayed, pressurized with water cannon, isolated in cold cells, handcuffed. The human rights organisations including HRFT, lodged complaint against guards. Meanwhile most of the children were again transferred to other prisons in Istanbul and Izmir without any notification and contrary to their will. The Prosecutor gave a decision on not to prosecute[58]. The objection which was submitted by the legal experts was rejected[59]. Upon the demand from the children and their parents, the case was brought before the Constitutional Court where it is still pending. On the other hand as a common pattern for the allegations of torture a counter charge was brought against the children on the grounds of "injury, harming public property, resisting against wardens" which is still on-going[60].

27. There haven't been any measures taken regarding the accountability of perpetrators of sexual torture acts against women deprived of their liberty. According to the data of "Legal Aid Office for Sexual Harassment and Rape in Custody" between 1997 and 2013, 389 women applied to seek for support. 86 incidents were reported as rape under custody where the rest were sexual

56 http://bianet.org/bianet/insan-haklari/136799-sincannin-pozantidan-farki-ne

57 These information were gathered based on he Reports of HRA dated September 2013 and December 2013

58 Ankara West Prosecution Office, 09 June 2014, 2014/962 -2014/8722

59 Ankara West 1st Magistrates' Court, 12 August 2014, 2014/303

60 Ankara West 1st Juvenile Court, 2014/520

harassment. There have been 283 police officials identified as the perpetrators following gendarmerie with a number of 100[61].

28. The most common method was defined as strip searches of women under deprivation of liberty. In the parliamentary question to Ministry of Justice; on 07 December 2012 Meryem Akpolat, Adile Dağal, Mehtap Çoban and Yağmur Keskin's complaints of being forcefully stripped search for intimidation purpose was raised. In its official response Minister states that "women took off their clothes and refused to put on" and adds that "the Prosecutor gave a decision on not to prosecute while women inmates were disciplinary sanctioned". The same official response also includes the data on the allegations of sexual harassment and rape for the years 2011 and 2012. There have been 29 incidents reported to Ministry of Justice where 100 wardens were decided not to be imposed any sanction[62]. As the impunity proceeded the acts of strip search also remain the routine of prisons. On 8 August 2013 Elif Kaya who was jailed in Şakran Prison was exposed to strip search and video footage was revealed, showing almost a dozen wardens forcing her to undress and searching. She was again disciplinary sanctioned. In her appeal against the sanction the judge gave a decision of approval on grounds that "she wasn't exposed to strip search as it would take longer than 4 minutes to take off blue jean"[63].

29. In 2015, there have been serious violations of human rights, including **acts of sexual torture** against women. Due to this fact there has been a proposal on establishment of parliamentary inquiry commission. It was submitted to the Assembly on grounds that sexual torture has been prevalent against women under custody thus both the reasons and the necessary actions for prevention need to be investigated[64]. The deputy was relying on these incidents that revealed on the news: Kevser Ertürk, whose deceased body got tortured and stripped and dragged in Muş[65], Figen Şahin who was subjected to sexual torture under custody in Adana[66], Z.İ. who was taken to Anti-Terror branch in Erzurum and stripped naked[67], Şükran Yıldız and other women who got arrested on 06 September was raped and Gülizar Akad was sexually harassed under custody in Diyarbakır[68].

The cases of Ş.Ç and L.T got revealed after they were taken to Sincan Prison from Urfa where they got arrested. Ş.İ was raped and regarding her complaints,

61 https://bianet.org/bianet/kadin/151541-21-kadin-gozaltinda-cinsel-tacize-ugradi

62 29/04/2013, 7/15184

63 http://www.cumhuriyet.com.tr/haber/turkiye/6385/_Direnseydi_4_dakikada_soyulup..._.html

64 http://www2.tbmm.gov.tr/d26/10/10-11868gen.pdf

65 http://www.hurriyetdailynews.com/probe-launched-into-sharing-of-dead-pkk-militants-naked-body-on-social-media.aspx?pageID=238&nID=87077&NewsCatID=509

66 http://awdnews.com/top-news/turkish-police-use-sexual-torture

67 http://www.tuerkeiforum.net/enw/index.php?title=26-30_November_2015_Daily_Human_Rights_Report

68 http://www.sosyalistgazete.net/2015/12/11/diyarbakir-emniyetinde-kadin-tutuklulara-cinsel-iskence/

Şanlıurfa Prosecution Office gave a decision on not to prosecute[69]. The objection was rejected[70] and the case is before Constitutional Court. L. T's case is still pending before the Şanlıurfa Prosecution. She was beaten and sexually harassed under custody.

30. In terms of UNCAT and Committee's General Comment No 3, those kept in prison can only reach treatment and rehabilitation services provided by HRFT after they got released. Hereby the statics are demonstrating the numbers of people who are provided treatment and rehabilitation after they are released:

Table 4

	2011	2012	2013	2014	2015
Number of applicants who has been imprisoned	247	220	291	472	202
Number of applicants who has subjected to torture in prison	138	92	168	291	140

31. Issue on **procedural safeguards** (para 5):

In accordance with the Law no. 6352[71] article 10 of ATL was abrogated and a new provision was introduced. The regulation that the detainee's right to access a lawyer can be restricted for 24 hours by the demand of prosecutor and the decision of judge in "terror crimes and crimes committed with the purpose of terror" and "crimes with the purpose of generating monetary profit within the scope of criminal enterprise activities" remained[72]. Also the prohibition on the statements of the suspects not to be taken during that period remained. However, no reason was provided for the restriction of the right to access a lawyer. Restrictions that "the suspect can only access one lawyer during detention" and "only one lawyer can attend while the suspect is in question by law enforcement officers" for crimes within the scope of ATL has also abrogated.

Nonetheless The Law No 6526 abrogated the article 10 of ATL[73]. The investigations and prosecutions conducted on the allegations that are regulated under ATL are subjected to general provisions of CCP. Law no 6638, mentioned above has amended the related provisions of CCP that will

69 Şanlıurfa Prosecution Office, 19.11.2015, 2015/26752 Soruşturma-2015/10889

70 Şanlıurfa 1st Magistrates' Court, 19.01.2016 , 2016/237

71 Official Gazette , 05 July 2012: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2012/07/20120705.htm&main=http://www.resmigazete.gov.tr/eskiler/2012/07/20120705.htm

72 Anti-Terror Law, Article 10/3-e

73 Official Gazette, 06 March 2014: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2014/03/20140306m1.htm&main=http://www.resmigazete.gov.tr/eskiler/2014/03/20140306m1.htm

be implemented also in the investigation and prosecution processes that are conducted within the scope of ATL.

32. According to addendum to article 91 of CCP, as mentioned above under unofficial detention places, preventive detention is introduced to the procedural law. Up to 24 hours in crimes, including first and foremost "crimes involving force and violence during social events", "all crimes within the scope of the ATL" and "crimes detailed in changes to the Law on Meetings and Demonstrations", and up to 48 hours in crimes committed during social events in which violent incidents may spread in a manner that may lead to the serious deterioration of public order, and in collective crimes this so- called detention will be implemented. Regarding the right to access a lawyer isn't specifically recognised under this regulation which is a loop hole that will result in violation. It is also arranged that security forces will notify the Public Prosecutor about the procedures carried out at the end of the durations stated above. Moreover persons under detention will appear before a judge in 48 hours at the latest, and within 4 days in collective crimes[74].

33. According to Law No 6572[75] there has been an amendment to article 153 of CCP. The restriction on the right of lawyer to examine the file and to take copies of the documents again introduced whilst the Law No 6352 has already been abrogating. According to the provision the restriction on the right of the lawyer to examine the file and to take copies of the documents remains. If the judge gives the verdict of confidentiality**,** all documents except "the records of statement of the person caught or the suspect", "the records of the proceedings which he or she has right to attend" and "the expert reports", cannot be examined and their copies cannot be taken by the lawyer of the suspect until the acceptance of the indictment by the court.

The article that regulates assignment of a lawyer for the suspect or the defendant without a demand "for crimes which has 5 years of lower limit of punishment"[76] is not amended. Before the amendment made in 2006, this article had included **"**crimes which has 5 years of limit up" so the field of application had been much wider. In addition, the implementations such as not informing the individuals about their right to access a lawyer or taking no notice of their demands, consequently depriving the individuals of this right de facto are encountered frequently.

At that stage it has to be mentioned that this restriction is applied to the victim party of investigation and the lawyer of the victim or complainant. The suicide

74 See para 6

75 Official Gazette, 12 December 2014: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2014/12/20141212m1.htm&main=http://www.resmigazete.gov.tr/eskiler/2014/12/20141212m1.htm

76 Code of Criminal Procedure Article 150/3

bombings that took place in Suruç on 20 July 2015 and in Ankara on 10 October 2015 the decisions on restriction to lawyers have immediately taken by Judges[77].

34. According to HRFT's data 348 of all applicants (62, 48 %) in 2015, 494 of all applicants (65, 3%) in 2014, stated that they were able to consult with a lawyer during their most recent detention. This percentage was 34, 1% (288 applicants) in 2013, 51, 6% (261 applicants) in 2012, 54, 8% (265 applicants) in 2011 and 48, 4% (166 applicants) in 2010.

35. The problems regarding the right to an independent medical examination still remains. There isn't any regulation considering the right to access to doctor under CCP. The medical examination of people under deprivation is determined as a duty for law enforcement officials which have left to their discretion. As a result no official notification is provided to detainees as they have right to be examined by a doctor. Article 99 of CCP states "Provisions... for the procedure how to conduct the health control...shall be enacted by an internal regulation."

36. The procedure regarding medical examination is regulated under Article 9 of the Regulation on Arrest, Detention, and Statement Taking which counts under what circumstances suspects and accused will be examined by a doctor as such: If the arrestee will be detained or arrested by force; Replacement of detainee for any reason; Extension of the period of detention; Before released or forwarded to the judicial authorities in order to determine medical condition of arrestees; For treatment of detainees with deteriorated health for any reason, have suspicious health condition[78]; During any transfer of a detainee to a new detention centre, detainee should be re-examined before her/his acceptance to such new centre.

37. Law on Forensic Medicine Institution (LFMI) authorizes the Institution and the affiliated units to issue officially recognized medico-legal reports. Forensic Medicine Institution isn't established as an autonomised body and structuralised under the power of Ministry of Justice which leads a concerning issue in documentation of allegations on torture and ill treatment.

The table below demonstrates the number of applicants to HRFT Centres who were issued medico-legal report[79].

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77 http://www.todayszaman.com/national_no-progress-in-suruc-probe-autopsy-reports-incomplete-daily-says_401623.html; http://www.todayszaman.com/g20_isil-emerges-as-prime-suspect-in-ankara-blasts-as-court-orders-secrecy-over-investigation_401339.html

78 The Regulation just envisages the situation of person when there is a suspicion in her/his health condition there needs to be medically examined during the detention process. Also there isn't any clarification regarding the authority who is assigned to give an opinion on this situation which results as the discretion of law enforcement officials.

79 These numbers shall be accepted in terms of the Regulation on Apprehension, Detention and the Taking of Statements. The numbers aren't representing the documentation compatible with the allegations of torture and ill treatment.

Table 5

	Number Of Applicants				
Medical Report Issued	**2011**	**2012**	**2013**	**2014**	**2015**
Yes	353	313	367	561	386
No	126	188	471	184	144
Don't Remember	5	5	6	11	14
TOTAL[80]	**484**	**506**	**844**	**756**	**544**

These numbers in 2015, 912 torture survivors were offered treatment and rehabilitation services at the HRFT five centres. 597 were new applicants. There were 787 new applicants in 2014, 869 new applicants in 2013, 553 in 2012 and 519 in 2011.[80]

Article 9/5 of the Regulation on Arrest, Detention, and Statement Taking states: *"The medical examination shall be conducted by Institution of Forensic Medicine or official health institutions*." As obviously mentioned by this provision, detainee has no right to a medical examination by a doctor of her/his own choice in the beginning of the detention period.

Article 9/9 of the Regulation states that in case of detecting any sign of that the suspect is subjected to torture or ill-treatment, the doctor is obliged to inform public prosecutor about the crime. However, in many cases, it can be observed that doctors even ignore physical signs of torture and ill-treatment and issue reports as stating that "there is no sign of ill-treatment." At that moment, the right to lawyer appears a complementary safeguard to right to medical examination. The right to lawyer during medical examination is stipulated under Article 149/3 of CCP: " The right of the lawyer to consult with the suspect or the accused, to be present during the interview or interrogation, and to provide legal assistance shall not be prevented, restricted at any stage of the investigation and prosecution phase." In contrast with Article 149/3 of CCP, Article 9/10 of the Regulation restricts the right to lawyer by stating that lawyer can only be present during medical examination if the doctor request for police to be present, too. Due to the fact that regulations cannot be in contradiction with legislation[81], related Article of the Regulation must be regarded void.

Besides there is no provision regarding determination of psychological aspects of torture and ill-treatment even though psychological trauma is considered

80 The total numbers belong to the torture survivors; the relatives of the torture survivors aren't included. Thus total applicant numbers compared to this table shall be considered this condition.

81 Article 11/2 of the Constitution of Turkey

as significant as physical signs of torture and ill-treatment in order to provide effective investigation against perpetrators.[82]

38. The Regulation on Arrest, Detention, and Statement Taking doesn't provide any measure regarding the privacy and confidentiality of examinations. It is essential that examination must be conducted in an environment out of sight and hearing of other persons, in privacy of the doctor and the patient, and according to the doctor-patient relations. These should be regarded, especially for the examinations of detainees.[83]

According to Article 9/10 of the Regulation on Arrest, Detention, and Statement Taking states: "The detainee and the doctor must stay in private. If requested by doctor for the reason of her/his security, medical examination shall be conducted under the supervision of law enforcement officials. In case that examination is conducted under supervision of law enforcement officials and if requested by the examiner, the patient's lawyer may be present during the examination."[84] However, as stated by Article 9/4 of the Regulation, the law enforcement officers who take statement of the detainee and conduct investigation and the law enforcement officers who brought detainee to the medical examination must be separate persons, if fails due to insufficiency of law enforcement personnel, this must be documented.

Privacy of doctor-patient relation has great significance since the doctor is the first person whom a detainee gets into contact with after apprehension by law enforcement officials. In case of being subjected to torture or ill-treatment during apprehension/detention, the presence of law enforcement officials during medical examination may lead to coercive pressures on the detainee or the physician not to document torture or ill-treatment. As a matter of fact, European Committee for the Prevention of Torture (CPT) stated that interview with physician should be made in an environment out of sight and hearing of the law enforcement officials.[85]

39. As stated above, the medical reports must be confidential and must not be made available to law enforcement officials under any circumstances.[86] In contradiction with the principle regarding confidentiality of reports, Article 9 of the Regulation on Arrest, Detention, and Statement Taking stipulates that a copy of the report issued at the time of arrest or entrance to detention centre is

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82 Report of the UN Special Rapporteur on the question of torture, E/CCN.4/1999/61/Add.1, para.113(d).

83 Ministry of Health, 2005, Article 3.2.4; Istanbul Protocol para.124

84 This point is also emphasized by Ministry of Health, regulation no.2005/143 dated 22.09.2005, Article 3.2.4

85 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 16 to 29 March 2004, CPT/Inf (2005) 18, para. 38

86 Istanbul Protocol, para.126, also see, Report of the UN Special Rapporteur on the Question of Torture, 113(d).

kept by the health institution which issued the report, second copy is submitted to the detainee, and third copy to the relevant law enforcement official in order to be kept in the investigation file. Instead of submitting the report to the law enforcement official, submitting to the prosecutor by post or by hand could have maintained accordance with Istanbul Protocol.

On the other hand, Article 9 of the Regulation on Arrest, Detention, and Statement Taking stipulates another measure for secure delivery or preventing replacement or alteration of the medical report issued for determination of the medical condition of the person for the period kept in custody, different than report issued at the time of arrest or entrance. Also in accordance with Article 157 of Criminal Procedure Code, a copy of medical reports issued during extension of detention period or replacement, or exit from detention centre is kept by the health institution, two copies are swiftly delivered to the relevant Chief Public Prosecutor's Office in a sealed envelope by the health institution. A copy of them is given to the detainee or her/his lawyer by the Public Prosecutor and a copy is kept in the investigation file.

40. Regarding Committee's question on the another Protocol that is still in force is the inter-ministerial agreement referred as "Tripartite Protocol"[87] on the medical examination of the detainees signed by the Ministries of Justice, Interior Affairs and Health on 06 January 2000 (last renewal on 19 August 2011) causes the constant violation of the right to proper medical examination of detainees[88]. The protocol is still used as a legitimization tool on the presence of law enforcement officials during medical examination. The renewal of the Protocol introduces a new provision on the presence of law enforcement officials during examinations without any reason which used to be formulated as any security risk to doctor.

Apart from that, the physicians who refused to provide service in the presence of gendarmerie or with handcuffs they are all under the risk of to be convicted. For instance, on 19 April 2013 Diyarbakır Magistrates' Court No. 5 sentenced Physician Burhan Birel to 2 months and 15 days of imprisonment on charges of "misconduct in office" under Article 257 of the TPC. He has been working in the Diyarbakır Training and Survey Hospital Emergency Service and he asked the gendarmerie to take off handcuffs of the pre-trial prisoner Mehtap Çoban and leave the room for medical examination[89].

87 See Protocol : http://www.ttb.org.tr/mevzuat/images/stories/Yeni_I_protokol.pdf; also see the judgment of ECtHR, Filiz Uyan v. Turkey, Application no. 7496/03, 08 April 2009

88 See also para 94

89 See HRFT Press Release of 30 April 2013: http://tihv.org.tr/artik-yeter-adalet-ve-saglik-bakanlarini-hukuka-ve-etik-degerlere-sahip-cikmaya-davet-ediyoruz/ and the news on Burhan Birel: http://arsiv1.tihv.org/index.php?20-22-april-2013-daily-human-rights-report

41. Issue on **enforced and involuntary disappearances** (para 8):

Considering the Replies of Government it is obvious that the enforced disappearances cases aren't on the agenda of State. Besides the data on the number of enforced disappearances' in Turkey is faulty, insufficient and contradictory. The number of the cases of enforced disappearances is based on the data of human rights organizations. The source of the data of human rights organization is mostly the news on disappearances reflected in the press, the applications and complaints made by the relatives of missing persons. According to the Truth Justice Memory Centre[90] between 1981 and 2004, 454 people have been determined as enforced disappeared[91]. According to the data of HRFT Documentation Centre, the number of the enforced disappearances in custody between the years 1990 and 2010 is 230[92]. According to the updated data of Human Rights Association the number of enforced disappearances between the years 1990 and 2012 (March) is 450. The difference between the data is caused by the different sources of information. HRFT bases the documentation studies on mostly the news reflected in the press and record the data obtained according as the confirmation**.** In addition, the missing persons whose remains are found afterwards are recorded under the category of "extrajudicial executions 'unknown assailants" ". HRA has the opportunity to receive direct applications of the relatives of missing persons as a source due to its wide branch organization as well as the news reflected in the press.

42. According to the United Nations Working Group on Enforced or Involuntary Disappearances, the number of cases of enforced or involuntary disappearance between 1980 and 2014 transmitted to the Government is 184. 72 of them are clarified by Government where the 49 cases obtained by the sources[93].

43. The ECtHR has examined a large number of applications alleging enforced disappearances that occurred in the 1990s in south eastern Turkey as a result of state agents activities within the context of the armed conflict and found violations of the Convention in its significant number of judgments in respect of Turkey. As identified by Truth Justice Memory Centre, 67 applications related to 126 forcibly disappeared persons have been brought before the ECtHR, 51 of

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90 The Truth Justice Memory Centre (Hafıza Merkezi) is an independent human rights organization based in 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.

91 http://www.zorlakaybetmeler.org/index.php

92 See http://www.tihv.org.tr/wp-content/uploads/2015/04/Kay%C4%B1plar-Bas%C4%B1n-Dosyas%C4%B1.pdf

93 United Nations Working Group on Enforced or Involuntary Disappearances,04/08/2014, A/HRC/27/49 http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/099/81/PDF/G1409981.pdf?OpenElement

which resulted in violation judgments, whereas 7 of them resulted in friendly settlements[94], and 9 of them were declared inadmissible[95].

The Case of Akdeniz and others v. Turkey, Application No. 23954/94, ECtHR (31 May 2001) is still tried before the Ankara 7th Assize Criminal Court with an allegation of "Murdering multiple persons for the same reason, encouraging people to revolt and murder each other, establishing an organization with the aim of committing criminal acts" against the perpetrators. Case of Seyhan v. Turkey, Application No. 33384/96, ECtHR (2 November 2004) is proceeding before Adıyaman Assize Criminal Court with an allegation of "Murdering and instigating to murder" against the perpetrators. Case of Çelikbilek v. Turkey, Application No. 27693/95, ECtHR (31 May 2005) is still on-going before the Ankara 6th Assize Criminal Court with an allegation of "Establishing an organization with the aim of committing criminal acts, murdering multiple persons".

Case of Gasyak and others v. Turkey, Application No. 7872/03, ECtHR (13 October 2009), known as Temizöz Case, has been tried before the Eskişehir 1st Assize Criminal Court. The Court gave a decision on acquittal of all defendants on the grounds that there has been no concrete evidence. Case of Tekçi and others v. Turkey, Application No. 13660/05, ECtHR (10 December 2013) has ended with a decision of acquittal of all defendants. The Eskişehir 1st Assize Criminal Court gave its decision on the grounds that there has been no concrete evidence. Case of Cülaz and others v. Turkey, Application Nos. 7524/06, 39046/10, ECtHR (15 April 2014)well known as Mete Sayar case, also has ended with a decision on acquittal of all defendants by Ankara 9th Assize Criminal Court on the grounds that there has been no concrete evidence.

44. As will be indicated below there are systemic problems in the implementation of the ECtHR judgments regarding enforced disappearances. Despite the decisions on violation, the prosecution stages were handled as form of impunity. They are initiated with a limited scope. Each incident is considered as a stand-alone case and therefore the systematic, organized and widespread structure of the violations is disregarded. Moreover prosecutions initiated have

94 Aydın v. Turkey, App. Nos. 28293/95, 29494/95 and 30219/96, ECtHR (10 July 2001); İ.İ., İ.Ş., K.E. and A.Ö. v. Turkey, App. Nos. 30953/96, 30954/96, 30955/96 and 30956/96, ECtHR (6 November 2001); Yakar v. Turkey, ECtHR, App No. 36189/97, ECtHR (26 November 2002); Eren and others v. Turkey, App. No. 42428/98, ECtHR (2 October 2003); Hanım Tosun v. Turkey, App. No. 31731/96, ECtHR (6 November 2003); Yurtseven and others v. Turkey, App. No. 31730/96, ECtHR (18 December 2003); Fatma Aslan and others v. Turkey, App. No. 35880/05, ECtHR (24 May 2011).

95 Adıgüzel v. Turkey, App. No. 23550/02, ECtHR (11 October 2001); Sevdet Efe v. Turkey, App. No. 39235/98, ECtHR (9 October 2003); Nergiz and Karaaslan v. Turkey, App. No. 39979/98, ECtHR (6 November 2003); Evin Yavuz and others v. Turkey, App. No. 48064/99, ECtHR (1 February 2005); Ulumaskan and others v. Turkey, App. No. 9785/02, ECtHR (13 June 2006); Zeyrek v. Turkey, App. No. 33100/04, ECtHR (5 December 2006); Yetişen v. Turkey, App. No. 33100/04, ECtHR (10 July 2012); Fındık and Kartal v. Turkey, App. Nos. 33898/11 and 35798/11, ECtHR (9 October 2012); Taşçı ve Duman v. Turkey, App. No. 40787/10, ECtHR (9 October 2012)

been transferred to a city other than the place of the offenses, by a decision of the Ministry of Justice due to "security reasons". Such transfers obstruct the relatives and lawyers of the survivors from following the proceedings properly and cause financial burdens due to transportation costs. Also most of the trials have been transferred to the cities, where there is a strong sentiment of Turkish nationalism and thus, it raises the question whether such transfers were politically motivated and intentional. In all of these cases, perpetrators have continued to serve their duty and in most of them the judges attitudes towards the survivors and their legal representatives remained unconcerned or even biased in comparison with their attitudes towards defendants and their legal representatives. There are visible concerns related to the impartiality of the courts. The decisions on acquittal are granted to the perpetrators.

45. There have been some efforts during the reporting period to reopen mass graves in order to reveal missing persons cases and extrajudicial executions. Investigations were not conducted in accordance with Minnesota Protocol despite the Circular of The Supreme Board of Judges and Prosecutors dated 18.10.2011 and Circular of the Ministry of Justice dated 20.02.2015 on acting in accordance with the Protocol [96] and the International Committee of the Red Cross's (ICRC) Guideline (2003) entitled "Operational best practices regarding the management of human remains and information on the dead by non-specialists". Therefore, data and evidence that would enable the revelation numerous missing people's case has been damaged. The processes such as reopening mass graves, collecting evidence and identification are not under the supervision of relevant persons and institutions especially the relatives of the missing persons and human rights organizations. The data and information on the missing persons and their relatives are not collected in accordance with the international standards and not kept in reliable and independent bodies/units. The issue of the statute of limitations is the biggest obstacle in front of investigating and finding missing persons, punishing the perpetrators and the reparation of the relatives of the missing persons. The cases on enforced disappearances which took place in the early 90s are faced with the risk of being time barred due to the fact that the period limitation was 20 years in the previous TPC.

46. Issue on designation of **National Preventive Mechanism** (para 10):

In Turkey, establishing a national preventive mechanism (NPM) has been brought to the Government agenda in 2009. During the session on the 'Democratic Initiative Process' in the General Assembly on 13th of November, 2009, the Secretary of Internal Affairs at time, Beşir Atalay have mentioned the ongoing effort of the government on institutionalisation in the area of human rights. He announced the formation of an independent "Commission against Discrimination", a civil National Human Rights Institute (TNHRI), a NPM and an

96 See also http://www.hsyk.gov.tr/Mevzuat/Genelgeler/GENELGELER/9.pdf

independent police complaint mechanism, following the ratification of the Optional Protocol to the Convention against Torture[97].

On 23rd of February 2012 the parliamentary of the Republican People's Party (CHP) Ayşe Danışoğlu raised a parliamentary question regarding "the attempts on establishing a national preventive mechanism and "the preparatory work carried out with the civil society that was organised by HRFT with the contribution of relevant international bodies". The answer given with the signature of the Minister of Foreign Affairs on the 2nd of November 2012, Ahmet Davutoğlu, announced that "the works continued", however no further detail was given on the sort of work in progress[98].

47. Pursuant to the Additional Optional Protocol to the UN Convention against Torture (OPCAT), Turkey was under the obligation of identifying/pointing out a national prevention mechanism. Meetings were organised by Ankara University, Association for the Prevention of Torture and Human Rights Foundation of Turkey on 3 November 2011, 8 October 2012 and 16 January 2014 with the participation of Malcolm Evans, Chair of the UN Subcommittee on Prevention of Torture, as well as with the representatives of public institutions, Ministries and civil society organisations including the representatives of the TNHRI. The meetings addressed the creation of an effective NPM, which should be established pursuant to OPCAT. The conclusion drawn by these meetings was as follows; no concrete work had been undertaken for the creation of a national preventive mechanism in the presence of the public and with the participation of the civil society, any action to the contrary is unacceptable and yet no information could be obtained as to which public body had been designated for this activity. Despite statements that the TNHRI would assume the function of a national preventive mechanism, Hamza Dağ, AKP's Izmir MP and Chair of the Subcommittee created for the TNHRI Law under the Human Rights Enquiry Committee of the Parliament, stated at the meeting on 8 October 2012 that the TNHRI law had not been designed by considering the NPM when the Committee was working on the said law. Similarly, at the meeting held on 16 January 2014, representatives of TNHRI emphasised that it was impossible for the Institution to function as a national preventive mechanism; it was even underlined that the Institution would "*collapse*" and all representatives had agreed that such function could not be fulfilled by TNHRI.

48. In the 2012 Progress Report of Turkey issued by the European Commission on the 10th of October, 2012, it was clearly expressed that "Independent monitoring bodies have not yet been set up in line with the Optional Protocol to the Convention Against Torture and a National Preventive Mechanism (NPM) in line with the requirements of the Optional Protocol has not yet been established[99].

97 13.11.2009 dated Radikal Gazetesi: http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=964199&CategoryID=78

98 http://www2.tbmm.gov.tr/d24/7/7-4250sgc.pdf

99 http://www.abgs.gov.tr/files/strateji/2012_ilerleme_raporu.pdf, s. 18-19

Despite these evaluations and the law text of TNHRI, during the press release on 15th of June 2013 on the 28th meeting of the Reform Monitoring Group, the EU Secretary Egemen Bağış announced "Efforts to designate the Human Rights Institution of Turkey as the initiator of a national preventive mechanism within bounds of OPCAT are in progress"[100]. Later, in the Progress Report of the EU Commission (16 October 2013) it was stated that "The national preventive mechanisms has not yet been established" however, that "Turkey intends to establish a National Preventive Mechanism within the National Human Rights Institution" [101].On the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, (16 March 2013) Christof Heyns has recommended: "The National Preventive Mechanism should be set up in line with Turkey's obligations under the Optional Protocol to the Convention against Torture" [102].On 26th of November 2013, the report of the Commissioner for Human Rights of the Council of Europe Nils Muiznieks on his visit to Turkey from 1 to 5 July 2013 was issued[103]. Muiznieks stated that "Turkey has not yet designated an NPM despite the Protocol"; and reminded the concerns of the Turkish authorities on the grounds that "it does not meet the requisite criteria for independence and that it would not have the operational capacity to fulfil this task", re-emphasizing the need to designate an NPM. Furthermore, the commissioner urges the NPM to "review of its statute in order to ensure compliance with the Paris Principles".

49. Although Turkey has agreed to establish an NPM by ratifying the OPCAT on 27th of September 2011 according to the article 17, it has not fulfilled its duty by the designated date of the 27th October, 2012. The permanent representatives of Turkey came together with SPT on the 21st meeting in 11- 15 November, 2013[104].

On January the 28th, 2014 the cabinet decree (2013/5711, 9 December 2013) was promulgated in the Official Gazette[105]. The decree identified Human Rights Institution of Turkey as a national preventive mechanism for the mandate outlined in the Optional Protocol.

50. As well known, an NPM must function in lines with the Paris Principles according to the article 18 of OPCAT. Presently, the process designating the national preventive mechanism was executed by the Cabinet Decree which is accepted as a regulatory body, and is not under a statutory provision. By taking the task of the

100 http://www.ab.gov.tr/index.php?p=49011&l=1

101 http://www.ua.gov.tr/docs/default-source/kurumsal/2013-t%C3%BCrkiye-ilerleme-raporu-nbsp-(ingilizce).pdf?sfvrsn=0

102 Translation of the reports, see: http://ihop.org.tr/dosya/ceviri/ChristofHeyns_TurkiyeZiyaretiRaporu_Tr.pdf

103 Translation of the report see: https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395762&SecMode=1&DocId=2079702&Usage=2

104 SPT, Seventh Annual Report, CAT/C/52/2, 20 March 2014: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2f52%2f2&Lang=en

105 http://www.resmigazete.gov.tr/eskiler/2014/01/20140128-4.htm;

legislative power, the executive power has caused a functional encroachment. Once again, according to the Guiding Principles of SPT, the process of establishing a national preventive mechanism must be public, transparent and co-operative. The Decree has not allowed any civil participation, against the principles of the international agreements; moreover, the Human Rights Institution of Turkey was designated for this mechanism, in spite of the will on the contrary. The delegation of the duties and mandates of the NPM to an institution through Cabinet Decree does not have any legal foundation and thus is unacceptable. In addition, according to the Protocol the adoption of NPM functions is not only dependent on a designation of an institution; but also on the existence of a regulation that covers the definition of the duties, mandates, structure, functional independency, adequate resources and transfer of funds in terms of budget and personnel as well a legal regulation ensuring of the safety of the members.

It has been established by the civil society in Turkey as well as by the international community that the functioning of TNHRI, which is expected to be created for promoting and safeguarding human rights and to operate as a National Human Rights Institution in line with the Paris Principles, is structurally and functions-wise not possible. In the UN's second term universal periodic review on Turkey held on 27-29 January 2015 in Geneva, it is stated --in connection with the TNHRI that its founding law was far from meeting the Paris Principles and that there was need for a legislative amendment to guarantee its structural and financial independence to be fully-aligned with the Paris Principles.[106]

51. The TNHRI was established with the Law No 6332 of 21 June 2012[107]. Civil society organizations have shared their concerns with the public several times prior to and after the enactment of the TNHRI Law, asserting that the TNHRI, which should promote and safeguard human rights, was in fact far from meeting the minimum requirements of a national human rights body in terms of its designated powers, duties and structural conditions.[108]

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106 United Nation Human Rights Council universal Periodic Review 2nd Cycle in 2015: http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G14/210/44/PDF/G1421044.pdf?OpenElement, para 4 and 5; The UN Committee Report on the protection of the rights of all migrant workers and members of their families, CMW/C/TUR/QPR/1, para. 4

107 http://www.tbmm.gov.tr/kanunlar/k6332.html

108 Please see the Joint Press Release by Helsinki Citizen Assembly, Human Rights Association, Human Rights and Solidarity with the Oppressed Association, Human Rights Foundation of Turkey, Amnesty International, 18 April 2012, at http://www.tihv.org.tr/turkiye-insan-haklari-kurumu-kurulmasina-dair-kanun-tasarisi-derhal-geri-cekilmelidir/; and Assessment Note on 14 February 2014 by the Society of Forensic Medicine Specialist, Progressive Lawyer Association, Agenda for Children Association, Helsinki Citizen Assembly, Human Rights Research Association, Human Rights Association, Human Rights and Solidarity with the Oppressed Association, Human Rights in Mental Health Association, Foundation for Society and Legal Studies, Human Rights Foundation of Turkey, Turkish Medical Association, and Amnesty International, at http://www.amnesty.org.tr/uploads/Docs/degerlendirme-notu890.pdf

52. Law no 6332, designates two branched structure which are Human Rights Board and Presidency. Board is the decision making body of the Institution is composed of eleven members, including one President and one Vice-President. Two members by the President of the Republic, seven members by the Council of Ministers, one member by the Board of Higher Education, one member by the presidents of the bar associations shall be elected. In order to be elected as a member of Board one shall be a citizen of the Republic of Turkey, not be deprived of public rights; not be have been sentenced with imprisonment for a year or longer for deliberate crimes or for crimes against the state security even if these are pardoned, not have any conditions to prevent the continuous performance of his/her duty, reserving the provisions of the Law on Public Servants with No: 657, not have assumed any position in the management and inspection organs of any political party as of the date of application for membership, have at least a bachelor's degree. The presidency is composed of vice president, nine service units and working groups. Presidency is authorized to notify decisions of Board and to assist President and Board about the other issues.

53. The process of establishment of TNHRI has been carried out in a manner which is contrary to transparency, participative manner and democracy which render to the spirit of OPCAT and Paris Principles such as. The establishment process wasn't open to the pluralist representation and participation of social forces of civil society that are active in strengthening and protection of human rights in the country. These concerns were expressed in lots of reports and reviews held by national and international bodies. One of them is a report prepared by European Union experts. It is underlined in this report that there has been an inconsistency in the involvement of Civil Society and NGOs in the development of the process, which has resulted in mistrust and scepticism on the part of NGOs as to the future independence, and functioning of the TNHRI.[109]

54. Law no. 6332 doesn't have perspective of preventing torture. The authorization of Unit for Combating Torture and Ill-treatment is much generalized. Wholly, the concept, language and preamble of the Law don't have any perspective of prevention of and combating against torture effectively. There is a lack of clear provision about how many members of the Board are taking the duty and responsibility of the Unit for Combating Torture and Ill Treatment, which means there isn't any provision related to the number of experts and assistant experts who will be staffed in the unit. Under the section of Board's duty and power, it ensures that there will be visits to places where persons deprived of their liberty or persons under protection are being kept, when necessary, with delegations composed of three members. If we assume the experts and assistant experts will be distributed equally to 9 service units then we mat say 6 or 7 expert/assistant expert will be staffed in the unit.

109 http://www.avrupa.info.tr/Files//2011%20Peer%20Review%20Report%20on%20the%20National%20Human%20Rights%20institutions.pdf

55. As in terms of Paris Principles and OPCAT, TNHRI is not independent. The decision making body of THNRI, the Human Rights Board's %80 of members are selected by President of the Republic, Council of Ministers shortly by government which damages independency. Also, the election process doesn't provide transparency and doesn't allow for a wide range of counselling. Besides no objective election or appointment criteria were defined that secure members' independency. In other words THNRI is designed similar to other ordinary state bodies. In addition there are no provisions requiring gender balance or representation of ethnic and ethnic/religious/cultural minority groups. There is also a lack of clear provision that secures the representation of civil society and civil society bodies.

It is designed as a president centred institution. All power and initiative about the Institution's services like determining the agenda, date and time of the Board meetings and to chair these meetings, identifying the strategic plan, performance programme, goals and objectives and service quality standards of the Institution and to develop its policies on human resources and operation are given to President. There is almost no option for the service unit and working commissions to work against the will of its president. When the way of election/ appointment of Board members is considered with the incredible power given to President it is like to makeup Human Rights Presidency linked to Prime Minister by expanding the authority, but nothing else. The provisions related to immunity of the NHRIT members and staffs are insufficient. Although there is a provision which ¨guarantees the membership¨ of President, Vice President and members of the Board, it is very far from providing guarantee as it should be. First of all the Law provides a guarantee of not to be subject of ¨arresting, body searching, house searching and interrogation¨ but doesn't preserve the independence of members by protecting them from legal liability for actions taken in their official capacity while carrying out the work of the HRIT. So board of members can be tried and even convicted during his/her tenure. Actually as per to the provision ¨the membership of President, Vice President or members who have been sentenced to imprisonment for crimes regarding their duties shall be ceased[110]. Moreover, it is stated that ¨the membership of the President and members who do not sign the Board decisions within given periods or do not submit in writing the reasoning for counter vote shall be terminated¨ which is open to misuse. Also there isn't any guarantee for experts who are going to practice in reporting and monitoring fields.

56. It is unclear from the law the level of financial autonomy that the institution will have. Most of its budget should be allocated from the general budget with the approval of the Parliament, the other proceeds are donations and charities, bequeathing to the Institution, revenues generated by the proceeds of the Institution. These general statements are not sufficiently clear and may not ensure the institution has adequate and independent funding in practice.

110 Law no 6332, art. 6/2

Above all, this insecure funding becomes apparent when it is considered with the specialized authorization given to President. President is authorized not just to prepare the annual budget and financial tables of the Institution but also has power to use it exclusively. To authorize just a person to prepare and to use the budget is contrary to pluralism and participative manner.

57. Following the delegation of the UN Subcommittee on Prevention of Torture (SPT) visit between 06 and 09 October 2015, it was announced that "The Government expressed its strong will to make the NPM fully operational. This commitment must now be translated into concrete action by adopting a specific law that provides the NPM with a strong mandate and makes it fully operational, functional, independent and well-resourced"[111]. The Council of Ministers submitted a "Draft Law on Human Rights and Equality Institution" before the Grand National Assembly of Turkey on 28 January 2016[112].

The draft law was not prepared in a participatory manner. Civil society organizations were not consulted before or during the preparation of the draft law. The Draft Law is prepared without considering both national and international critics to the structure of TNHRI and with a perspective to turn over the whole values that are enshrined under Paris Principles and OPCAT. The members of the Board is planned to be selected by Executive Power. The president of the Board is again the sole authority to call the members for a meeting sine die. Moreover there isn't any provision which guarantees the membership. How the structure of the Institution isn't envisaged and it is referred to a Regulation which will be enacted in the future.

58. Given the aforementioned national and international assessments about the establishment purpose of the institution, it is not realistic to try to structure the institution as a national preventive mechanism when it has not been foreseen among the institution's duties and powers in its establishment law and in the absence of any amendments to its establishment law for it to operate as a national human rights institution under universal norms in line with its reason for establishment.

59. Issue on **independency of Judiciary** (para 11)

With the amendment to The Constitution in 2010, a new The Supreme Council of Judges and Prosecutors was established in 11/12/2010 with a number of 6087. As revealed by Venice Commission the authority of the Minister of Justice is absolute that results in the lack of independency of the Council[113]. On 27 February 2014 Law No. 6524 amended the structure of the Council. Minister of Justice's powers were increased in an extraordinary way, (the only authority in the Council). For instance, Minister is the only authority to regulate

111 See http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16589&LangID=E

112 http://www2.tbmm.gov.tr/d26/1/1-0596.pdf

113 http://www.venice.coe.int/files/Bulletin/B2010-2-e.pdf

the duty and task sharing in Chamber of Council; to propose the members for their appointment to Chamber; to initiate investigations against members of Chamber; to be in charge of Board of Inspection. Although the Constitutional Court has cancelled most of the provisions, until the decision of Constitutional Court come into force and a new law is made in place of the established structure and functioning, this structure of HSYK will remain which results in functioning far from objectivity, impartiality, transparency, accountability.

60. The so-called "17 December Corruption Investigations"[114] has also been prominent compounds of the threats towards independency of Judges and Prosecutors. Following the December 17, 2013 corruption investigation operations, a change introduced in accordance with Law No. 6526 dated 21 February 2014, the concept of "reasonable doubt" was replaced with "strong suspicion based on concrete evidence" in order to block new operations to be carried out within the scope of the corruption investigation. Meanwhile the prosecutors and judges in charge with the corruption investigations were dismissed and some of them are still under disciplinary and criminal investigation. An indictment accusing 54 judges and prosecutors of staging a conspiracy during the "Selam Tevhid" investigation, an alleged terror group formed to justify the wiretapping and investigations by the "Fethullah Terror Organization/Parallel State Structure" have been prepared[115].

61. Moreover as stated in the LoIPR, the lawyers are entitled to act without the fear of reprisals. During the reporting period in the early hours of 18 January 2013, police raided the homes and offices of a number of lawyers in seven provinces across the country, including in the cities of Istanbul, Ankara and Izmir. The human rights lawyers arrested on 18 January include: Progressive Lawyers Association (ÇHD) Istanbul Branch Chairperson Mr Taylan Tanay, former branch president and ÇHD member Mr Efkan Bolaç, and ÇHD members Mr Güçlü Sevimli, Mr Güray Dağ, Ms Gülvin Aydın, Mr Serhan Arıkanoğlu, Ms Ebru Timtik, Mr Barkın Timtik, Mr Naciye Demir, Ms Günay Dağ, and Ms Şükriye Erden. Other lawyers Mr. Selçuk Kozağaçlı was travelling abroad at the time of the raids and was arrested upon his return to Istanbul on 21 January 2013[116]. The video footage about forcefully taking body tissues from the lawyers was in violation of prohibition of torture[117]. On 26 December 2013, Güçlü Sevimli, Şükriye Erden, Betül Kozağaçlı and Naciye Demir were released. On 21 March 2014 the rest of the lawyers, Ebru Timtik, Barkın Timtik, Selçuk Kozağaçlı, Taylan Tanay and Günay Dağ were also released. The trial is still on-going.

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114 It refers criminal investigations against key people in the Turkish government with the charge of corruption

115 See http://www.hurriyetdailynews.com/54-judiciary-accused-of-trying-to-overthrow-govt.aspx?pageID=238&nID=96652&NewsCatID=509

116 See https://www.hrw.org/news/2013/01/22/turkey-nine-human-rights-lawyers-imprisoned

117 See: http://www.hurriyetdailynews.com/Default.aspx?pageID=428&VideoID=632

62. In November 2011 mass arrests of 46 Kurdish lawyers took place in raids carried out simultaneously in many cities and provinces. The arrest of these lawyers is linked with many thousands of other arrests which have taken place, mainly of Kurdish Turkish nationals, since 2009. The lawyers are charged under anti-terror legislation in Turkey with being members of an illegal organisation called KCK (Kurdistan Communities Union) [118]. All of the defendants have at some time or other acted in a representative fashion for Mr Abdullah Öcalan and are accused of passing on his orders as well as forming part of an illegal leadership committee linked with the PKK. The methods used to collect evidence are clearly in breach of fundamental elements of legal professional privilege. Routine recording of privileged interviews is perhaps the most fundamental breach of the lawyer-client relationship. Moreover this on-going prosecution is a threat to the proficiency as it is criminalising the lawyers work based on human rights. As this trial was pending another operation was launched against lawyers who are affiliated with ÖHD in Istanbul on 16 March 2016. Nine Lawyers namely, Mr. Mustafa Rüzgar, Mr. İrfan Arasan, Ms. Ayşe Acinikli, Mr. Hüseyin Boğatekin, Mr. Şefik Çelik, Mr. Adem Çalışçı, Ms. Ayşe Gösterişlioğlu, Mr. Tamer Doğan and Mr. Ramazan Demir were asked about their meetings with their clients in prison and phone conversations with journalists or international bodies[119]. While introducing this incident, the information on the release of all lawyers on 19 March 2016 was noted. But as of 22 March 2016 due to the Prosecutor's objection against the decision on release another Magistrates' Court gave a decision to issue an arrest warrant to detain Mr. Hüseyin Boğatekin, Mr. Ramazan Demir, Ms. Ayşe Acinikli and Ms. Ayşe Gösterişlioğlu. The threats against the lawyers who are acting on the protection of human rights remain an alarming situation.

Ms. Filiz Ölmez who is practising in Cizre as a lawyer was also subjected to torture in the vehicle of Special Forces on 02 March 2016. Despite the curfew she sustained her work on protection of human rights in Cizre during the curfew. She became well-known figure before the law enforcement officials that on the first day of the curfew ended in morning she was taken to vehicle and insulted, beaten there[120].

63. Chairperson of the Diyarbakir Bar Association and a respected human rights lawyer Mr. Tahir Elçi was killed on 28 November 2015 in Diyarbakir during a press release[121]. Prior to his killing, he was embroiled in a legal battle over

118 See http://www.eldh.eu/fileadmin/user_upload/ejdm/publications/2013/Report_Trial_Observation_-_17_September_2013.pdf; http://www.eldh.eu/events/event/mass-trials-against-lawyers-in-turkey-going-on-232/

119 https://bianet.org/english/law/173150-lawyers-in-custody-asked-of-their-conversations-with-journalists; http://www.bestanews.com/16262/all-of-the-lawyers-of-ohd-released.

120 Cizre Prosecutor Office, 2016/944

121 See http://edition.cnn.com/2015/11/28/asia/turkey-kurdish-lawyer-killed/; http://www.theguardian.com/world/2015/nov/29/thousands-gather-to-mourn-kurdish-lawyer-gunned-down-in-turkey

freedom of expression in Turkey. On Oct. 15, he gave an interview to TV channel in which he said the PKK should not be defined as a terrorist organization. Five days later he was arrested and charged with creating "terrorist propaganda"[122]. The investigation is proceeding with the critics of his lawyers and family as the evidences are believed to be covered up and destroyed. Like The UN Special Rapporteur on the independence of judges and lawyers has already urged "Governments have an obligation to guarantee that lawyers can work without intimidation and risk to their lives and security and that of their families"[123], the "chilling effect" of threats towards lawyers is intensifying.

RECOMMENDATIONS on ARTICLE 2

The State Party should:

- Ensure that all safeguards are recognised at the moment of deprivation of liberty in any formal or informal circumstances whereby the survivor is de facto or de jure under the total control of law enforcement officials.
- Take all measures that the responsibility belongs to the public authorities at the moment of deprivation of liberty rather than the person under confinement.
- Amend the articles of TPC, especially 125 and 265, in line with absolute prohibition of torture and other forms of ill-treatment that all valid claims reported are investigated without threat of counter-charges causing intimidation or avoidance.
- Review Law LMD with the core purpose of ensuring right to protest that it is compatible with the object and purpose of international standards.
- Refrain from using kinetically, biologically, chemically triggered agents, especially tear gas and plastic bullets, in any circumstances during peaceful protests.
- Ban the use of weapons at any level which have a proven track of lethal effect, in protests whether they are spontaneous, simultaneous, unauthorized or restricted.
- Adopt alternatives to detention that fulfil the best interests of the child and the obligation to prevent torture or other ill-treatment of children with a comprehensive programme to close down juvenile prisons.
- Apply higher standards to classify treatment and punishment as cruel, inhuman or degrading in the case of children.
- Ensure that strip and invasive body searches amount to torture when conducted for a prohibited purpose or for any reason based on discrimination and leading to severe pain or suffering.
- Repeal the article 91/4 of CCP which regulates the "preventive detention" by guaranteeing the whole detention process, under the authority of judicial review.

122 See http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/CCBE_HR_Letter_Tahir1_1446732868.pdf

123 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16827&LangID=E

- Ensure the right of lawyer to examine the file and to take copies of the documents by repealing the restrictions under the article 153/2 of CCP.
- Re-adopt and take effective measures to realize the provision of prompt information on and an explanation of rights under detention.
- Repeal the restriction on mandatory defence under article 150/3 of CCP and guarantee the right to be assisted by counsel in any circumstances.
- Guarantee prompt access to an independent judge with powers to rule on the legality of arrest and the conditions of detention.
- Ensure the right to an independent medical examination under Law.
- Guarantee and take all measures that medical examination of detainees are conducted compatible with Istanbul Protocol.
- Recognize the right to request a second medical examination or opinion.
- Repeal "Tripartite Protocol" and abate the investigations, prosecutions or execution of sentences against physicians relying on Tripartite Protocol.
- Sign and ratify the International Convention for the Protection of All Persons from Enforced Disappearances and the Rome Statute.
- Abrogate the Cabinet Decree No 2013/5711 on the designation of NPM and ensure establishment of a NPM in full compliance with OPCAT under a specific Law.
- Amend the Law on TNHRI to ensure the structural and operational independence in full compliance with the Paris Principles and to guarantee that the TNHRI effectively and fully fulfil its investigative powers.
- Withdraw the Draft Law on Human Rights and Equality Institution
- Ensure that judges and prosecutors can perform their functional activities in an independent, objective and impartial manner.
- Revise the Law on HSYK to cease the influence of the executive power within the Council.
- Take all effective measures for lawyers to avoid prosecution or any other kind of sanctions or intimidation for discharging their professional duties.
- Abate the investigations, prosecutions or execution of sentences against lawyers organised under ÇHD and ÖHD or who are charged on their professional performance on protection of human rights.

III. Issues regarding Article 4

64. Issue on **legislation** on torture (para 16)

In the reporting period, there haven't been any measures taken that all perpetrators of torture are prosecuted under articles 94 or 95 of TPC. Moreover there hasn't been any guideline adopted related to the determination of articles 256 or 86 instead of 94 or 95 of TPC.

The most significant purpose of Article 4 and related General Comment 2 of CAT is to eradicate serious discrepancies between Convention's definition and domestic law's definition which lead to potential loopholes for impunity. In that regard, taking effective measure encompasses having appropriate legislation which identifies certain conduct as other forms of ill-treatment in such a way that it will not overlap with the scope of torture as an offence in order not to let prosecution of a conduct merely as ill-treatment or other related crimes where the elements of torture are present. It has to be stated that State is far beyond to meet the requirements of Article 4. In fact as revealed in the Annexes to the Replies of Government, the article 256 of TPC is posed compared to article 94 or 95 of TPC. Meanwhile as the statics submitted to the Committee isn't following the allegations against suspects or defendants in its own process the numerical data leads to deficiencies which Committee can't rely on.

65. When the act in question, hold the features of the circumstances under article 94 or 95 it is needed to investigate the crime under torture provisions rather than the crime of exceeding the limits of authorization for the use of force. However, in practice, since the element of 'being authorized' is disregarded for an appropriate investigation, the unlawful acts of law enforcement officers which may amount to torture, are prosecuted under Article 256, the perpetrators take advantage of the' impunity system' in exact same way it occurs in the context of other related crimes.

66. The similarities in various incidents from different regions of Turkey are remarkable when the issue on application of 94 or 95 rather than 256, 86 and the rest arises. When it comes to the question of vulnerable groups this inappropriate legislation causes critical problems. Like in the case of Lutfillah Tacik, the 17-year-old Afghan asylum seeker, who died in Turkey on 31 May 2015 after being detained for removal, and assaulted by a police officer[124]. Due to witness statements and video records from hospital and medical reports after he was beaten under detention his health condition worsened and he died. The indictment was submitted before the Van Assize Court with an allegation of committing article 86/2 (intentional injury) and 87 (aggravated form of injury) of TPC rather than article 95/4 (torture causing death)of TPC[125].

67. Issue on **prosecution** (para 17):

Within the limits of the data provided by State it can be assessed that in 2013, 7 law enforcement officials were convicted under 94/1 of TPC (Annex I to the Replies of Government). But when this data is cross checked with Annex 5 to the Replies of Government it is obvious that none of the law enforcement officials were imprisoned under article 94/1 of TPC. This verifies that Government

124 See http://bianet.org/bianet/insan-haklari/165736-afganistanli-multeci-cocugun-olumunden-sorumlu-iki-polise-dava; https://www.amnesty.org.uk/blogs/childrens-human-rights-network/turkey-teenage-asylum-seeker-dies-others-risk-return

125 Van Prosecution Office, Indictment No: 2015/239

provided the data not relying on the definite judgment of Courts. Another point to be underlined is the decisions of convictions compared to the rest which symbolizes the impunity. Whether the investigations are launched based on torture or exceeding the limits of authorisation the non-prosecution decisions are predominant. Moreover as mentioned above, considering the real current situation related to incidents of torture although the data on the number of investigations provided by Government, isn't realistic to rely on, the number of investigations isn't even turning to an effective prosecution.

68. In the case Kasap v. Turkey[126], ECtHR ruled that the States must "intervene in cases of manifest disproportion between the gravity of the act and the punishment imposed".[127] Therefore, the Court has found a violation Article 2 of the ECHR by stating that the application of the provision 'suspension of the pronouncement of the judgement' in a case regarding the killing of a person by police officers, leads to impunity of the perpetrators as a result of depriving the judgement of all its legal consequences[128]. The applications of suspension of the pronouncement of the judgement[129] or suspension of execution of sentences or amnesty have been on-going prevalent issues in the reporting period.

As the suspension of the pronouncement of the judgement or suspension of the execution of the sentence procedures can only apply to crimes that shall be punished with imprisonment of two years or less or a judicial fine, it wouldn't cause any problem as long as the prosecution was carried out under Article 94-95 of the TPC. However, when the accused is subjected to less than two years imprisonment either because of mitigating factors or because of the application of different provisions of the Criminal Code, incompatibility with the UNCAT standards occur which Annexes to Replies of Government have already demonstrated. According to Article 87 of the Constitution, the Grand National Assembly of Turkey has the right to announce special or general amnesties. The

126 Kasap v. Turkey, App. No. 8656/10, 14 January 2014

127 Ibid., para. 59

128 Ibid., paras. 60-62

129 Article 231/5-6 of CPC states:

(5)In cases where at the end of the adjudication conducted related to the crime charged to the accused, if he shall be punished with imprisonment of two years or less or a judicial fine, the court may decide to delay the pronouncement of the judgment. The provisions related to mediation are preserved. Delaying the pronouncement of the judgment means that the judgment that has been produced shall not have legal effect for the accused.

(6) In order to be able to render "the decision on delaying the pronouncement of the judgment", the following requirements must have been fulfilled:

a) The accused must not have been convicted for an intended crime priory,

b) Considering the characteristics of the personality of the accused

and his behaviour during the main trial, the court has to reach the belief that the accused shall not commit further crimes,

c) The damage to the victim or the public, due to the committed crime has been recovered to the full extent by giving back the same object, by restoring the circumstances as they were before the crime had been committed, or by paying the damages.

only exception to amnesty is identified as the offences under Article 14 of the Constitution which do not include the crime of torture. Only the crimes against the State such as "destruction of inseparable unity of the State within its land and nation" and "endangering the existence of the Republic." are excluded from the crimes that are liable to amnesty. As stated by the Committee, granting amnesty to the perpetrators of the crime of torture and ill-treatment has been regarded as an obstacle that prevents the enjoyment of the right to redress.[130] In addition, failure to make appropriate legislation that excludes the crime of torture from amnesty, also leads to impunity of the perpetrators in contradiction with non-derogable nature of torture prohibition.

69. Uğur Kantar's case has to be underlined in connection with the implementation of article 4 of UNCAT. As questioned in LoIPR and well known by the Committee, Uğur Kantar was beaten to death while serving in a military unit in Northern Cyprus. Uğur Kantar was killed in 2011 after enduring physical abuse and torture at a "disco," slang for a disciplinary prison in the military. In Uğur Kantar's case, two perpetrators were convicted for life-sentence based on breaching the article 94 of TPC. But meanwhile the superior commander whose orders for humiliation and exposure to positional torture confirmed by the witnesses before the Court, was convicted on abusing power and the sentence was suspended[131]. The case is still by the Military Supreme Court.

70. Issue on **permission system (para 18)**

Article 161 of CCP stipulates that the prosecutor is entitled to carry out any investigation and gather all necessary information with the help of the security officials under her/his command. Considering the Committee's question on article 161/5 of CCP, prosecutors still do not have the authority to investigate the highest authority in command of security forces at a provincial level. However the prosecution process of state officials is subjected to distinct procedural rules which require permission for the crimes perpetrated in relation to their official duty.[132]

71. Considering that the crime of torture can only be perpetrated by state officials under TPC, there remains the problematic whether permission for investigation can be claimed when it comes to the crime of torture. Article 2/5 of Law No 4483 refers to the crimes in the former TPC which are articles 243 and 245 regulating the crime of torture, ill-treatment and death to torture. In this respect one can admit that 'Torture' under Article 94 and 95, and the crime of 'Exceeding the limits of Authorization for Use of Force' under Article 256, and article 86 'intentional injury caused by public officials' of TPC will be

130 CAT, General Comment No. 3: Implementation of Article 14 by States Parties, 13 December 2012, CAT/C/GC/3, para. 38

131 Land Forces Command Cyprus Turkish Peace Corps Command Military Court Decision dated 2013/50

132 Act on Adjudication of Civil Servants and Other Public Employees, Law No. 4483, 02.12.1999

prosecuted by prosecutors on its own motion. In addition, according to Article 161/5 of TPC, public officials as well as superiors and officers of security officers are also excluded from the Law No. 4483 and will be prosecuted by prosecutors in a direct way.[133] Therefore, within the scope of these crimes, administrative permission cannot be claimed to start an investigation against public officials and officers of security officers as well as their superiors. However, starting an investigation against governors and administrative chiefs as well as the highest degree of superiors of the security forces is still subjected to the permission procedure under the Law No 4483.

The prerequisite for ex-officio investigation is the authorization of the prosecutor to start a criminal investigation without bound by any permission from any competent authority. In the case that permission is claimed to start an investigation, it will be distinctly in contrast with the principle of ex-officio investigation and independency of investigation authorities.

72. The wording of Article 161/5 of TPC leads to confusion whether prosecution of governors, administrative chiefs and the highest degree of superiors of the security forces are still subjected to the permission procedure. As a matter of fact, Article 94/5 of Turkish Criminal Code states that: "*The punishment to be imposed may not be reduced even if the offense is committed by negligence.*"[134] As it is obviously seen from that wording of Article 94/5, the crime of torture can also be committed by negligence and the reducing of the punishment cannot be justified on the grounds of negligence. Therefore, in the case that the crime of torture occurred as a result of the negligence of their duties, governors, administrative chiefs and the highest degree of superiors of the security forces must be prosecuted without any necessary permission[135]. However, in fact, it is observed that permission for investigation is still required for the governors and highest degree of superiors of the security forces.[136]

73. The ongoing prosecutions on allegations of extrajudicial killings, Courts halted the cases on the grounds that permission had to be obtained from the Supreme Board of Judges and Prosecutors to try high-ranking military commanders[137]. Although the Supreme Board have given a decisions "not necessary to give

133 Article 161/5 of Turkish Procedural Criminal Code "Public employees who misuse or neglect their duties stemming from the statute, or duties required of them according to provisions in the statute, as well as superiors and officers of the security forces who misuse or neglect to execute the oral or written demands or orders of the public prosecutors, shall be prosecuted by the public prosecutors in a direct way. Governors and administrative chiefs of districts shall be subject to provisions of the Act on Adjudication of Civil Servants and Other Public Employees, dated 2 December 1999, No. 4483, and the highest degree superiors of the security forces shall be subject to the provisions of adjudication, which are applicable for judges while they are under adjudication for crimes related to their offices"

134 Article 94 of Turkish Criminal Code, Law Nr.5237, 26.09.2004

135 Governor of Ankara, 498.01.02-S-88 K., 29.05.2014

136 Istanbul Prosecutor's Office, no: 2014/38648

137 http://hakikatadalethafiza.org/en/who-are-the-perpetrators-in-the-kiziltepe-jitem-case/

a decision" on grounds that the allegations were in the scope of article 161/8 which doesn't need require permission. But as a matter of fact this situation both created concerns on independency of Courts and on the length of proceedings.

Moreover it was revealed on the news that the Government is in a process of drafting a law on the immunity of military officials who took part during the operations held in curfew zones[138].

74. Issue on **Statue of Limitations** (para 19)

The addendum to article 94 to TPC repealed the statute of limitations on investigations to crime of torture[139]. Yet the statute of limitations is still in force in respect to serious violations of human rights[140]. Also despite the addendum there is still a loophole on the retrospective effect of it.

75. The statute of limitation was used as one of the methods for allowing impunity for gross/serious human rights violations including torture in the past. For instance, after the decision of the Supreme Court stating that the case of 12 September 1980 coup d'état fell under statute of limitation[141], legal proceedings relating to these allegations started to be closed one by one in 2014.

76. Tahir Canan is a former inmate who was released on 30 April 2013 after spending 32 years in several Prisons of Turkey. After he got released he applied to HRFT Istanbul Treatment Centre for the medical evaluation of physical and psychological symptoms emerged, after being exposed to torture during military coup in the beginning of 1980's. He required legal assistance about on-going criminal case against commanders of military coup. As a complainant an intervention was filed by legal expert of HRFT, relying on the alternative report. The case was dropped due to the fact that two defendants died while waiting for the finalized verdict. An on-going compensation case lodged against Ministry of Justice on grounds of arbitrary detention is conducted by legal expert of HRFT. On the other hand, a complaint was brought by the Gaziantep Prosecutor Office for being exposed to torture after military coup. The Prosecutor gave a decision not to prosecute relying on the statute of limitations[142]. Legal process after the decision for not to prosecute given by Office of Prosecutor in Gaziantep, the case was brought by the Constitutional Court. The case is still pending.

According to Article 94/6 of TPC, torture is not subjected to statute of limitations. However, Article 7/1 of TPC states that any person cannot be subjected to any

138 http://t24.com.tr/haber/terorle-mucadele-eden-askerlere-dokunulmazlik-tasarisi-beyaz-toros-gunlerini-geri-getirebilir,330013

139 11.04.2013 dated Law No 6459

140 See https://www.hrw.org/report/2012/09/03/time-justice/ending-impunity-killings-and-disappearances-1990s-turkey

141 The Supreme Court's decision, 1st Criminal Section, 4 December 2013 , 2013/2656 - 2013/7378

142 Gaziantep Prosecutor Office, 15 September 2014 , 2014/40247 -2014/23894

punishment for an act which does not constitute an offense according to the law in force at the time of commitment of the crime. Regarding the crime of torture, the problem occurs since there is no exception to the prohibition against *ex post facto* laws known as the *nulla poena sine lege* principle. Despite the lack of appropriate legislation which excludes the crime of torture from the prohibition against *ex post facto* laws, under international human rights law, it is permissible for a State to prosecute an individual for a crime violating a jus cogens norm such as torture. Article 15/2 of CCPR states "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations." Due to its international obligations and absolute nature of torture prohibition, the lack of appropriate legislation in Turkey bears its responsibility under international law since it does not comply with its obligations by leading to impunity of the perpetrators.

77. Appointment of Sedat Selim Ay to Assistant Branch Manager of İstanbul Anti-Terror Branch in July 2012 is an indication of how the perpetrators of torture are still rewarded with promotions in Turkey relying on statute of limitations. Sedat Selim Ay who was deputy inspector in İstanbul Anti-Terror Branch in 1997 was tried on court for torturing 16 people and sentenced to prison for 11 months and 20 days for torturing 15 survivors, and the punishment was suspended. The Court of Cassation reversed the judgment to the detriment of the offender and asked the court to sentence to impose separate penalties for each crime. Instead of imposing a heavier penalty, the court decided to dismiss the case on the grounds that the statute of limitations which was 7, 5 years ran out. ECtHR considered the fact that the perpetrators were not convicted on the grounds that the statute of limitations ran out although torture was accepted in the verdict as a violation of Article 3 of ECtHR.

The Prime Minister defended the chief of police by saying "there is not any verdict of guilty for him" against the public reaction and the demands on revoking the decision formed after the news of the promotion had been learned and responded to those who reacted against the decision of promotion with the following words: "We will not let them idle away our friend who fights against terrorism"[143]. Apart from the Prime Minister, the Governor of Istanbul[144] and General Directorate of Security[145] laid claims to Sedat Selim Ay and emphasized that there was not any verdict of guilty in torture and rape for the new assistant branch manager and even, he was deemed worthy of this task because he had a "good" personal record in their statements.

143 http://www.agos.com.tr/basbakan-erdogandan-iskenceci-polis-aciklamasi-2221.html

144 http://www.marksist.org/haberler/8088-istanbul-valisinden-sedat-selim-aya-destek

145 http://www.muhalifgazete.com/43967-Emniyet-o-polisi-korudu-.htm

RECOMMENDATIONS on ARTICLE 4

The State Party should:

- Produce clear guidance on when articles 256 and 86 of the TPC will be required to prosecute instead of article 94 and 95.
- Abrogate the Law No 6638, namely Homeland Security Package.
- Ensure that, alongside criminal sanctions, effective and meaningful disciplinary sanctions are imposed on law enforcement officials who commit torture and other forms of ill-treatment.
- Ensure superiors who know or should have known of torture and ill-treatment acts, and who fail to take action to prevent and punish them should also face disciplinary sanctions.
- Suspend from active duty officers under investigation for torture and other ill-treatment and ensure their dismissal if convicted.
- Avoid rendering suspension of the pronouncement of the judgment or delaying the execution of sentences to the offence of torture and other forms of ill treatment.
- Abolish the permission system for investigation of law enforcement officers. Withdraw the Draft Law on the immunity of military officials.
- Ensure investigation of torture isn't subjected to statute of limitations, retrospectively
- Repeal statute of limitations on prosecution of gross violations of human rights, especially extra judicial killings and enforced disappearances.

IV. Issues regarding Article 10

78. Issue on new **training programmes** (para 20)

Since the Committee's concluding observations there haven't been any structuralised educational programmes to ensure that all officials, including judges and prosecutors, public inspectors of places of detention, law enforcement personnel, security officers, members of the Village Guards, prison and immigration officials, are fully aware of the provisions of the Convention, the absolute prohibition of torture and that they will be held liable for any actions in contravention of the Convention.

79. Moreover, as will be stated in the following title, it is stated in the "National Programme of Turkey for the Adoption of the European Union Acquis" published on 31 December 2008 dated Official Gazette[146] that "Necessary measures taken in order to use modern investigation techniques in line with universal human rights practices in criminal investigations continue. Trainings of forensic personnel, judges and public prosecutors in effective application of medical techniques within the framework of Istanbul Protocol continue". This is an unrecognized expression since apart from the trainings which HRFT was in charge of the relevant people unfortunately haven't been trained on Istanbul

146 See: http://www.ab.gov.tr/index.php?p=42260&l=2

Protocol. Yet it is obvious from the daily practice that there isn't any follow up methodology[147].

On 01 March 2014 "Action Plan on Prevention of ECHR Violations" was published in Official Gazette[148]. It has to be stressed that the programmes related to the "Continuing to functionally carry out awareness-raising activities for the judges, prosecutors and law enforcement officers on the standards set out in the case-law of the ECtHR in the investigation, prosecution and compensation proceedings regarding the actions constituting torture and ill-treatment."; "Ensuring the conformity of the judicial examinations and reports with the Istanbul Protocol and the standards of the European Committee for the Prevention of Torture (CPT), and organizing awareness-raising activities in order to ensure the effective supervision thereof by the judicial authorities" aren't in the knowledge of civil society. As far as the trainings aren't known publicly the follow-up methods remain unknown. In fact the Replies of the Government aren't mentioning any training within the context of LoIPR.

80. Although there isn't any concrete training programme genuine to the absolute prohibition of torture, there have been conducted trainings within the scope of the projects on Judiciary and Fundamental Rights contributed by European Commission and Council of Europe. We are gain not aware of the methodology to scale the efficiency of these trainings but some consultation firms have already published reports on behalf of European Commission and Council of Europe. Considering the Reports drawn by both Council of Europe and United Nations one can easily asses that these trainings aren't effective. Moreover with regards to the recent political developments mobility or transfer or dismissal of public officers result in the ineffectiveness of these trainings.

81. Concluding, the responsibility regarding the training programmes are mostly taken as a form of "home work" in the access process to European Union. Besides, as stressed throughout this alternative report, State finds new tactics to refrain from its responsibility or obligation by the courtesy of these trainings. After 2005 Government and public authorities have engaged in training programmes with international organisations while in the meantime, as Committee may asses, the democratic life and fundamental human rights values have been demolished.

82. Issue on **Istanbul Protocol** training programmes (para 21)

Although it isn't a new programme to be mentioned between 2007 and 2009, the requirements of the European Commission funded project titled

147 See Unuvar U and friends: Evaluation of Official Medico-Legal Documents about Police Custodies in Turkey before Istanbul Protocol Trainings available at: http://oaji.net/articles/2015/1436-1424344327.pdf

148 01 March 2014, 28928 No. issued Official Gazette: http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2014/03/20140301.htm&main=http://www.resmigazete.gov.tr/eskiler/2014/03/20140301.htm

"Istanbul Protocol Training Programme: Enhancing the Knowledge Level of Non-Forensic Expert Physicians, Judges and Prosecutors" prepared by Council of Forensic Medicine (CFM) was not fulfilled. Alongside CFM, Ministry of Health and Ministry of Justice s' written commitments to the output of the project, with the contribution of HRFT and the Forensic Medicine Specialists Association (FMSA) the Turkish Medical Association (TMA) and the International Rehabilitation Council for Torture Victims (IRCT) have conducted trainings. 163 medical doctors have attended to the training of trainers, and 3476 medical doctors have attended to training of users. Apart from training programmes, it was guaranteed to prepare the draft of a monitoring mechanism for medical examination/reporting of torture claims, to be implemented as soon as possible.

Nevertheless there weren't any responses to our suggestions on monitoring mechanism towards 3476 medical doctors. Thus there hasn't been any post evaluation of training. Moreover due to the politics on health system throughout Turkey, the medical doctors' assigned positions were changed where recently they aren't in charge of conducting medical assessment and of people under custody. To our knowledge there aren't any structuralised programs to the medical doctors who act in these places where possible allegations of torture can be brought. As mentioned above although the draft of a monitoring mechanism for In addition within the scope of this project 70 judges and prosecutors attended to training of trainers while 1100 attended the training of users. The Ministry of Justice's objections to the modules of training and trainers the trainings were unable to be conducted by HRFT and the other civil organisations.

83. Despite the training of Istanbul Protocol, investigations are launched against medical doctors who show attitude in accordance with the Protocol and the ethical principles of the profession of medicine. MD. Sadık Çayan[149], MD. Naki Bulut[150] and MD. Burhan Birel[151] are the most striking examples that have widespread media coverage. These investigations and law suits cause pressure on medical doctors and prevent the forensic examinations of detainees from being in accordance with the standards. On the other hand on 15 December 2015 Constitutional Court gave a decision on the violation of effective investigation into torture and ill treatment relying on the examination incompatible with Istanbul Protocol. Meanwhile the Presidency of the Council of Higher Education disseminated a notification to Medicine Faculties in 2015 that training on Istanbul Protocol will be integrated to the curriculum. These contradictions between the public bodies result in conflicts like in the case of physicians.

149 See http://www.hurriyetdailynews.com/default.aspx?pageid=438&n=dr.-charged-for-8216refusing-treatment8217-2011-07-28

150 See http://t24.com.tr/haber/dr-naki-bulut-yasaya-uydugu-icin-suclaniyor,87833

151 See: http://arsiv1.tihv.org/index.php?20-22-april-2013-daily-human-rights-report; also see para 40

84. Regarding the Committee's questions to Government it has to be expressed that there isn't any legislation that guarantees the use of Istanbul Protocol in the determination process of refugee status. However the agreement between HRFT and UNHCR is still in force since 2009 which requires the treatment, rehabilitation and documentation of the torture survivors to be conducted by HRFT. The medical documentation in line with Istanbul Protocol is as much as appreciated while determining the status.

RECOMMENDATIONS on ARTICLE 10

The State Party should:

- Structuralise educational programmes to ensure that all officials, including judges and prosecutors, public inspectors of places of detention, law enforcement personnel, security officers, members of the Village Guards, prison and immigration officials, are fully aware of the provisions of the UNCAT and other related human rights instruments.
- Establish follow-up programmes to realize the requirements of structuralised training programmes.
- Ensure all law enforcement officials and related persons who performe in detention facilities fully trained on the implementation of Istanbul Protocol by the experts specialised on Istanbul Protocol.
- Integrate training on Istanbul Protocol to the curriculum of Law Faculties.
- Establish a supervision system on the trainings of Istanbul Protocol that is integrated into curriculum.

V. Issues regarding Article 11

85. Issue on **independent visits and official visits** to detention places (para 22)

There haven't been any formal regulations related to the independent visits to be taken by civil parties, adopted during the reporting period. In fact as annexed to the Replies of Government there isn't any concrete legal parameter that can be relied on for evaluation of the demands. In other words whether the Ministry of Justice rejects or accepts is solely up to their discretion. For instance HRFT has applied to Ministry of Justice to take an urgent visit to an inmate, L.T (19), when her lawyer brought the case before HRFT and asked for a medical evaluation into the allegations of sexual torture. The Ministry, despite the urgent call gave a response of rejection on the grounds that she didn't need to be examined[152]. Apart from this, as to the Committee's questions to Government it has to be expressed that there isn't any formal regulation related to the other places of detention.

86. Law no. 4681 which envisages the establishment of Prison Monitoring Boards has a limited extent to which the Boards can only visit prisons no other

152 Ministry of Justice, 31 December 2015

detention places such like police stations or military prisons. In fact the Board's structure isn't independent and they aren't entitled independent budget, they become non-functional and dependent on Government. Official response of Ministry of Justice dated 12 May 2014 to the request of information on the regularity of visits to be taken and reports to be established and to whom these reports are provided, was referred to the article 6 of Law No. 4681 which is a general provision that regulates the responsibilities of Board. In other words, public isn't notified on the Reports and the follow up to these reports, if there are any.

87. The TNHRI is also entitled to take notified visits to the detention places[153]. On the web site of Institution it is revealed that since 2013 the Board has conducted visits to detention places. Nevertheless the information that one can gather only by surveying the website of the TNHRI about its activities and their content it clearly demonstrates that the TNHRI cannot perform effectively without functional, institutional and financial independence. Yet the main findings related to the "Monitoring Reports" are as follows: The preparations aren't indicated. Any information about the scope or the purpose of the visits isn't determined. Reports where concludes with recommendations, yet fail to define any follow-up mechanism. The reports set out recommendations but without analysing the root causes of the problem or without a holistic perspective for solution. It is simply pointed out to the gaps in the regulations.

88. Issue on the conditions of **prisons** (para 23)

Prisons remain among the places where torture and ill treatment allegations are common. It is observed that, along with physical or psychological violence against inmates, physical conditions of prisons, limited access to health care facilities, hygiene and nutritional issues, and solitary confinement and small group isolation (especially in type F prisons) cause physical and psychological integrity of inmates to get severely damaged.

89. The increasing population of prisons and placing inmates at levels exceeding the capacity of prisons cause worsening of physical conditions and increases deprival of rights. Considering the data of Ministry of Justice as of 18 February 2016 there are 362 prisons with a capacity of 180.256 people[154] where the total number of inmates is 182539[155]. Hereby the Figure 2 shows the increasing number of inmates in the reporting period:

153 See para 51 and rest

154 http://cte.adalet.gov.tr/

155 http://www.zaman.com.tr/gundem_adalet-bakani-cezaevlerinde-bulunan-kisi-sayisi-182-bin-539_2346165.html

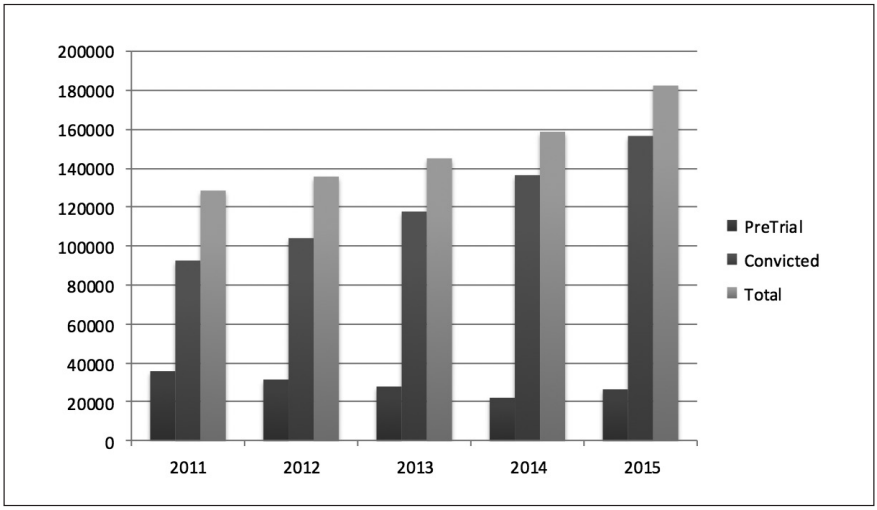

Figure 2

As may be seen below it has to be indicated that there is a peak in Turkey's prison population considering the recent history which have been commemorated with the serious violations of human rights such as military coup and the clashes.

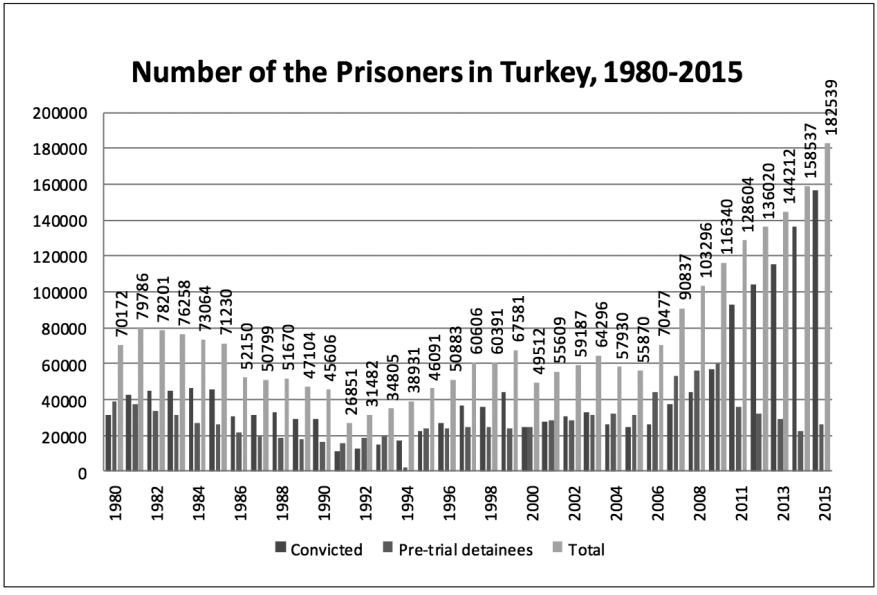

Figure 3

90. The arising population in contrast to decreasing humane treatment have caused protests which resulted in serious violations. In the fire outbreak at Type E Closed Prison, Şanlıurfa on 16.06.2012, 13 inmates died and 5 were injured. In the joint report prepared by HRFT, HRA, CPETU, TMA, Progressive Lawyers Association (PLA), Confederation of Progressive Trade Unions (CPTU), Diyarbakır Bar Association (DBA) and The Association of Human Rights and Solidarity for Oppressed People (AOP), it was stated that 1057 detainees and inmates were put in a 375 person capacity jail, the building was old, health conditions were very bad, humane needs like food and sleep weren't fulfilled in dignity, and wards were extremely crowded and hot[156]. Another claim is that detainees, inmates and NGOs have long been attempting to solve these problems, but no steps for betterment were taken. Other issues underlined in the report include: those in the prison set their beds on fire to protest these conditions, but fire-fighter intervention was allowed only when it was too late and efforts were insufficient, medics also weren't allowed in until it was too late and thus deaths and injuries happened. The Prosecution Office of Şanlıurfa gave a decision not to prosecute whilst Constitutional Court has determined violation of right to life and referred the case to the Prosecution Office to ensure effective investigation are to be held[157].Proceeding with the Committee's question on monitoring, the Ministry of Justice's official response to the parliamentary question related to Urfa Prison stipulates the situation whereas it is indicated that between 2009-2013 none of the Urfa Prison Monitoring Board's reports have been submitted to the Judge of Execution in order to point out the violations to prevent or recommendations to be executed[158]

91. Regarding the question on sick prisoners and treatment conditions, it has to be stipulated that the official information on the right to health of prisoners and particularly sick prisoners isn't open to public scrutiny which lacks to frame the current conditions.

92. Code on the Execution of Penalties and Security Measures (EPSM) is the basic domestic legal framework of the regime of prisons. Moreover there is a Regulation No. 2006/10218 on the Administration of Penitentiary Institutions and the Execution of Penalties and Security Measures and specific circulars and protocols that are in force.

93. One of the Protocols is the Protocol signed on 30 April 2009 between the Ministries of Justice and Health[159]. After the regulation entered into force the health services in prisons has transferred to the family medicine specialists

156 Preliminary Examination Report on Fires Which Happened in Şanlıurfa Type E Prison on 16-18 June 2012, 22.06.2012, http://www.kesk.org.tr/content/urfa-cezaevi-raporu

157 http://www.diken.com.tr/anayasa-mahkemesi-sanliurfa-cezaevi-yangini-icin-ihmal-var-dedi-400-kisilik-cezaevinde-1050-kisi-kaliyordu/

158 20/12/2012, 7/8569

159 See European Commission 2010 Progress Report, page 19: http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/tr_rapport_2010_en.pdf

under the administration of Ministry of Health. Due to Protocol, the assignment of family medicine specialist is as below[160]:

Table 6

Number of Prisoners and Officers	Assignment	Implementation
More than 5000	District Polyclinic for Prison	Pilot- Ankara-Sincan, İstanbul-Silivri, İstanbul-Maltepe and İzmir-Aliağa Prisons
1000 and more	Family medicine specialist per a settlement	5 days full-time
1000 and less	Mobile Health Service of family specialists (not more than 3)	Between 500-1000: 5 days part-time Less than 500: 2 days part- time

As mentioned above as of 18 February 2016 there are 362 prisons with a capacity of 180.256 people where the total number of inmates is 182539 in Turkey, with a growing trend. Before 2009 it has always been criticised by civil society that the health service being provided shall not be regulated under Ministry of Justice and it has always been recommended to be organised under Ministry of Health as an independent discipline specialised on prisoners. Nonetheless under the discipline of family medicine, with a limited numbers of mobilise physicians are now assigned to the health services. Moreover considering the duration of the working time with the prison health service requirements it makes it harder to follow up the patients or adequate timing for proper examination.

94. As mentioned under issue on right to independent medical examination[161] the other Protocol in force is Tripartite Protocol. If the physician refers the patient to hospital the examinations are carried out there. But at that stage the transfer of patients need to be mentioned as it is also a form of violation of right to health which causes the prisoners to refuse the possible, early examination. If there isn't any emergency situation the transfers of prisoners are made by gendarmerie with prison vehicles where lots of incidents of torture and other forms of ill treatment have been reported. Under article 32 and the rest of the Tripartite Protocol, ¨the secure prisoner wards and services¨ have to be built and the treatment and rehabilitation services have to be provided at these wards which are also accepted as a component of prison. As of 2014, it has been indicated that there are 336 ¨prisoner wards¨ at Public Hospitals. The total capacity of in-patient bed-space is 1184. 34 of them are located in basement and 99 of them in ground floor with a degrading, inhuman physical condition[162].

160 See: http://www.cte.adalet.gov.tr

161 See para 40

162 See Report on the Health Services Provided to Prisoners, The Human Rights Inquiry Committee of Grand National Assembly of Turkey, page 12: https://www.tbmm.gov.tr/komisyon/insanhaklari/docs/2015/saglik_hizmetleri_hakkinda.pdf

Under article 38 of the Tripartite Protocol the examination services shall be taken in "secure examination rooms" without the presence of "gendarmerie" in hospitals. The physician shall be accompanied by gendarmerie during the examination on the written request of the doctor without any reason. Meanwhile under the same article it is stated that the examinations shall be taken in the presence of gendarmerie until "secure examination rooms" are built, but gendarmerie shall wait distant enough so the conversations shall not be heard. To our recent knowledge there hasn't been any so called ¨secure examination rooms¨ have been constructed. Moreover, The Ministry of Health has sent the Governors a notification dated 05 October 2011 on the implementation of the Protocol and urging to take the effective measures for providing the physical conditions of the medical examinations. And The Governor has sent a notification dated 09 March 2015 to hospitals (public and university) just mentioning to consider the presence of gendarmerie during the medical examinations. And the Medicine Faculty urged the head of the departments with a notification dated 01 April 2015 that Departments are required to act in accordance with this provision. It is obvious that this regulation does not prevent the violation of patient confidentiality with its effect of breaking the confidence in the relation between patient and medical doctor. Istanbul Protocol emphasises the principle of examining the patient exposed to torture or ill treatment in a way to ensure the determination of all traces on the body of the patient, by paying attention to patient confidentiality in every step of the examination. Medical ethics prioritise the interest and confidentiality of patient in all circumstances. Even if the conversation cannot be heard, being monitored during such examination shall restrict the patient and become degrading.

95. The most frequently reported complaint on accessing right to health is the examinations that are forced to carry out with handcuffs. This practice is allegedly relying on the article 155 of the Regulation No. 2006/10218 and Regulation on the External Protection of Prisons and Transfer Procedures published by General Commandership of Gendarmerie. Respectively, it is stated that ¨handcuffs may be used in infirmaries or health facilities during examination, diagnosis or treatment in order to provide these services in security when it is considered as ta situation of necessity upon the request and supervision of the physician¨ and ¨handcuffs are not removed unless there is a situation of necessity such as death, injury or serious illness. The prisoners who refuse to have treatment with handcuffs are exposed to both disciplinary and criminal investigations and mostly punishments[163].

96. According to HRA's data as of 15 December 2015 there are 300 seriously ill prisoners[164] and according to the official response given to parliamentary

163 http://bianet.org/bianet/insan-haklari/146351-91-tutukluya-237-ay-iletisim-cezasi

164 http://www.insanhaklaridernegi.org/wp-content/uploads/2015/12/19-ARALIK-2015-y%C4%B1l-sonu-hasta-listemiz.pdf

question, as of June 2014 there are 605 seriously and chronically ill prisoners[165]. The main regulation on the stay of execution or release of seriously ill prisoners is regulated under EPSM. But also under the title "Duties and Powers" of the President, Article 104 of the Constitution of Turkey it states that the President has the power "to remit or commute the sentences imposed on certain individuals on the grounds of chronic illness, disability or advanced age." This special procedure of pardoning the sentences is not subjected to any kind of limitations as well as judicial supervision.

97. Article 16 of the EPSM sets out the rules for suspension of execution of sick prisoners. Regarding article 16 it is stipulated that there are two conditions for the sick prisoners who is entitled to have a suspension of execution. One of them is regulated under article 16/2 which states that if the illness poses an absolute danger to the prisoner's life the decision on suspension of execution can be given. And the other situation was introduced with the amendment to the EPSM on 31 January 2013[166]. A provision was added to article which states that the suspension of execution of the sentences of the persons who are seriously ill or handicapped, and accordingly are not able to go on living on their own, would only be possible if they do not pose any security risk to the public in addition to the medical report issued in accordance with article 16/3. Article 16/3 stipulates that decision on suspension will be given by the Chief of Public Prosecutor, upon a report issued by the Forensic Medicine Institution or issued by the health committee of a fully equipped hospital designated by the Ministry of Justice and approved by the Forensic Medicine Institution. The decision of rejection of release is can be objected by the Magistracy.

The additional requirement of "not posing any security risk to the public" render the purpose of the right to early release of seriously ill persons ineffective and is incompatible with the international standards mentioned above. Besides, as the traditional interpretation of public security is the security of State, these amendments caused an obstacle to enjoy the right to release and in most cases the public security clause was used as a motivation for rejecting the claims on suspension of execution of sentences even there were issued reports that set forth the seriousness of illness. During the so-called peace process this article was used as a tool of current political will that differed due to tension of the negotiations which raised public attention. Thus it was announced that there would be another amendment in order to enable the sick prisoners to enjoy their right to health including right to release. The amendment to the article 16/6 on 28 June 2014 ensured the threat would be not a ¨ordinary¨ one but it has to be ¨gross and objective¨. In its action report, submitted to Committee of Ministers concerning the case of Gülay Çetin v. Turkey, The Ministry of Justice states that between 28 January 2013 to 05 August 2014, 242 prisoners' sentence

165 http://www2.tbmm.gov.tr/d24/7/7-36022sgc.pdf

166 See: http://www.resmigazete.gov.tr/eskiler/2013/01/20130131-32.htm

was suspended[167]. Although this number is lack of explaining the use of public security clause, on 17 January 2014 the representative of Ministry of Justice has stated that there has been an ongoing assessment of 61 prisoners before the Forensic Medicine Institution and 7 prisoners request on release was rejected relying on threat to public security and 180 prisoners were released after the amendment to EPSM entered into force[168]. At that stage it is significant to recall the number of seriously ill prisoners which is officially 605, as of June 2014.

98. Apart from the data, it has to be underlined that every individual's life is unique and worth to respect. Therefore the story of Ramazan Özalp is significant as a symbol of misuse of authority at every stage. He has been serving his life sentence since 1993 when he was taken to emergency service in Midyat on 24 April 2011. For the further examinations he was referred to Şanlıurfa Training and Survey Hospital and on 05 August 2011 the report stating that his illness is chronic - cancer which caused him handicap and can be considered as advanced age. After this report was issued he was transferred to Amasya Prison which is very far from where he used to stay and from the proper health service facilities. His demand on release was rejected. His illness progressed and on 02 October 2013 he applied to Prosecutor Office with his report that was issued on 26 July 2013 by Forensic Medicine Institution that was documenting that he had to be released in connection with 16/6. The Prosecutor Office asked the law enforcement office in Idil-Şırnak where he was grown up whether his release would pose a threat to public security or not. Relying on the response of The Gendarmerie Commander the Chief Prosecutor of Bakırköy District denied the release of the prisoner on the ground that "he might be used as a tool of propaganda by political persons and accordingly he poses a threat to the public security" despite the medical report stating that he needs to be released due to the his situation of health[169]. By the courtesy of public attention he was released on 13 May 2014 he was released just before 4 months he lost his life[170]. Ramazan Özalp's story indicates not only the regulations that are violating international human rights standards or dominance of political discourse while deciding someone's confinement but also demonstrates that all evaluations in each step must rely only on clinical approach and whole medical process must be guaranteed as independent and qualified.

99. As revealed by CPT's Country Visit Reports since 2007 the prisoners held in high-security prisons are as a rule accommodated in groups of three persons in two-storey accommodation units and have unrestricted access throughout

167 See:https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2729068&SecMode=1&DocId=2179468&Usage=2

168 See: http://www.tihk.gov.tr/www/files/tihk_rapor_metris.pdf

169 The decision of the Chief Public Prosecutor of Bakırköy, No: 2013/233, 19.08.2013

170 HSYK rejected to investigate the Prosecutors on 17 February 2016

the day to an outdoor exercise yard which is attached to every unit. Further, Ministry of Justice Circular No. 45/1 of 22 January 2007, the prisoners concerned may associate with prisoners of other units in conversation sessions, in groups of up to ten persons and for a maximum of ten hours per week. Nonetheless the implementation in practice of the conversation sessions varied from one establishment to another where in some cases it isn't even implemented. An applicant to Constitutional Court has complained that he was exposed to isolation relying on the fact that he was let to associate with other prisoners for 5 hours per month. The Court found no violation of prohibition of torture since there can't be any discriminatory purpose in a high security prison[171]. At that stage it has to be reminded that CPT has already states as follows "The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature"[172].

RECOMMENDATIONS on ARTICLE 11

The State Party should:

- Structuralise a comprehensive and effective monitoring mechanism in line with OPCAT into all detention places.
- Ensure the legal guarantees on the independency of official monitoring mechanisms.
- Ensure the civil and independent supervision of the military prisons.
- Adopt legal measures that ensure the civil society to take visits to all detention places.
- In order to avoid the overcrowding in prisons adopt and implement alternative means to deprivation of liberty as a penal sanction.
- Ensure that prisoners are able to spend a reasonable part of the day, minimum 8 hours outside their cells.
- Prohibit the imposition of solitary confinement as a punishment, judicial or disciplinary.
- Lift the F Type Prisons which are established as the physical conditions and prison regime of isolation that amounts to torture.
- Establish appropriate gender-specific conditions of detention with regard to women, girls, and lesbian, gay, bisexual, transgender and intersexual persons in compliance with Bangkok Rules.
- Ensure the release of pregnant women and in the post-natal period of mother to provide medically approved, appropriate, qualified and equal medical service which is necessary for the health of and baby and the relationship between them during the maternity and post-natal period.

171 See http://www.kararlaryeni.anayasa.gov.tr/BireyselKarar/Content/5202908d-1e10-4bfc-a482-2a5eef38c8b1?wordsOnly=False

172 CPT Standards (Rev. 2015), para 47

- Take all measures for the examination of prisoners in line with medical ethical standards.
- Adopt legal measures that all evaluations in each step for the sick prisoners must be made only by clinical approach and must be guaranteed as medically qualified.
- Abolish the discretional power of administrative or judicial organs such as security of public under article 16/6 of EPSM.
- Stay of execution must be guaranteed until the person is completely healed.
- Forensic medical institution should be autonomised and removed from being the exclusive authority
- Adopt legal measures on the sufficiency of independent medical documentation following independent examination of prisoners.
- Immediately release prisoners who have been medically decided unsuited to continued detention.
- Repeal "Tripartite Protocol" and ensure Istanbul Protocol is implemented.
- Ensure the right of effective application for the objections against reports and decisions of prosecution office or judges of execution.

VI. Issues regarding Article 12 and 13

100. Issue on **effective investigation** (para 25, 26)

Article 160/1 of CCP secures the principle of ex-officio investigation[173]. In principle, complaint of the torture survivor is not required for starting an investigation against the perpetrators. However, in practice, it can be observed that prosecutors do not start an investigation until a complaint is filed. In regards to duty of investigation ex-officio, the issue of permission system[174] and counter charges[175] must be evaluated as an indicator of the investigations whether they are effective or not. Although ECtHR's rulings on the continuing violation of effective investigation into allegations of torture and other forms of ill treatment under article 3 rely on conducting investigation in compliance with Istanbul Protocol, the State didn't take any steps for the implementation of Istanbul Protocol as an investigation tool.

101. Moreover there is not any amendment made to eliminate the risk of the perpetrator to intervene in the investigation such as ensuring that offenders are relieved of duty or moved to another position until the investigation is over and also, there is not any information on any measures taken administratively.

173 Article 160/1 of CPC states that: "As soon as the public prosecutor is informed of a fact that creates an impression that a crime has been committed, either through a report of crime or any other way, he shall immediately investigate the factual truth, in order to make a decision on whether to file public charges or not."

174 See para 70

175 See para 11

On the contrary most of the law enforcement officials remain in duty or are subjected to reassignment to other places but one can identify as promotion.

As a symbolic case Musa Çitil's process has to be expressed. In 1993-94 in the district of Derik, Mardin 13 villagers were disappeared and their remains were never found. A case was opened against Musa Çitil, who was the Gendarme Commander Brigadier General for Derik at the time. The case, which was opened at the Mardin High Criminal Court in 2012, was moved to Çorum at the request of the Ministry of Justice and with the confirmation of the High Court's Fifth Penal Chamber, citing "security concerns." In the indictment prepared for the case, Çitil is charged with 13 separate counts of aggravated crime. During the trails he kept on serving as Ankara Regional Gendarme Commander Brigadier General and after he got acquitted he was assigned to Diyarbakır[176].

102. Issue on the **conduction of investigations** (para 29)

Regarding the questions on Circulars, it has to be stated that Circular No 9 was abrogated by Ministry of Justice with its new Circular No 148 dated 21 October 2011[177]. Also the Circular No 8 was abrogated with Circular No 148 which was stipulating the duty of Prosecutors to conduct the investigations into torture and ill-treatment.

The Draft Law on the Establishment of Commission on monitoring of Law Enforcement Officers prepared regarding the establishment of an independent system of police complaints planned by the Ministry of Internal Affairs was presented to the Presidency of Grand National Assembly of Turkey on 22.07.2010, but it became obsolete due to the expiration of the Parliament's task. The draft was presented to the Parliament again on 05.03.2012[178] but also again became obsolete. The draft law was not prepared in a participatory manner. Civil society organizations were not consulted before or during the preparation of the draft law.

103. Issue on **implementation of ECtHR judgments** (para 28)

As mentioned and demonstrated with the Veli Saçılık Case above, State is failing to implement decisions of ECtHR[179]. Although Government refrains to reply to the question on execution of specific judgements it has to be expressed that the so called "period of limitation" and amendment to CCP aren't representing the situation. These barriers remain but more importantly the State's approach towards the ECtHR judgments is abusive.

104. As may be well known the ECtHR acknowledged that in respect of a person deprived of his/her liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in

176 See http://jinha.com.tr/en/ALL-NEWS/content/view/28518.

177 http://www.cigm.adalet.gov.tr/genelgelerimiz/genelgemetinleri/148nolu.pdf

178 http://www.tbmm.gov.tr/develop/owa/tasari_teklif_sd.onerge_bilgileri?kanunlar_sira_no=102780

179 See para 16

principle an infringement of the right set forth in Article 3. The interpretation of State mainly relies on "own conduct".

The Isparta Administrative Court's decision on requiring payment of any compensation to Veli Saçılık was based on the grounds that he had a "personal fault to be before the bulldozer" and has no rights to claim for compensation. This decision was finalized after ECtHR's judgement on the violation of article 3. Similarly the Council of State's decision on the "personal fault of Abdullah Yaşa to attend a protest that results with injury" was also relying on this misinterpretation[180]. This decision was given on 12 August 2013, after ECtHR gave a decision on violation of article and granted compensation to Abdullah Yaşa on 16 July 2013[181]. On 12 November 2013 ECtHR gave a landmark decision on a bombing case[182]. The Court concluded that on 26 March 1994 the Turkish air force had conducted an aerial bombardment of Kuşkonar (Gever) and Koçağılı (Beysuke), killing 38 Kurdish villagers, and that the authorities had covered it up, describing its investigation into the attack as "wholly inadequate." The Court described the "national authorities' failure to offer even the minimum humanitarian assistance" to the surviving villagers after the bombing. It ruled that Turkey was responsible for causing survivors "suffering attaining the threshold of inhuman and degrading treatment." The court ordered the Turkish state to pay them 2.3 million Euro compensation. The most striking part of the Court's ruling is its conclusion that it is now "inevitable" that Turkey investigate the case "with a view to identifying and punishing those responsible for the bombing of the applicants' two villages." On 17 April 2014 the Military Prosecutor of General Staff gave a decision not to prosecute on grounds of statute of limitations[183].

105. Following this legal interpretation of ECtHR rulings, before the domestic Courts State submits its defences based on similar justifications. The opinion of Ministry of Interior submitted to Administrative Court on the case of Ali İsmail Korkmaz, who was killed during Gezi Park Events, states that "his own conduct caused his personal fault in the incident of death. Therefore there is no ground for compensation"[184]. Likewise the defence of Ministry of Justice submitted before the Constitutional Court on the so called "Roboski Massacre", the killing of 34 villagers in Uludere, is remarkable. The Ministry evaluated the bombing as "unavoidable fault" in terms of article 2(a) of ECHR with respect to protect the lives of security officials and citizens under self-defence"[185].

180 Council of State, 10th Chamber, 2009/15195, 2013/4438

181 See Yaşa and others v. Turkey, No. 44827/08, 16 July 2013

182 See Abdullah Yıldırım and others v. Turkey, No. 72957/12, 12 November 2013

183 https://www.cihan.com.tr/en/prosecutor-drops-probe-into-94-airstrike-that-killed-38-villagers-1406956.htm

184 http://www.hurriyet.com.tr/icislerinden-tartisilacak-savunma-ali-ismail-korkmaz-polise-tas-atti-28037669

185 http://www.kurdishinfo.com/justice-ministry-submits-scandalous-opinion-roboski

RECOMMENDATIONS on ARTICLE 12 and 13

The State Party should:

- Ensure that investigations into allegations of torture and other forms of ill treatment especially in all detention places, in all times, in cases of excessive use of force are conducted in line with Istanbul Protocol.
- Establish an independent authority to investigate complaints against law enforcement officials under suspicion of torture and ill-treatment in order to eliminate the risk of the perpetrator to intervene in the investigation.
- Establish independent system on monitoring of Law Enforcement Officials with the participation of civil society.
- Take effective measures to ensure that the Prosecutors conduct ex-officio investigations into allegations of torture and other forms of ill treatment.
- Strengthen the efficiency and independence of public prosecution by increasing the number, authority and training of investigating prosecutors.
- Ensure preservation of evidence until the arrival of prosecutor and instruct courts to consider the possibility of tampered or missing evidence as central factors in trial proceedings.
- Ensure that prosecutors and judicial officers read and evaluate all medical reports documenting torture and other forms of ill treatment from medical personnel and forensic doctors, irrespective of institutional affiliation, who are competent and have specialized training on the Istanbul Protocol.
- Ensure the fulfil implementation of ECtHR rulings; specifically take all effective disciplinary measures to prohibit the abusive interpretation of ECtHR rulings under "personal fault clause".
- Implement the Committee of Ministers' recommendations with the participation of the civil society and the survivors or families of survivors in making the necessary arrangements
- Adopt legal measures to recognize and impose sanctions to relevant persons who practice in contradiction with the ECtHR's rulings as supervised by the Committee of Ministers.

VII. Issues regarding Article 14

106. Issue on **redress** (para 29)

The comprehensive reparative concept under UNCAT and related soft law tools haven't been realized. The subject of redress is not evaluated in an integrated way and is only perceived to be limited to financial compensation. The Government's attitude towards the issue on redress stated under the "Action Plan on Prevention of ECHR Violations" published in Official Gazette in March 2014, is "Efficient Use of Revocation for the Compensations Awarded by the Government due to Torture and Ill-Treatment from the Perpetrators of the Crime or the Officials who failed to carry out an Effective Investigation".

107. Domestic law does not provide for restitution, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, there are no specific provisions for compensation for torture and ill-treatment resulting in the courts generally failing to award compensation to torture survivors. Two ways have been envisaged regarding compensation: Demands of indemnification from individuals based on their personal responsibilities or Demands of indemnification from the administration due to fault in delivery of service. Both types of legal action are based on the principle of indemnification against financial and moral damage[186]. According to article 13 of Law no 2577 on the Administrative Court Procedures, the period of filing a case with claims of indemnification is within one year as of the date of knowledge of the administrative offense, and in any case, within a period of 5 years following the administrative offense; and 60 days in cases where the application made to the relevant administration is rejected or unanswered within 60 days.

108. The relevant arrangements on recourse system in domestic law are under articles 40/3 and 129/5 of the Constitution and article 13/1 of the Law on Civil Servants[187]. According to article 13/1 of the Civil Servants Law, there is a right of recourse against the public official causing the damage for the collection of indemnity imposed as a result of administrative cases as well as the indemnity imposed by the ECHR. The Ministry of Finance in its official response to a parliamentary question on the numbers of incidents that recourse of indemnity was imposed is as such: "Since no classification is made according to the organization and responsibility of the individuals subject to these cases, it has not been technically possible to determine the perpetrator to whom to recourse"[188].

109. Issue on r**ehabilitation** (para 30)

There isn't any institution, which directly provides rehabilitation service to torture survivors. Moreover the state does not have any effective activities on rehabilitation for torture survivors and their dependants. It is conceivable that a torture survivor would refrain from seeking rehabilitation from a public institution as the perpetrator is a public official. There are several non-state rehabilitation programmes run by organisations like HRFT. The Foundation for Society and Legal Studies, and SOHRAM that provide comprehensive treatment and rehabilitation services to survivors of torture with their limited resources.

There are several non-state rehabilitation programmes run by organisations like HRFT. The Foundation for Society and Legal Studies, and SOHRAM provide

186 (Abdülmenaf) Kaya/Turkey, Application no: 158/1996/777/978; Decision of February 19, 1998, para. 104, 105, 108

187 Law No 4748 for the Amendment of Various Laws under article 13 of the Civil Servants Law *(R.G.* 9.4.2002) art.3.

188 16 May 2013, 7- 13585

comprehensive treatment and rehabilitation services to survivors of torture with their limited resources.

110. As part of the right to rehabilitation under Article 14 of UNCAT, the State has a clear obligation to refrain from intimidation and reprisal against such service providers and to sustain their work[189]. But that State doesn't take any responsibility to refer people to these organizations, which have expertise in treatment and rehabilitation of torture and ill-treatment survivors.

111. Amendment to the Law on Health Services requires punishment for providing "unauthorized" medical services during emergencies. Considering the prevalence of torture and ill-treatment during recent emergencies in Turkey and the need to ensure immediate rehabilitation services to the survivors, this amendment serves to criminalise the provision of rehabilitation services[190].

112. As a pre-application of this model, two physicians Ms. Erenç Dokudan and Mr. Sercan Yüksel who were providing medical care to the injured people who sheltered in Valide Sultan Mosque during the Gezi Park Events in Istanbul, were put on trial[191] with the demand of total punishment of imprisonment up to 8 years. They were alleged to be "favouring the criminals by providing opportunity for people offending crime" and "making the mosque dirty with the purpose of affronting the related social sections having religious beliefs"[192]. The Court gave convicted them on grounds of messing the mosque and gave a decision on 10 months' imprisonment[193].

113. The HRFT also has been subject to reprisals in the reporting period. The Social Security Institution (SSI) conducted an audit at HRFT headquarter between 18 and 21 June 2013 with the aim of finding out whether one of HRFT staffs, who are officially recorded as part-time, works as part-time or not at HRFT. It was during the Gezi Park Events and thus HRFT was providing support to many people who were tortured during the peaceful protests. Despite the proofs submitted by HRFT including insurance records and work agreement and other strong evidence (i.e. the record of the staff as part-time employee at other workplace in the SSI's system), the auditor considered HRFT's claim as invalid and reported that HRFT was allegedly in breach of employment regulations. Based on the report, HRFT was subjected to an administrative fine

189 CAT, 30 December 2012,General Comment No 3, paragraph 15

190 UN Special Rapporteur on the right to health Physicians for Human Rights, World Medical Association, British Medical Association, German Medical Association, and other leading medical groups have all criticized the amendment. See more at: http://physiciansforhumanrights.org/press/press-releases/turkish-president-signs-bill-that-criminalizes-emergency-medical-care.html#sthash.uzqtSnQO.dpuf; http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14076&LangID=E

191 See http://www.istabip.org.tr/icerik/dolmabahcebrosuren.pdf

192 İstanbul Prosecutor Office, 2013/20645

193 Istanbul 55th Court of First Instance, 2013/52, 23 October 2015

and was also forced to pay a premium debt.[194] The HRFT objected before the SSI, but they were all rejected[195]. All efforts HRFT made to revoke this unfair fine remained inconclusive until now. There are still on-going cases of HRFT against SSI, but the HRFT might be forced to pay this unfair fine and debt at any time. Directly contrary to its obligations under article 14, rather than supporting the HRFT which has provided more than 15.000 torture survivors with treatment and rehabilitation service for 25 years, the State has directed reprisals or intimidation to it at the risk of preventing torture survivors to have proper rehabilitation and treatment service.

Moreover the HRFT Reference Centre in Cizre was destroyed by law enforcement of was subjected to unlawful raid and the fundamental tools to sustain the work were burnt.

RECOMMENDATIONS on ARTICLE 14

The State Party should:

- Adopt a specific Law covering the full scope of measures required to implement the right to redress.
- Abolish the statute of limitation to indemnification cases under article 13 of Law no 2577.
- Take all necessary measures to provide the possible conditions for available, appropriate and promptly accessible rehabilitation services for survivors of torture and other forms of ill treatment from a service provider of their own choice.
- Ensure that civil society organisations or related civil bodies providing rehabilitation service to torture survivors conduct their work in an enabling legal and administrative environment as the survivor's participation in the selection of the service provider is essential.
- Ensure that no reprisals or intimidation are directed to civil society organisations including professionally independent and adequate health care providers.
- Abate the administrative investigations and sanctions against the HRFT.

194 The fine amounts 85.286.00 TL and the premium debt amounts 41.238.09 TL

195 The HRFT filed annulment cases for administrative fine at administrative court and a negative declaratory case for rejecting a premium debt. In the two annulment cases filed at Ankara14th Administrative Court, our demand of suspension of execution was rejected. Besides, in another annulment case at Ankara 10th Administrative Court, our demand of suspension of execution was rejected. The preliminary court session about the case HRFT filed at Ankara 16th Labour Court was held on 17 March 2015. HRFT has not reached a positive consequence for now. The court cases filed against SSI did not eliminate the financial threats against to HRFT.

VIII. Issues regarding Article 16

114. Issue on **extrajudicial killings** (para 32)

During the reporting period State hasn't taken any measures to effectively investigate the allegations of extrajudicial killings. Indeed as mentioned before, more the authority of law enforcement officials expanded, the less investigations were launched[196].

The Figure 4 demonstrates the violation of right to life in terms in clashes between 2002 and 2015, according to HRFT Documentation Centre.

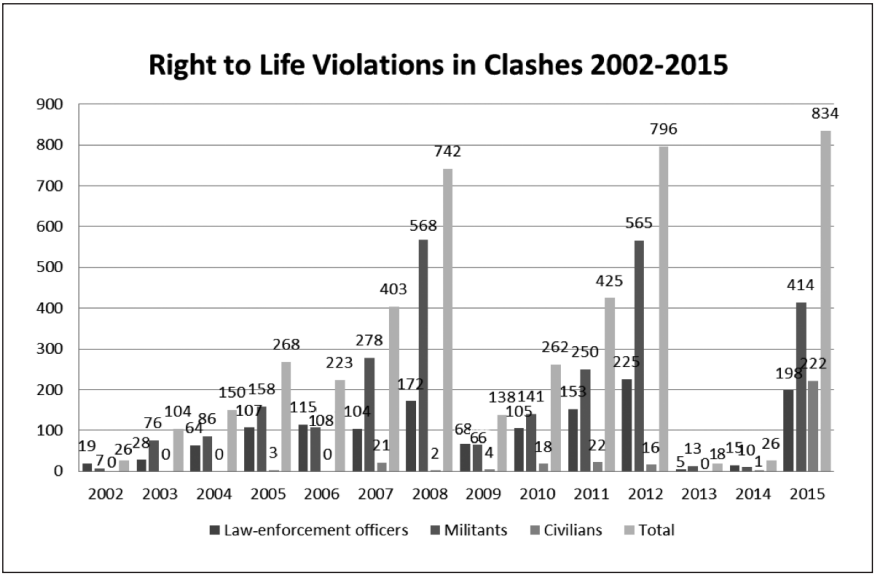

Figure 4

As shown in the figure above the clashes commenced in July increased the number of people died, dramatically which can be followed below:

115. As the clashes intense not only the reckless use of arms, heavy weapons increased but also there have been incidents occurred before the public which desecrate the deceased, in other words torture the bodies of killed people. As revealed on internet[197], on 03 October 2015 Hacı Lokman Birlik's body was dragged behind an armoured vehicle followed by several more vehicles allegedly after being killed and because of a suspicion of carrying bombs. It has been announced that there is a disciplinary investigation against the law enforcement officials who revealed the footage.

196 See para 18

197 See https://www.youtube.com/watch?v=KZBgjKTwdJg

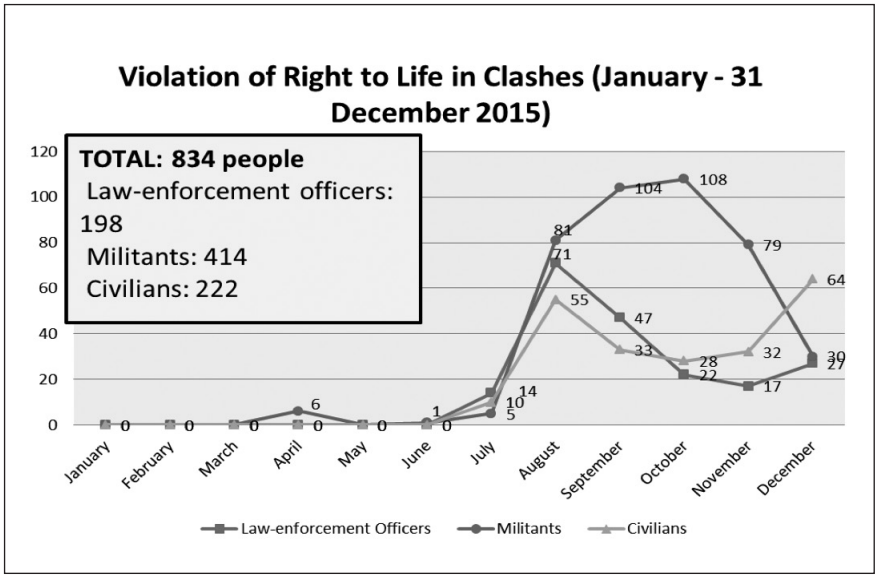

Figure 5

Not only in the south east of Turkey but also in Istanbul and other cities there have been extra judicial killings occurred. Dilek Doğan's case is also another remarkable example of the use of fire arms, unconditionally. She was shot at her home in Sarıyer on 18 October 2015 during a police raid and lost her life at the hospital. The video footage also revealed that on the contrary of the reports of policemen there wasn't any clash at the moment of killing[198]. The police officer is tried[199] with an allegation of "killing with negligence"[200].

198 See http://www.hurriyetdailynews.com/footage-of-dilek-dogans-shooting-released-added-to-case-file-.aspx?PageID=238&NID=92784&NewsCatID=509

199 12th Assize Court of Istanbul, 2015/385

200 Article 83 of TPC states that:
(1) In order to keep a person responsible from a death due to failure to perform an obligation, the failure or negligence creating such consequence should be equal to commissive act in degree.
(2) In order to accept negligence and commissive act as equal elements, a person;
a) Should have undertaken liabilities arising out of a legal adaptations or contract to execute a commissive act, and
b) His previous performance should constitute a risk against the other's life.
(3) Any person causing death of a person due to failure in performing of a legal obligation or requirement, as a basic punishment, is sentenced to imprisonment from twenty years to twenty years instead of heavy life imprisonment and from fifteen years to twenty years imprisonment instead of life imprisonment. As for the other cases, the court may decide for imprisonment from ten years to fifteen years, or reduction of punishment.

116. Regarding the Committee's questions on cases of extra judicial killing, the Replies of Government need to be reviewed up to recent developments. Şemdinli Case is still pending before the Supreme Court.

The Uludere investigation has been referred above in terms of the Ministry of Justice's legal interpretation of the case[201]. After the rejection of objection to the decision of non-prosecution the case was brought before the Constitutional Court on 18 July 2014[202]. Constitutional Court rejected the application of 53 people on 26 February 2016 on grounds that 3 of the applicants didn't submit the power of attorney in the proper time[203].

And concerning the Kaymaz Case, it was brought before the ECtHR on 09 December 2009. The Court ruled that there has been a violation of right to life both with substantive and procedural aspect[204]. The lawyers applied for the retrial of the case before Eskişehir Assize Court. And the Court, without any justification gave a decision on rejection in March 2015. This decision is also before the Constitutional Court.

117. Issue on threats against **human rights defenders** (para 33)

There haven't been any measures taken by State to ensure that all human rights defenders, including members of human rights organizations, journalists, trade union members and lesbian, gay, bisexual and transgender (LGBT) activists are protected from harassment, intimidation and violence, particularly by public officials, as a result of their activities. As revealed throughout this report there have been lots of incidents including assassination to arbitrary arrest in the case of protection of human rights defenders.

118. ATL or national security paradigm has always been misused for targeting the human rights defenders. As of March 2015 there are 31 reporters in jail, according to HRFT Documentation Centre. As mentioned above the prosecutions against lawyers are proceeding while new investigations are launched.

119. On January 11, 2016, more than 1,400 academics in Turkey and abroad published a statement led by Academics for Peace entitled "We will not be a Party to This Crime"[205]. The statement expresses concern that the ongoing curfews, which have been declared in several cities across South East Turkey, are exposing their inhabitants to severe human rights violations, and asks that they are immediately lifted and that solutions for a permanent peace process

201 See para 105

202 http://bianet.org/bianet/insan-haklari/170583-roboski-katliaminda-cezasizligin-dort-yili

203 The decision hasn't published yet. See: http://tr.sputniknews.com/turkiye/20160226/1021160220/anayasa-mahkemesi-uludere.html

204 See Macule Kamas and Others, 25 February 2014, No: 651/10

205 http://bianet.org/english/human-rights/170978-academics-we-will-not-be-a-party-to-this-crime

be established. Soon after its publication, President Mr. Recep Tayyip Erdoğan heavily criticised the academics and compared them to terrorists[206].

As of 18 March the table 7 shows the threats against signatory academics:

Table 7

	Public Universities	Private Universities
Suspended	27	2
Administrative Investigation	471	60
Resignation	5	-
Forced Retirement	-	1
Dismissed	14	24
Legal investigation	156	2
Detention	35	2

Furthermore, on 15 March 2016 three academics were incarcerated for signing the original call of Academics for Peace and announcing that they will start an 'Academic Vigil'. The arrested academics are: Esra Mungan of Boğaziçi University, Kıvanç Ersoy of Mimar Sinan Fine Arts University, and Muzaffer Kaya, formerly of Nişantaşı University. The court also requested the arrest of Meral Camcı, formerly of Yeni Yuzyıl University; Camcı was not arrested as she was currently outside Turkey. A fifth academic and a UK citizen, Chris Stephenson of Bilgi University, was detained for holding a vigil outside the court in support of the three academics and for carrying a Newroz (Kurdish New Year) invitation from a parliamentary party – the People's Democratic Party (HDP).

120. Issue on **conscientious objection** (para 34)

The decision[207] given by ECtHR in 2006, after the application by conscientious objector Osman Murat Ülke, which states the legal process the applicant had to go through, and the procedures he had faced along with its consequences means "civil death" and violates ECHR article 3, still could not be put into practice as a whole. There were other judgements against Turkey in the reporting period. These verdicts are; Yunus Erçep on 22.11.2011, Feti Demirtaş on 17.01.2012, Halil Savda on 12.06.2012, Mehmet Tarhan on 17.07.2012, Buldu and others on 03.06.2014. ECtHR, having changed the jurisprudence with Bayatyan-Armenia verdict on 07.07.2011, defines conscientious objection, a right within article 9 of the Convention.

In its decision adopted at the 1150th meeting (September 2012), the Committee

206 http://sputniknews.com/middleeast/20160114/1033150869/erdogan-university-professors-freedom-of-speech.html

207 ECtHR, Luke vs. Turkey, 39437/98, dated 24.01.2006

of Ministers urged the Turkish authorities to take the necessary legislative measures with a view to preventing repetitive prosecution and conviction of conscientious objectors[208]. The Turkish authorities informed the Committee on 23 October 2012 that consultations between the relevant authorities were on-going with the aim of identifying the general measures required to execute these judgments. The Turkish authorities drew the Committee's attention to the project carried out with the Council of Europe on "Human Rights Training of Military Judges and Prosecutors". The overall aim of the project is to improve the application of the Convention at domestic level through raising awareness of military judges and prosecutors on the Court's case-law. It is expected that the activities carried within the context of this project (such as training and translation of relevant judgments of the European Court) will have an impact on the direct application of the Convention standards in Turkish law.

Thus, despite continuing violations about conscientious objection, Turkey puts conscientious objectors through heavy procedures as bad as "civil death", but takes no steps towards changing this practice which causes torture and ill treatment forms. This irremediable attitude towards conscientious objectors actually shows the lack of intent to prevent torture and other forms of ill-treatment.

121. Moreover the domestic trials are still on-going. Enver Aydemir who refused to perform the compulsory military service on religious grounds, was jailed in 2007 but was released same year, again got arrested in 2009 upon warrant arrest and jailed in Maltepe Military Prison where he was exposed to torture, got released in 29.03.2010 2010 and forcefully brought to the military unit. He was again jailed on 30.03.2010 and got released on 29.04.2010 and brought to military unit. He was jailed on 03.05.2010 until 01.06.2010 when he was sent to Military Hospital. Due to a medical report that indicated he was not eligible for military service he was acquitted from the cases on grounds of medical report covering the time of allegations[209]. But the Court also suspended the pronouncement of the judgments in two trials on "insubordination of obeys" and another decision on conviction was given on grounds of desertion. The Court gave a decision for recognizing the right of conscientious objection but not the Enver Aydemir's as his conscientious objection wasn't found credible. The case is still pending before the Military Supreme Court. The other conscientious objectors, Inan Suver, Muhammed Serdar Delice, Onur Erden, Fikri Işık, and Vakkas Kalay are still pending which cause threat to be jailed anytime[210].

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208 See:https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1150/24&Language=lanEnglish&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383

209 https://www.cihan.com.tr/en/cms-copied-news-on-26-10-458140.htm

210 See http://vicdaniret.org/

RECOMMENDATIONS on ARTICLE 16

The State Party should:

- Amend article 17 of Constitution to bring the formulation of the right to life in line with international standards
- Review the Law on LDPP with the core purpose of ensuring right to life and right to be free from torture in the case of use of force.
- Ensure effective, prompt, impartial and transparent criminal investigation into the independent and urgent forensic investigation into identified mass graves in south-east Turkey and other relevant parts of the country in accordance with the Minnesota Protocol.
- Ensure that prosecutions are no longer initiated against human rights defenders for actions in the defence of human rights; national security and counter-terrorism legislation and other measures aren't misused to target human rights defenders or hinder their work and or endangered their safety in a manner contrary to international law
- Recognise the right to conscientious objection and abate all investigations, prosecutions or execution of sentences against conscientious objectors.

IX. Other issues of concern

122. Issue on **definition of terror** (para 36)

As mentioned throughout this alternative report the Replies of Government aren't sufficient to evaluate the current developments considering the amendments to Laws have become politically vulnerable. The so called "Packages" have already been outdated.

123. In fact despite the short-term process due to the ceasefire, it has to be stated that the discourse on terror has followed a general pattern. At the end of 2011, Mr. İdris Naim Şahin, former minister of interior was introducing the "new definitions of terror". He defined the arts as the "backyard of terrorism "through painting; they [the artists] depict it on a canvas. Through poetry; they reflect it in words." He went on to accuse artists of trying "…to demoralize the military and the police who fight against terrorism by making them the subject of their art". Artists are seen as duplicitous. "If they say 'good', they mean 'bad', and vice versa. If they say 'peace', it means 'war'. If they say 'democracy', they mean 'oppression'". Şahin's chilling solution to this problem is for the government "to weed these [troublemakers] out with the precision of a surgeon"[211].

These, and other similar comments made by officials have been referred along under the relevant sections. They serve to target the opponents and provide

211 See http://www.cnnturk.com/2011/turkiye/12/26/icisleri.bakanindan.yeni.teror.tarifleri/642042.0/index.html

a climate under which everyone feels threatened. On 14 March 2016 the president Mr. Recep Tayyip Erdoğan made a statement after the bomb attack in Ankara. He targeted NGO representatives, journalists and parliamentarians by quoting "There is no difference between the terrorist holding gun, and those using their titles and pencils to support it" and added that "I believe definition of terror and terrorist should be redefined as soon as possible and be included in our Criminal Law. This matter is no more a matter of freedom of expression, freedom of information, or freedom of organizing"[212].

The Figure 5 below shows the detentions in connection with ATL. As seen after the clashes commenced in July 2015, the terror definition broadened in practice.

124. Issue on **international commitments** (para 37-39)

An increase in violence against opponents in the society and legal regulations allowing the use of violence, political and public authorities' attitudes and discourse disregarding human rights have severely damaged democracy and rule of law in Turkey.

125. Attempts to ensure state security has increasingly continued at the cost of violation of human rights such as right to assembly, demonstration, and prohibition of torture and other forms of ill-treatment during the reporting period. As mentioned in the European Commission Turkey 2014 Progress Report, freedom of expression and freedom of assembly has continued to be hampered by legal framework and its interpretation. In this respect, great number of legal amendments having devastating effects on human rights and democracy in Turkey were issued in 2014[213]. Moreover, as mentioned above, the so-called "Homeland Security Package" was one of the steps to restrict freedoms, to suppress social opposition, to broaden the powers of the police, and to dissolve the judiciary from the state system, which cause abolishment of the principles of "the rule of law" and "the separation of powers". Needless to say, broadening powers of detention, search, and use of firearms easily lead to increased use of torture and other forms of ill-treatment. The practice of curfews which will be underlined below, has seriously demolished the common conscience on promotion and protection of human rights, if there was any as the Government's attitude when it comes to human rights lacks inner conviction and, in our view, reforms have been made mostly out of the

212 See http://www.independent.co.uk/news/world/middle-east/turkey-s-president-erdogan-wants-definition-of-terrorist-to-include-journalists-as-three-academics-a6933881.html

213 Several legal regulations on the use of internet starting on 19 February and continue throughout 2014, several legal amendments on high council of judges and prosecutors starting on 27 February 2014 and continue throughout 2014, several legal amendments on Anti-Terror Law on starting from 6 March 2014 and continue throughout 2014, several legal regulations on national intelligence service starting on 26 April 2014 and continue throughout 2014, judicial package including legal provision of replacing "strong evidence" with "reasonable doubt" for the search by law enforcement bodies on 12 December 2014, etc.

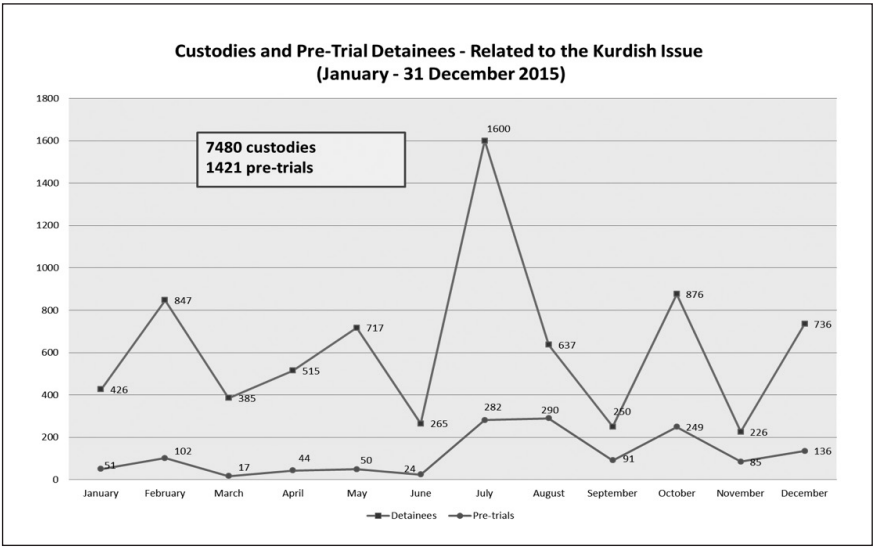

Figure 6

necessity to "do the homework" with regard to the EU accession negotiations. Yet, Turkey's motivation to pursue its accession to the EU is decreasing for various reasons and in our experience; this directly affects the level of human rights protection in a negative way.

126. As mentioned above, during the reporting period, many attempts making us concern about increasing and intensifying human rights violations in Turkey has occurred rather than measure to promote and protect human rights. Especially, in 2015, we unfortunately have entered a new period of state of emergency in Turkey where the arbitrary power of police has been increasing; human rights and freedom are increasingly violated; many people lost their lives and/or wounded in the cities under the long-lasting curfew; participants in social demonstrations were subjected the police violence; and the freedom of expression and organization was highly restricted.

127. In the Replies of the Government an Action Plan on Prevention of European Convention on Human Rights Violations is described as a measure to promote and protect human rights. Yet, it was observed that recent legislation and implementation on internal security which we mentioned above contradicts the measures outlined the action plan since law enforcement bodies were granted with broad powers without adequate oversight as result of perspective of giving priority to internal security at the cost of human rights. Moreover, as mentioned in European Commission Turkey Progress Report 2015, the Action Plan should be revised as it cover all the areas identified as violating the ECHR,

including the protection of human rights in the field of counter-terrorism. It is because anti-terror legislation is not in line with ECtHR case law, and used as an important tool to restrict human rights and freedom in the name of internal security.

128. The state has also continued a policy of restricting freedom of expression and freedom of assembly in law and practice. As mentioned in the European Commission Turkey Progress Report 2015, freedom of expression is challenged by arbitrary and restrictive interpretation of the legislation, political pressure, dismissals and frequent court cases against journalists which also lead to self-censorship[214]. The state continued using a strong pressure on the media through arresting and prosecution of journalists, and giving high fines and opening censorship cases and layoffs against media organs, newspaper, etc. The EU Report also stated that freedom of assembly is overly restricted in particular through disproportionate use of force in policing demonstrations and a lack of sanctions for law enforcement officers[215].

129. The use of violence under the name of protecting the state at the risk of violation of freedom and human rights, even the right to life, has intensified in Turkey after the national election on 7 June 2015 and then increased day by day. In July 2015, the "settlement" process was suspended, which resulted in the re-start of the armed-conflict between Kurdistan Workers' Party (PKK) and the state of Turkey as a result of lack of concrete attempts to develop and implement comprehensive and holistic programme for peaceful and democratic solution to Kurdish issue until now and recent developments in Middle East. This immediately caused the escalation of violence in the east and south eastern regions. As mentioned by the European Commission Turkey Progress Report 2015, this also gives rise to serious concerns over human rights violations[216]. And the situation after suspension of "settlement" process has been getting worse day by day.

130. Issue on **Curfews**

As mentioned above in 2015, a new period of state of emergency was introduced in Turkey. Since 24 July 2015 after the clashes commenced between State and PKK, the most intense times concerning the armed conflict has marked the violations of human rights.

131. The authorities have stated that the curfews are being imposed in order to allow for the capture of members of the PKK, to remove barricades, to protect the security of the people and their property. According to HRFT Documentation Centre between the dates August 16th, 2015 and March 17th, 2016 there has been 63 officially confirmed, open-ended and round-the-clock

214 COM(2015) 611 final}, p.22

215 COM(2015) 611 final}, p.22

216 COM(2015) 611 final}, p.22

[all daylong] curfews in at least 22 districts of 7 cities in South-eastern Turkey. These cities are as follow; Diyarbakır (34 times), Şırnak (9 times) and Mardin (11 times), Hakkâri (5 times), Muş (1 time), Elazığ (1 time) and Batman (2 times). The curfews in Cizre last 79 days and in Sur it is still on-going in its 100. Day as of 22 March 2016. Like Sur the curfews were on going while this report was in preparation process.

It is estimated that, according to the 2014 population census, at least 1 million 642 thousand residents have been affected by these curfews and fundamental rights of these people such as Right to Life and Right to Health are explicitly violated. According to the statement of Ministry of Health on February 27th, 2016, at least 355 thousand residents were forced to leave the cities and districts they lived in. According to the data of HRFT Documentation Centre, since August 16th, 2015 (which is the date of first declared curfew) until March 18th, 2016 at least 310 civilians lost their lives in regions and periods of time that curfews where officially declared[217].

132. In his statement the Commissioner for Human Rights Nils Muiznieks has already manifested the fundamental concerns on the application of curfews. He described the curfews as a massive restriction of the most fundamental human rights of a huge population. As the use of curfews does not appear to satisfy the criteria of proportionality and necessity he therefore urged the Turkish authorities to ensure that in the future anti-terror operations will be more limited in scope and the disruption of public life is strictly proportionate to the aims pursued. Moreover he found the lack of ongoing investigations disheartening in the face of the number and seriousness of allegations. For this reason he called the authorities to ensure that victims receive fair, appropriate and timely compensation for the damages they suffered and called on the authorities to allow access by independent observers[218].

133. Following the same procedure the Governor's Offices' declare curfews in districts which will last until a further notice. The public release on the impose of curfews are all justified relying on the article 11/C of LPA[219]. As it can be assessed there isn't any power recognized under article 11/C of LPA. Moreover there isn't any legal ground for declaring curfew within the authority of Governorship. On the contrary the Constitution of Turkey regulates under its article 13 that, ¨Fundamental rights and freedoms may be restricted only by law and in conformity with the reasons mentioned in the relevant articles of the Constitution without infringing upon their essence. These restrictions shall not be contrary to the letter and spirit of the Constitution and the requirements of

217 See the Report available at: http://tihv.org.tr/wp-content/uploads/2016/03/T%C4%B0HV-Soka%C4%9Fa-%C3%87%C4%B1kma-Yasaklar%C4%B1-Bilgi-Notu-18-Mart-2016.pdf

218 See the statement available at: http://www.coe.int/en/web/commissioner/-/turkey-should-ensure-the-protection-of-human-rights-in-the-fight-against-terrorism

219 http://www.migm.gov.tr/en/Laws/Law5442_ProvincialAdministration_2010-12-31_EN_rev01.pdf

the democratic order of the society and the secular republic and the principle of proportionality¨. According to Constitution, state of emergency procedures must be incompatible with article 121/2 which is "The financial, material and labour obligations which are to be imposed on citizens in the event of the declaration of state of emergency under Article 119 and the manner how fundamental rights and freedoms shall be restricted or suspended in line with the principles of Article 15, how and by what means the measures necessitated by the situation shall be taken, what sorts of powers shall be conferred on public servants, what kinds of changes shall be made in the status of officials as long as they are applicable to each kinds of states of emergency separately, and the extraordinary administration procedures, shall be regulated by the Act on State of Emergency". This Act on State of Emergency is the Law no: 2935. The declarations of curfews aren't relying on this Act.

Such like according to article 120 of Constitution the Council of Ministers meeting under the chairpersonship of the President of the Republic, after consultation with the National Security Council, may declare a state of emergency in one or more regions or throughout the country for a period not exceeding six months. In fact the Government is aware of the absence of legal basis since it has been reported that a new amendment to ATL will be introduced in following days which regulates the authorisation of Prime Minister to assign military units to launch operations[220].

134. As of December 11th, 2015 the impose form of continuous curfews, the broadness of regions that curfews are declared, length of duration, military dispatch and using heavy weapons within the residential areas[221] and judicial processes in accordance with all these, made Right to Information and Right to Know the Truth which are under protection by the international conventions inaccessible.

135. Some people whose bodies were reached are identified whether by their relatives or DNA pairings, yet the lack of knowledge and suspicions over the time, cause and manner of death are present. The Istanbul Protocol and Minnesota Protocol are violated by including claims such as not allowing the lawyers and independent forensic medicine specialists to be present during autopsies of most of the bodies; not delivering investigation files with especially the reports of examination of deceased and crime scene investigation to relevant people; not conveying copies of autopsy reports neither to relatives nor to lawyers; and bringing most of the bodies as stripped naked before the autopsy procedure. Within this period of serious violations a complete autopsy procedure became

220 http://www.hurriyet.com.tr/guneydoguda-operasyonlara-katilan-askere-yasal-koruma-40071929

221 Even though it's not officially declared, according to the national media almost 10 thousand members of security forces are active in operations in each district that curfews are ongoing (Cizre, Sur, Silopi). Moreover, it's known that hundreds of armoured military vehicles such as tanks, panzers, cannons etc. are dispatched to the relative districts/cities.

impossible; therefore reliable information couldn't be obtained on people who lost their lives. As the integrity of most of the bodies is damaged identification was not able to be conducted, especially of the people whose bodies were taken from the in question basements of Cizre. Moreover, there has been changes on Regulation for Implementation of Forensic Medicine Institution Law on January 7th and 16th, 2016 and again on Regulation on Transfer and Burial of Corpses on January 16th, 2016 that allowed the bodies to be buried collectively to common graves or unknown places without waiting for the necessary period of time which made the identification process even harder. Bodies of people who are known or claimed to be dead whether identified or unidentified are still waiting to be sent to Forensic Medicine Institutions, due to ongoing military operations or even though the operations are declared to be done due to ongoing curfews. It is known that these bodies are not brought out of the curfew areas, yet reliable information couldn't be obtained if there are any conducted investigations. It has been reported that the torture incidents rose during the curfews and there haven't been any procedural safeguards granted to the detainees[222].

136. The data revealed demonstrates that lethal force has been intensively deployed towards the civilian population. Such like, even if the cause and manner of deaths and injuries haven't been officially announced, contrary to international human rights standards guaranteeing impartial and independent investigations, lots of the incidents have been reported based on the lack of emergency services which weren't provided. Furthermore it can reviewed that wounded civilians are referred to the hospitals in other cities which sets forth the fact that in districts providing health services lead to risk. Both in Silopi and Cizre districts it has been reported and footages were already demonstrated that the State Hospitals are controlled and blockaded by security forces which disrupt the delivery of essential health services, endanger health professionals, and deprive people of urgently needed medical attention. It has to be stressed that under the 'emergency condition' promotive, preventive, curative and rehabilitative services aren't provided.

Since the curfews commenced the attacks on health workers became intense. On 30 December 2015, health worker Abdulaziz Yural, who works at Cizre State Hospital and one of the distinguished volunteer of HRFT, was targeted by special operation police upon attempting to go to the aid of a civilian woman shot by police on a street in Nur neighbourhood. Abdulaziz Yural was shot to his head and has lost his life soon after the attack. His body remained on the street and couldn't be retrieved from the scene due to intensified gunfire by state forces. On 29 December 2015, Agit Tetik (23) working as a health worker was put in jail with an allegation of providing health service to his uncle Ali Tetik (34) who was shot from his chest.

222 http://www.radikal.com.tr/turkiye/silopi-ve-cizrede-gozaltinda-iskence-iddiasi-1500026/

137. Under article 12 of International Covenant on Economic, Social and Cultural Rights and The Committee' General Comment No. 14 (2000) on the interpretation of article 12, the right to health is 'an inclusive right extending not only to timely and appropriate health care but also to the underlying determinants of health, such as access to safe and potable water and adequate sanitation, an adequate supply of safe food, nutrition and housing, healthy occupational and environmental conditions, and access to health-related education and information, including on sexual and reproductive health'. As The Committee has underlined in its Comment 'the right to health in all its forms and at all levels contains the interrelated and essential elements such as availability, accessibility, acceptable and good quality'. Adding that 'the right to health is closely related to and dependent upon the realisation of other human rights, as contained in the International Bill of Rights, including the rights to food, housing, work, education, human dignity, life, non-discrimination, equality, the prohibition against torture, privacy, access to information, and the freedoms of association, assembly and movement. These and other rights and freedoms address integral components of the right to health'. Within the context of this letter we focused on the health services in relation with right to life and right to be free from torture and other forms of ill-treatment. Nevertheless as it can obviously be assessed the right to access safe food and water, right to housing and, healthy occupational and environmental conditions weren't available as most of the incidents occurred at people's houses and the curfews have been round-the-clock and regretfully open-ended.

As well known, the right to health contains freedoms such as 'the right to be free from non-consensual medical treatment, such as medical experiments and research or forced sterilisation, and to be free from torture and other cruel, inhuman or degrading treatment or punishment'. Also the right to health contains entitlements which include 'the right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; the right to prevention, treatment and control of diseases; access to essential medicines; Maternal, child and reproductive health; equal and timely access to basic health services'. The States are obligated to refrain from interfering directly or indirectly with the right to health, to prevent third parties from interfering with the right to health and to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to fully realise the right to health. As stipulated, where a hospital is controlled and blockaded by security forces there can be no expectation for the public to request health service without a fear of reprisal and for the health workers to provide health service in safety.

138. No justification can be applicable in these conditions since all inhabitants of the cities where curfews were in force were subjected to heavy military operations which resulted in gross violations of human rights. Yet, there hasn't been any effective investigation into allegations of violations of human rights. Moreover,

State didn't let the independent observers to investigate the allegations. All the applications to the public authorities were denied and all international claims before UN or Council of Europe for independent observation weren't met.

139. Concluding, a collective punishment has been applied to the inhabitants of the cities or districts. As mentioned above the right to health with all its components has been violated by State agents since the curfews have been in force. It has to be stated that approximately 1 million 642 thousand people are intentionally and "arbitrary deprived of their liberty" as a result of "continuous curfews", last for months. The residents of places where there is an absolute control of State, are under the threat of right to life, are deprived of fundamental needs such as water, food and health care for extended periods[223]. This practice of "continuous curfew" has to be considered on prohibition of torture and other forms of ill treatment basis as persons have been individually or collectively suffered harm including severe pain and emotional suffering that has already amounted to a certain level of gravity.

RECOMMENDATIONS on OTHER ISSUES OF CONCERN

The State Party should:

- Provide statistical data disaggregated by gender, age, ethnicity and minory status, geographical location and nationality relevant to the monitoring of the UNCAT and compile comprehensive data on complaints, investigations, prosecution and convictions of cases of torture and other forms of ill treatment and information rehabilitation and compensation, and the outcomes of all such complaints and cases.
- Refrain from stigmatising and intimidating persons in the name of counter-terrorism.
- Withdraw the intended amendments to ATL.
- End imposing continuous curfews.
- Conduct prompt and thorough investigation into injury or killing of civilians during curfews.
- Conduct effective investigation into allegations of extrajudicial killings during curfews.
- Ensure effective investigations are conducted into allegations of torture and other forms of ill –treatment, especially under detention during curfews.
- Adopt the legal measure that there can be justification for human rights violations in the name of counter-terrorism.
- Sign and ratify Rome Statue.

223 See Amnesty International's Reports: https://www.amnesty.org/en/documents/eur44/3178/2016/en/; https://www.amnesty.org/en/documents/eur44/3230/2016/en/

United Nations CAT/C/TUR/CO/4

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the fourth periodic reports of Turkey[224*]

1. The Committee against Torture considered the fourth periodic report of Turkey (CAT/C/TUR/4) at its 1406th and 1409th meetings, held on 26 and 27 April 2016 (CAT/C/SR.1406 and 1409), and adopted the present concluding observations at its 1424th and 1426th meetings, held on 10 and 11 May 2016.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee.

3. The Committee welcomes the dialogue held with the State party's delegation during the consideration of the report.

B. Positive aspects

4. The 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.

5. The Committee also welcomes the following legislative measures taken by the State party in areas related to the Convention:

   (a) The amendment in April 2013 of article 94 of the Criminal Code, which now specifies that criminal liability for acts of torture is no longer subject to a statute of limitations, as recommended by the Committee in its previous concluding observations (see CAT/C/TUR/CO/3, para. 24);

   (b) The promulgation, on 11 April 2012, of Law No. 6291 on "Amending the Law on the Execution of Punishments and Security Measures and the Law on Probation, Help Centres and Protection Board", which promotes the use and application of alterative measures to deprivation of liberty;

224 Adopted by the Committee at its fifty-seventh session (18 April-13 May 2016).

(c) The enactment, on 11 April 2013, of Law No. 6458 on Foreigners and International Protection, which includes a provision on subsidiary protection for individuals in danger of being subjected to torture if returned to their country of origin or habitual residence (art. 63 (1) (b));

(d) The entry into force, on 20 March 2012, of Law No. 6284 on the Protection of the Family and Prevention of Violence against Women.

6. The Committee takes note of the State party's initiatives to amend its policies and procedures in order to afford greater protection of human rights and to apply the Convention, in particular the update of the National Action Plan on Combating Violence against Women for the period 2016-2019.

7. The Committee values the substantial efforts made by the State party to respond to the massive influx of asylum seekers, persons in need of international protection and undocumented migrants arriving in its territory. It also commends the State party for having admitted and/or accommodated over 2.7 million Syrian refugees fleeing from armed conflict in their country, as well as thousands of asylum seekers and refugees from Afghanistan, Eritrea, Iraq, the Sudan and other countries.

8. The Committee appreciates the fact that the State party maintains a standing invitation to the special procedures mechanisms of the Human Rights Council.

C. Principal subjects of concern and recommendations

Impunity for acts of torture and ill-treatment

9. The Committee is concerned that, despite the fact that the State party has amended its law to the effect that torture is no longer subject to a statute of limitations, 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. The Committee is also concerned that there is a significant disparity between the high number of allegations of torture reported by non-governmental organizations and the data provided by the State party in its periodic report (see paras. 273-276 and annexes 1 and 2), suggesting that not all allegations of torture have been investigated during the reporting period. 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. The Committee regrets that the State party did not provide information requested by the Committee on the six cases in which officials received sentences of imprisonment for ill-treatment between 2011 and 2013, nor on any cases in which officials received sentences of imprisonment for ill-treatment in 2014 or 2015. The Committee further regrets that State party did not respond to the concern raised by Committee members that law

enforcement authorities have on many cases brought "countercharges," such as "resisting" or "insulting" police officers, against those individuals lodging complains of torture, ill-treatment and other police brutality. The Committee further regrets, with reference to its previous recommendations (see CAT/C/TUR/CO/3, para. 8), that the State party has not yet created an independent State body to investigate complaints of torture and ill-treatment against law enforcement officers (arts. 2, 4, 12 and 13 and 16).

10. **The Committee urges the State party to:**

    (a) **Ensure that all instances and allegations of torture and ill-treatment are investigated promptly, effectively and impartially and that the perpetrators are prosecuted and convicted in accordance with the gravity of their acts;**

    (b) **Ensure that alleged perpetrators of torture and ill-treatment are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, to commit reprisals against the alleged victim or to obstruct the investigation;**

    (c) **Ensure that state officials do not use the threat of countercharges as a means of intimidating detained persons or their relatives into not reporting torture;**

    (d) **Provide in its next periodic report statistical data on allegations of torture and ill-treatment, disaggregated by relevant indicators, including ethnicity of the victim, and information on cases in which individuals alleging torture or ill-treatment by the authorities have subsequently been charged with an additional criminal offence;**

    (e) **Establish an independent authority tasked with investigating complaints against law enforcement officers that is independent of the police hierarchy, as previously recommended by the Committee.**

Allegations of torture and ill-treatment of detainees in the context of counter-terrorism operations

11. 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).

12. **The Committee recalls the absolute prohibition of torture contained in article 2 (2) of the Convention, which stipulates that 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. In this connection, the 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 State parties, in which it states, inter alia, that exceptional circumstances also include any threat of terrorist acts or violent crime, as well as armed conflict, international or non-international. The Committee recommends that the State party:**

    (a) **Undertake prompt, thorough and impartial investigations into all allegations of torture and ill-treatment by security forces, including the allegations of police abuse in Cizre between December 2015 and March 2016, reportedly made by 52 persons and raised with the State party's delegation by the Committee;**

    (b) **Ensure that alleged perpetrators of and accomplices to torture, including persons in positions of command, are duly prosecuted and, if found guilty, given penalties commensurate with the grave nature of their acts;**

    (c) **Provide effective remedies and redress to victims, including fair and adequate compensation, and as full rehabilitation as possible;**

    (d) **Unambiguously reaffirm the absolute prohibition of torture and publicly condemn practices of torture, accompanied by a clear warning that anyone committing such acts or otherwise complicit or acquiescent in torture will be held personally responsible before the law for such acts and will be subject to criminal prosecution and appropriate penalties.**

Allegations of extrajudicial killings and ill-treatment in the course of counter-terrorism operations

13. In addition to the allegations of torture and ill-treatment of detainees noted above, the Committee is concerned at reports it has received concerning the commission of extrajudicial killings of civilians by the State party's authorities in the course of carrying out counter-terrorism operations in the south-eastern part of the country. The Committee regrets that the State party did not respond to requests for information as to whether investigations are under way into widely reported cases, such as the alleged killing by police snipers of two unarmed women, Maşallah Edin and Zeynep Taşkın, in the Cudi neighbourhood of Cizre on 8 September 2015. The Committee also regrets the failure by the State party to ensure accountability for the perpetrators of killings in cases previously raised by the Committee, such as the killing by security forces of Ahmet Kaymaz and his 12-year-old son Uğur in a counter-terrorism operation

in November 2004, which was the subject of a decision of the European Court of Human Rights. The Committee is further concerned at reports that family members of those killed in clashes between security forces and members of armed groups have been denied the ability to retrieve their bodies, which has the effect of impeding investigations into the circumstances surrounding those deaths. Moreover, the Committee expresses its serious concern at reports that the imposition of curfews in areas in which security operations have taken place has restricted the ability of the affected populations to access basic goods and services such as health care and food, causing severe pain and suffering.

14. **The Committee recommends that the State party:**

(a) **Ensure that prompt, impartial and effective investigations are undertaken into all allegations of extrajudicial killing by the State party's authorities, including the alleged killing of Maşallah Edin and Zeynep Taşkın by police snipers in Cizre on 8 September 2015, and that the perpetrators of such killings are prosecuted and held accountable;**

(b) **Ensure that in all cases the family members of individuals killed in the course of counter-terrorism operations are given notice and a reasonable opportunity to retrieve their bodies, and investigate allegations that family members have been denied this opportunity in recent cases;**

(c) **Promptly, impartially and effectively investigate allegations that the State party's imposition of curfews during security operations has had the effect of depriving affected persons of access to food and health care, causing severe suffering; discipline or prosecute those responsible for the imposition of such ill-treatment; and take measures to ensure that measures taken in the course of future security operations do not have such effects.**

Excessive use of force against demonstrators

15. The Committee is concerned that allegations of excessive use of force against demonstrators have increased dramatically during the period under review. The Committee notes with regret that the State party's investigations into the conduct of officials in the context of the 2013 Gezi Park protests in Istanbul and Ankara have not resulted in any prosecutions, despite the allegations of excessive use of force noted by observers, including the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The Committee also regrets that the State party did not provide any data on the specific sentences, if any, that police officers tried on charges of excessive use of force during the reporting period had received. It further expresses concern over the recent legislative amendments in the Domestic Security Package

granting additional powers to the police, in particular the expanded power to use firearms against demonstrators (arts. 2, 12, 13 and 16).

16. **The State party should:**

    (a) **Ensure that prompt, impartial, and effective investigations are undertaken into all allegations relating to the excessive use of force by law enforcement officers and ensure that the perpetrators are prosecuted and the victims adequately compensated;**

    (b) **Increase its efforts to systematically provide training to all law enforcement officers on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.**

Definition and criminalization of torture

17. Although the Criminal Code defines torture as a specific offence, the Committee notes that the definition set out in article 94 is incomplete inasmuch as it fails to mention the purpose of the act in question. There is also no specific mention of the act of torture carried out in order to intimidate, to coerce or to obtain information or a confession from a person other than the person who was tortured (art. 1).

18. **The State party should align article 94 of the Criminal Code with article 1 of the Convention by: (a) identifying the motivating factors or reasons why torture is being inflicted; and (b) including in the definition acts intended to intimidate, coerce or obtain information or a confession from a person other than the victim. In this regard, the Committee recalls its general comment No. 2, which states that serious discrepancies between the Convention's definition and the definition in a State party's law create actual or potential loopholes that can foster impunity (see CAT/C/GC/2, para. 9).**

Fundamental legal safeguards

19. While taking note of the legal safeguards enshrined in Turkish legislation, the Committee is concerned at recent amendments to the Code of Criminal Procedure, which give the police greater powers to detain individuals without judicial oversight during police custody. Placing suspects under constant video surveillance in their cells is another matter of concern (art. 2).

20. **The State party should ensure that all detainees are afforded, by law and in practice, all fundamental safeguards from the very outset of their deprivation of liberty, including the right to be brought before a judge without delay. The State party should continue to install video surveillance in all areas of custody facilities where detainees may be present, except in cases in which detainees' rights to privacy or to confidential communication**

with their lawyer or doctor may be violated. Such recordings should be kept in secure facilities and made available to investigators, detainees and lawyers.

Enforced disappearances

21. The Committee is concerned at the "almost complete lack of accountability for cases of enforced disappearance" in the State party and its "palpable lack of interest [in] seriously investigating, prosecuting and adjudicating these cases", as reported by the Working Group on Enforced or Involuntary Disappearances in its preliminary observations publicly announced at the end of its visit to Turkey from 14 to 18 March 2016.[225] With regard to the issue of the missing persons in Cyprus, the Committee appreciates the State party's cooperation with the Committee on Missing Persons to ensure progress in the search for and identification of remains of missing persons. However, it is concerned that, while the State party has indicated that the Attorney General's office of the Turkish Cypriot authorities has completed its review of 94 case files returned to it by the Committee on Missing Persons, no criminal investigations have been opened and no other measures have been taken to ensure accountability for the perpetrators in any of these cases. The Committee is also concerned that the State party has not implemented the decision of the European Court of Human Rights in *Cyprus v. Turkey* (arts. 2, 12, 13 and 16).

22. **Recalling its previous recommendation (see CAT/C/TUR/CO/3, para. 9), the State party should take appropriate measures to ensure effective and impartial investigations into all outstanding cases of alleged enforced disappearance, prosecute the perpetrators and, where appropriate, punish them and provide compensation to the families of the victims. The Committee calls upon the State party to continue cooperation with the Committee on Missing Persons in Cyprus and to enhance efforts to ensure criminal accountability for perpetrators. It encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.**

Refugees, asylum-seekers and non-refoulement

23. While acknowledging the existing legal framework, in particular the Law on Foreigners and International Protection, which provides temporary protection and assistance for asylum seekers and refugees, the Committee notes with concern that the State party maintains the geographical limitation to the 1951 Convention relating to the Status of Refugees. It is also concerned by several reports of expulsion, return or deportation, in violation of the non-refoulement principle contained in article 3 of the Convention. According to the information before the Committee, the State party may have acted in breach of the principle

225 www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18476&LangID=E.

of non-refoulement with regard to hundreds of Syrian nationals reportedly returned to their country of origin since mid-January 2016. The Committee is concerned about other recent cases in which around 30 Afghan asylum seekers were reportedly returned to Afghanistan in March 2016 without being granted access to asylum procedures. The Committee is further concerned at reports according to which Turkish Armed Forces opened fire on people trying to cross Turkey's southern border in April 2016, although it notes that the State party's delegation denied these allegations of wrongdoing, claiming that the 18 persons killed were "PKK terrorists" trying to reach the Syrian Arab Republic. Lastly, the Committee regrets that the State party has not provided complete information on the procedures in place for the timely identification of victims of torture among asylum seekers (art. 3).

24. **The State party should:**

(a) **Strengthen its domestic framework by continuing to develop a new asylum system consistent with international standards and in accordance with article 3 of the Convention;**

(b) **Consider lifting the geographical limitation to the 1951 Convention by withdrawing its reservations;**

(c) **Ensure that in practice no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal, foreseeable risk of being subjected to torture;**

(d) **Undertake effective and impartial investigations into the shooting incidents at the southern border;**

(e) **Formulate clear guidelines and related training on the identification of torture victims among asylum seekers.**

Agreement of 18 March 2016 between the European Union and Turkey

25. While taking note of the explanations offered by the State party's delegation regarding the content and initial results of the agreement between the European Union and Turkey on "the migrant crisis", which took effect on 20 March 2016, the Committee regrets the lack of information from the State party concerning concrete measures adopted to accommodate returned refugees, asylum seekers and irregular migrants under this agreement. Furthermore, the Committee is deeply concerned at the lack of assurances that applications for asylum and international protection will be individually reviewed and that individuals filing such applications will be protected from refoulement and collective return. Readmission agreements signed by the State party with other States reinforce the Committee's concern (art. 3).

26. **The State party should:**

(a) **Take the measures necessary to ensure appropriate reception conditions for returned refugees, asylum seekers and irregular migrants;**

(b) **Refrain from detaining asylum seekers and irregular migrants for prolonged periods, use detention only as a measure of last resort and for as short a period as possible and promote alternatives to detention;**

(c) **Reinforce the capacity of the General Directorate of Migration Management to substantively assess all individual applications for asylum or international protection, without any discrimination based on regional origin, and guarantee access to free, qualified and independent legal aid during the entire procedure;**

(d) **Ensure that all returnees have the opportunity for an individual review and are protected from refoulement and collective returns.**

National human rights institution

27. The Committee is concerned that the new law establishing the Human Rights and Equality Institution of Turkey, which replaced the Turkish National Human Rights Institution, provides for the appointment of eight of its members by the Cabinet and three others by the President, thereby undermining its independence. The Committee notes the explanation by the delegation that the new national human rights institution is also required to perform additional functions as the national mechanism for the prevention of torture (art. 2).

28. **The State party should take appropriate legal measures to ensure the functional, structural and financial independence of the Human Rights and Equality Institution and to guarantee that the appointment of its members is in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). In addition, the State party should ensure that the Human Rights and Equality Institution effectively fulfils its mandate as a national preventive mechanism, with a dedicated structure and adequate resources for that purpose. The State party should encourage the Institution to apply to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights for accreditation.**

Training

29. While appreciating the information provided by the State party about human rights training for members of the police, gendarmerie and prison staff, the Committee is concerned at the lack of information on the evaluation of the impact of those programmes. The Committee regrets the scant information provided on training programmes for professionals directly involved in the

investigation and documentation of torture, as well as medical and other personnel dealing with detainees, on how to detect and document physical and psychological sequelae of torture and ill-treatment (art. 10).

30. **The State party should:**

(a) **Further develop mandatory in-service training programmes to ensure that all public officials, in particular law enforcement officials, prison staff and medical personnel employed in prisons and psychiatric institutions, are well acquainted with the provisions of the Convention and are fully aware that violations will not be tolerated and will be investigated, and that those responsible will be prosecuted and, on conviction, appropriately sanctioned;**

(b) **Ensure that all relevant staff, including medical personnel, are specifically trained to identify cases of torture and ill-treatment, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

(c) **Develop and apply a methodology for evaluating the effectiveness of educational and training programmes relating to the Convention and the Istanbul Protocol.**

Conditions of detention

31. While welcoming the efforts made by the State party to improve conditions of detention in prisons, the Committee is concerned that overcrowding and inadequate health-care services remain a problem in the prison system and that the State party has taken insufficient measures to mitigate the dramatic increase in its prison population through the use of alternative measures to deprivation of liberty. It is also concerned at reported arbitrary practices such as cell raids at any hour of the day, illegal searches and denial of phone calls, in particular in the Tekirdag F-type prisons. In addition, the Committee notes with concern that solitary confinement may be imposed for up to 20 consecutive days (arts. 2, 11 and 16).

32. **The State party should:**

(a) **Continue its efforts to alleviate the overcrowding of penitentiary institutions, including through the application of non-custodial measures;**

(b) **Ensure that all persons deprived of their liberty receive timely and appropriate medical treatment;**

(c) **Ensure independent and prompt investigations into allegations of deliberate denial of health care to persons deprived of their liberty and**

ensure that any prison officials responsible for such conduct are subject to prosecution or disciplinary action;

(d) **Bring its legislation and practice on solitary confinement into line with international standards, in particular with rules 43 to 46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

Deaths in custody

33. The Committee regrets the lack of complete information on suicides and other sudden deaths in detention facilities during the period under review (arts. 2, 11 and 16).

34. **The State party should provide the Committee with detailed information on cases of death in custody and the causes of those deaths. It should also take measures to ensure that all instances of death in custody are promptly and impartially investigated by an independent body.**

Aggravated life imprisonment

35. The Committee is concerned by the restrictive conditions of detention for persons sentenced to aggravated life imprisonment, a sentence that was established after the abolition of the death penalty in 2004 (arts. 11 and 16).

36. **The Committee recommends commuting aggravated life sentences and repealing article 47 of the Criminal Code, as well as section 25, paragraph 1, of the Law on the Execution of Sentences and Security Measures.**

Monitoring detention centres

37. The Committee is concerned that, contrary to the information provided by the State party, human rights non-governmental organizations have reported that they are still not allowed to visit prison detention facilities to conduct monitoring activities. The Committee also regrets the lack of information provided by the State party regarding whether activities related to the monitoring of places of detention by official entities, such as the prison monitoring boards and provincial and district human rights boards, are leading to receipt of complaints of torture and ill-treatment from prisoners and to investigations and prosecutions with respect to their allegations (arts. 2 and 11).

38. **The Committee reiterates its previous recommendation (see CAT/C/TUR/CO/3, para. 16) that the State party adopt formal regulations explicitly authorizing human rights non-governmental organizations, medical professionals and members of local bar associations to undertake independent visits to places of detention. The State party should also ensure the financial and functional independence of all official bodies monitoring places of deprivation of liberty, including the prison monitoring boards.**

Redress and rehabilitation

39. While noting the State party's assertion that its legislation provides for redress for victims of torture and ill-treatment even in the absence of a criminal conviction against the perpetrator, the Committee regrets the limited amount of information available with regard to reparation and compensation measures ordered by the courts or other State bodies and actually provided to the victims of torture or their families since the consideration of the previous periodic report. It also regrets that the State party has presented no information on measures taken to support and facilitate the work of non-governmental organizations that seek to provide rehabilitation to victims of torture and ill-treatment (art. 14).

40. **The State party should ensure that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full rehabilitation as possible. The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of the obligations of States parties under article 14 of the Convention.**

Criminalization of medical treatment without a government permit

41. The Committee is concerned that the State party has enacted legislation that prohibits the unauthorized provision of medical services. While taking note of the explanations given by the State party's delegation that these provisions shall not apply in cases of emergency, the Committee remains concerned over the negative implications that they may have for medical professionals in direct contact with victims of torture and ill-treatment (arts. 2 and 14).

42. **The State party should repeal those provisions in the addendum to Law No. 3359 which could arbitrarily restrict access to the provision of medical care, including medical examinations and rehabilitation services, for victims of torture and ill-treatment. The State party should also ensure that health professionals are not prosecuted for providing health care to victims of torture or ill-treatment.**

Human rights defenders, journalists and medical doctors

43. The Committee is seriously concerned about numerous consistent reports of intimidation and harassment of and violence against human rights defenders, journalists and medical doctors who provide assistance to victims of torture. It regrets the scant information provided by the State party regarding the investigations into the cases raised by the Committee, such as the murder of journalist Hrant Dink in 2007, the murder of human rights defender Tahir Elçi in November 2015 and the attack on the Istanbul office of *Hürriyet* newspaper

on 7 September 2015. While taking note of the delegation's statement that no Turkish journalists have been arrested solely because of their journalistic activities, the Committee remains concerned about the numerous reports received of arbitrary detention of journalists and human rights defenders on terrorism-related charges because of their reporting, including journalist Nedim Oruç and human rights defender Muharrem Erbey (art. 16).

44. **The Committee urges the State party to:**

(a) **Ensure the effective protection of journalists, human rights defenders and medical doctors against threats and attacks to which they may be exposed on account of their activities, and ensure that such cases, including the murders of Hrant Dink and Tahir Elçi and the attack on the Istanbul office of *Hürriyet* newspaper, are investigated promptly, and that suitable action is taken against those responsible and remedies granted to the victims;**

(b) **Refrain from detaining and prosecuting journalists and human rights defenders as a means of intimidating them or discouraging them from freely reporting on human right issues;**

(c) **Ensure an independent review of cases in which journalists and human rights defenders are presently on trial or appealing sentences handed down against them for membership in, engaging in propaganda for, or facilitating the activities of a terrorist organization, including the cases of Nedim Oruç, Muharrem Erbey and other individuals, which were specifically raised with the State party's delegation during the dialogue.**

Gender-based violence

45. While noting the State party's efforts to combat gender-based violence, including domestic violence and so-called "honour killings", the Committee is concerned at the very low conviction rate for such crimes. The Committee is also concerned at reports that women who have received or applied for protection orders have not received effective protection from the State party's authorities in practice, resulting in a number of cases in which they were subsequently killed.

46. **The State party should:**

(a) **Ensure that all cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and that victims obtain redress, including fair and adequate compensation;**

(b) **Provide better protection and appropriate care for women who seek the assistance of authorities in protecting them from violence, including ensuring that women who apply for protective orders receive**

meaningful protection in practice and that officials who deny such women effective protection are disciplined;

(c) **Ensure that all women victims of violence are able to access shelters and receive necessary medical care and psychological support;**

(d) **Conduct effective training on gender-based violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with victims.**

Abuse of army conscripts

47. The Committee is concerned about reports of abuse of army conscripts by fellow soldiers. It regrets the absence of information from the State party as to whether, in any of the 204 cases in which soldiers reportedly died in barracks during the period under review, an investigation was conducted that revealed that the death had been the result of abuse by fellow conscripts, and whether any prosecutions were undertaken in such cases (arts. 2, 12, 13 and 16).

48. **The State party should ensure prompt, impartial and thorough investigations into all allegations of abuse of conscripts in the army, and into all deaths of conscripts in military barracks, and prosecute and punish those responsible with appropriate penalties. The State party should also ensure that all examinations of complaints against military personnel are carried out by an independent body. The State party is encouraged to provide detailed information on effective measures adopted to prevent and combat such acts.**

Follow-up procedure

49. The Committee requests the State party to provide, by 13 May 2017, information on follow-up to the Committee's recommendations relating to the following: the use of countercharges as a means of intimidating detained persons, or their relatives, into not reporting torture (para. 10 (c)); allegations of extrajudicial killings and ill-treatment in the course of counter-terrorism operations (para. 14); measures to ensure that all returnees under the agreement of 18 March 2016 between the European Union and Turkey have the opportunity for an individual review and are protected from refoulement and collective returns (para. 26 (d)); and the detention and prosecution of journalists and human rights defenders as a means of intimidating them or discouraging them from freely reporting (para. 44 (b)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

50. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

51. The Committee invites the State party to submit its fifth periodic report by 13 May 2020. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fifth periodic report under article 19 of the Convention.