
A REPORT TO THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO)



MARCH 8, 2021



A REPORT TO THE GROUP OF EXPERTS ON ACTION AGAINST VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (GREVIO)

Table of Contents

I. ABOUT ASSEDEL	3
II. THE PURPOSE OF THIS REPORT	3
III. AN OBSERVATION ABOUT THE BASELINE EVALUATION REPORT REGARDING TURKEY	4
A) WOMEN'S PLACE IN THE CURRENT POLITICAL ATMOSPHERE OF TURKEY	4
B) THE TREATMENT EXPERIENCED BY THE WOMEN IN PRISON	5
C) LACK OF DATA SUBMITTED BY THE TURKISH OFFICIALS	6
IV. AN ANALYSIS ABOUT THE SITUATION IN TURKEY BASED ON CERTAIN ARTICLES OF THE ISTANBUL CONVENTION	7
A) NOTIONS UNEXAMINED WITHIN THE SCOPE OF THE BASELINE EVALUATION REPORT	7
1. PSYCHOLOGICAL TORTURE	7
A. DEFINITION AND THE COMPONENTS OF THE NOTION	8
B. STRIP SEARCH PRACTICE AS AN ACT OF PSYCHOLOGICAL TORTURE	9
2. DETENTION AND ARREST	12
A. ARBITRARY DETENTION AND ARREST	12
B. DETENTION OF PREGNANT OR PUERPERAL WOMEN	14
3. STATE-SPONSORED EXTRATERRITORIAL OPERATIONS	17
B) EXAMINATION OF THE CERTAIN ARTICLES OF THE ISTANBUL CONVENTION	18
1. STATE RESPONSIBILITY AND DUE DILIGENCE	18
2. DISCRIMINATION	19
3. CONCLUSION	19
V. OUR REQUEST BASED ON THIS REPORT	20

I. About ASSEDEL

ASSEDEL, L'Association européenne pour la défense des droits et des libertés, is a Strasbourg-based human rights advocacy association. Its main goal is to promote and defend human rights and fundamental freedoms as well as to guide and stand by the victims of human rights violations¹.

II. The Purpose of This Report

As is indicated in **Article 1** of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), the protection of women against all forms of violence constitutes one of the purposes enumerated of the aforementioned Convention. According to **Article 2** dedicated to the scope of the Convention, all forms of violence are incorporated within its framework. In this regard, at the Baseline Evaluation Report About Turkey, a wide scope of problems ranging from domestic violence to psychological abuse to forced marriage and honor killings have been evaluated in terms of the country's adaptation process to the implementation of the Istanbul Convention. Because the analysis, suggestions, and proposals directed to the competent authorities in the Baseline Report have covered the situation until 9 May 2018, some current severe acts of state authorities like arbitrary detentions of pregnant women right before or after giving birth, strip search practices, state-sponsored extraterritorial abductions or psychological torture to which a lot of women have been subjected to over the course of the last five years, especially after the controversial coup attempt of July 2016, could not find their place within the Report. In addition to these points, the treatment faced by the women deprived of their liberty is a substantial problem that needs to be analyzed with consideration of the political and cultural environment of Turkey. Thus, we would like to highlight in this report these mentioned concepts to be in a much more appropriate position to be able to evaluate both the situation of the women in Turkey and the implementation of the Istanbul Convention in the country.

According to **Paragraphs 5, 13, 14, and 15 of Article 68 of the Istanbul Convention**, we, as ASSEDEL, have the honor to submit this report to your kind attention and appreciation.

¹ <https://assedel.org>

III. An Observation about the Baseline Evaluation Report regarding Turkey

As the monitoring body mandated to monitor the implementation of the Istanbul Convention, you welcome some of the measures taken by the Turkish authorities which will facilitate and promote the realization of the country's engagement to the Convention. Nevertheless, as it is seen in the concluding remarks section and the following appendix (I) of the Report, certain proposals and suggestions are directed to Turkish authorities based on the process of putting into effect the dispositions specified by the articles of the Convention.

A. Women's Place in the Current Political Atmosphere in Turkey

To be able to make sound deductions concerning the role and the place of women in the country, the governmental approach regarding women-related issues must be analyzed alongside those cultural values. Policies put into practice by the government are indicative of the constant regressive role of women within society. The statements made by the State officials in terms of the number of children that women should have and the fact that women and men could not be placed in the same position due to the natural inequality between them manifest the position of women in the eyes of the political authority perfectly².

The modification made in the denomination of the Ministry of Women and Family Affairs to the Ministry of Family and Social Policies is a mere illustration of the government's policy in respect to confining women to the traditional role of mothers³. The removal of the expression of "Women" in the denomination of the Ministry, when subjected to an assessment in terms of gender equality, put forward the reality according to which the position of women has been degrading while the concept of family is prioritized as opposed to the women⁴. In light of the facts mentioned above, it can easily be concluded that the treatment, the inequalities, and all forms of violence faced by women cannot be appreciated and interpreted as they should be, without taking into account these changes in regards to the position and value attributed to the women in the country.

² <http://www.platformpj.org/assessing-the-coe-report-on-violence-against-women-in-turkey/>

³ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

⁴ <https://www.gazeteduvar.com.tr/siyasal-islam-gozuyle-kadina-bakis-haber-1509271>

To give two examples from the President himself, at a hospital opening on July 4, 2020, the Turkish President said, "Yes, let's take at least (laughs) two of our female MPs, albeit symbolically..."⁵.

Furthermore, while inaugurating the National Space Program he said, "Maybe, yes, even maybe there are some women amongst us here who would say they are candidates too (for the so-called *Moon mission*)"⁶. Another appalling speech came from AKP MP Özlem Zengin. She responded to strip search accusations with the following, "an honorable and chaste woman would not wait for a year to report it!" and she defended and even bragged about her unfortunate remarks on social media as well. On September 12, 2020, A Turkish police officer claimed that his wife had committed suicide. However, following the woman's release from the intensive care unit, she revealed that her husband had shot her saying "We do not have a divorce [in this family]"⁷. These incidents can provide a general perspective about the role of women in society and politics and explain why women are disproportionately underrepresented in the National Assembly.

B. The Treatment Experienced by the Women in Prison

The Baseline Report is a very comprehensive study that encompasses many aspects of the situation women in Turkey find themselves in. As we mentioned before, **Article 2** of the Convention comprises all forms of violence against women. Accordingly, the concepts ranging from discrimination to the state of the women with disabilities, from the prejudice faced by the lesbian, bisexual and transgender women to domestic violence are subjected to examination in the light of the requirements laid out by the Istanbul Convention. The disadvantaged situation of the Kurdish women, the inequalities, and the discrimination faced by them, especially from the beginning of the anti-terrorist operations in south-eastern Turkey is also highlighted within the scope of the Baseline Report light of the information provided by the OHCHR Report, rejected by the Turkish government, on the human rights situation in South-East Turkey⁸. On the other hand, it is not just an allegation but a well-known fact that the situation of human rights in Turkey has started to decline sharply with the consecutive declarations of a state of emergency following the attempted coup d'état in July 2016. There are currently a total of 622,646 people who have been subject to investigations, while nearly over 300,000 people have been exposed to detentions and approximately 100,000 to

⁵ <https://www.cumhuriyet.com.tr/video/cumhurbaskani-erdogan-istanbulda-kesinlikle-bunlara-musaade-edilmeyecek-1749425>

⁶ <https://www.cumhuriyet.com.tr/haber/erdogandan-cinsiyetci-ifadesi-buyuk-tepki-topladi-bayanlardan-bile-ben-adayim-diyen-vardir-1812562>

⁷ <https://www.evrensel.net/haber/426400/polis-esi-intihar-etti-dedi-yogun-bakimdan-cikan-sevginur-esim-vurdu-dedi>

⁸ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

arrests⁹. Even if the ***mass dismissal of civil servants after the failed coup attempt and the concern about the cases of women being ill-treated while in detention or intimidated by law-enforcement officials pronouncing threats of rape***¹⁰ are specified in the Baseline Report, we have serious concerns regarding the situation of the imprisoned women in the country, a subject which could not receive the attention that it deserves. In one of its closest reports (March 2018) to the publishing date of the Baseline Report, OHCHR, in light of the deteriorating situation of human rights, examined the state of the women some of whom have been sexually assaulted during the arrest or the detention, or have been detained with or without their children whilst visiting their spouses, or have been arrested just before or after giving birth¹¹. The fact according to which 780 children have suffered the same fate as their mothers in terms of being held in prison, is another phenomenon creating great concern¹².

Furthermore, it should be indicated that during the process of their detention or their arrest, the premises that women would be held in should be sufficient in terms of responding to their specific needs. The accommodation conditions, health care, and hygiene are some of the factors that should be taken into consideration when women have been detained or imprisoned. There is no doubt that pregnant women, who are arbitrarily forced to lie on the ground for days in cells of full capacity are physically and psychologically targeted with their babies. These women are being deprived of the right to breastfeeding within an appropriate manner, being used as a threat to their spouses or relatives who are simultaneously detained or their children being used as a threat for them, being accused of giving birth on order or using their children as an instrument to be able to get released, experiencing resistance with their children under detention and arrest, before and afterward. A lack of fulfillment related to these specific or gender-based needs of women may reach the level which amounts to degrading treatment¹³. The detention and prison conditions for women detainees should not be disregarded while assessing the situation of women in Turkey.

C. Lack of Data Submitted by the Turkish Officials

⁹ <https://psychologicaldevelopmentinstitute.com/tr/strip-search-analyse/>; <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>

¹⁰ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

¹¹ OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018

¹² <https://silencedturkey.org/wp-content/uploads/2020/04/Captive-Mothers-and-Babies.pdf>

¹³ Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Women in Prison, January 2018

Data collection at regular intervals concerning the cases of all forms of violence is one of the positive obligations falling upon the parties according to the Convention¹⁴. Taken into account that violation of this obligation has a substantial connection with all concepts that will be examined in this report, we would like to give a prior place to it in this section. As stated in the Baseline Report, the lack of official data which needed to be provided by the Turkish authorities complicates and directly impacts the evaluation process of implementation of the Convention¹⁵. In addition, the unavailability of judicial data poses an obstacle in terms of monitoring the implementation and the efficiency of the legislation in force in Turkey. This situation hinders also the assessment of state obligations and the exigence of due diligence regulated under **Article 5** of the Convention.

According to the 2020 Annual Report released by the 'We Will End Femicide Platform', for the last ten years, instead of publicizing the official data, a policy of rejection and distortion has been internalized by the authorities on which it is incumbent to disclose statistics according to the Convention. Even if the data related to the femicide in the country has been announced finally by the Ministry of Interior with the efforts of the NGOs, the number of murders of women, 300 in 2020, still points out the fact that concrete solutions in terms of preventing these cases have not been able to put into practice by the State officials¹⁶.

In addition to making the evaluation process much more difficult, this situation also leads to questioning the transparency and accountability of the officials and to disseminating mistrust in the society¹⁷. When these problems combine with the arbitrariness within the law enforcement bodies, it creates certainly a state of helplessness not only in the eyes of the victims or their family and relatives but also of other women which tend to get victimized against the "omnipotent power" of the state.

IV. An Analysis about the Situation in Turkey based on Certain Articles of The Istanbul Convention

A. Notions Unexamined within the Scope of the Baseline Evaluation Report

1. Psychological Torture

¹⁴ Istanbul Convention, Article 11

¹⁵ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

¹⁶ <http://kadincinayetlerinidurduracagiz.net/veriler/2949/2020-report-of-we-will-end-femicide-platform>

¹⁷ <http://www.platformpj.org/assessing-the-coe-report-on-violence-against-women-in-turkey/>

a. *Definition and the Components of the Notion*

Psychological torture is one of the major problems which should be analyzed under the umbrella of violence against women. Although the concepts of psychological violence (which can be defined as “*the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats*”¹⁸), stalking, physical violence, etc. have been regulated within the scope of the Istanbul Convention, there is not an article in the Convention dedicated specifically to the concept of physical or psychological torture. However, this situation does not change the fact that the treatment faced by the women within the framework of this report enters into the scope of **Article 2** which specifies the application of the Convention to all forms of violence, thus comprising directly the concept of psychological torture.

The notion of psychological torture is defined in the Report of UN Special Rapporteur as follows;

“Psychological torture” should be interpreted to include all methods, techniques, and circumstances which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering.

In the same report, it is stated that the systematic and deliberate violation of the victim’s privacy, dignity, and sexual integrity can be classified among the predominant methods of psychological torture¹⁹.

The concept of feeling powerless against the authorities is also pointed out as one of the components of psychological torture. When the powerlessness of the victim is taken into consideration with the arbitrariness at the judicial or administrative system of which arbitrary detentions could be assessed as one of the ways of its emergence, and when this practice amounts to a degree that it intentionally and purposefully inflicts severe mental pain or suffering on the victim, this situation can lead to or directly result in psychological torture²⁰.

Besides, it is important to note that psychological torture cannot be analyzed with the exclusion of cultural factors rooted in Turkish society. All of the constitutive elements of this kind of torture, in other words, the severity of mental pain and suffering, purposefulness of the practices adopted, the intentionality of the perpetrator, and the powerfulness of the victim, are intertwined with the

¹⁸ Istanbul Convention, Article 33

¹⁹ Human Rights Council, forty-third session, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (24 February–20 March 2020), Agenda item 3 “Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development”

²⁰ Ibid

individual values, convictions, and opinions of the Turkish women within the scope of this report as well as the law enforcement officials which could potentially be described as perpetrators.

b. Strip Search Practice as an act of Psychological Torture

Strip search practice needs to be examined in light of psychological torture and based on its effects on the detainees and women prisoners. This notion is susceptible to engender some serious damage in the victim's psychology. Thus, it should be regulated thoroughly and strictly and be carried out only in exceptional circumstances. When it is considered necessary to apply this practice, special attention must be paid to factors such as the usage of the search only by same-gender officers and out of sight of the opposite gender, avoidance of forcing the detained or arrested women to remove all their clothes at the same time, respecting and prioritizing the safety and dignity of the woman²¹.

"The provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)²² state that *"The laws and regulations governing searches of prisoners and cells shall be in accordance with obligations under international law and shall take into account international standards and norms, keeping in mind the need to ensure security in the prison. Searches shall be conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality, and necessity. Searches shall not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy."*

All methods and forms of torture possess an inseparable correlation with human biology and the structure of society. Therefore, cultural and individual values cannot be dissociated whilst analyzing the effect of strip search practices. Vulnerability, the feeling of shame, humiliation, the state of powerlessness are the factors directly linked to the cultural phenomenon. This aspect of the notion is highlighted in the study carried out by the Psychological Development Institute; *"Cultural and historical context will shape the meaning of torture experiences and the aftermath²³"*. Thus, to be able to evaluate the actual impact of the practices applied on the victim, they should be put into perspective with the consideration and knowledge of the personal and cultural parameters which shape the personality of the victim.

²¹ Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Women in Prison, January 2018

²² https://www.apt.ch/en/dfd_print/602/legal/en

²³ <https://psychologicaldevelopmentinstitute.com/tr/strip-search-analyse/>

Most of the alleged strip-search incidents relate to a period starting with an attempted coup which the Turkish regime has been using as a pretext to suppress dissent, following an increasing number of women detained on terrorism charges. As to the examination of the situation in Turkey, the notion of strip-search has received remarkable attention in 2020. The existence and long-standing history of strip search practices in police custody and prisons have been brought for the first time to the Turkish Parliament by Peoples' Democratic Party (HDP) Kocaeli deputy, member of the Parliamentary Human Rights Inquiry Commission, and a prominent human rights defender Ömer Faruk Gergerlioğlu on December 12, 2020²⁴. According to the case revealed by Gergerlioglu, on August 31, thirty female university students having been detained by Turkish police on the grounds of alleged links to the Hizmet Movement in Uşak province of Turkey had been subjected to a strip-search. This situation has later been confirmed by one of the students during an interview with Sevinç Özarslan of Bold Medya. The student has indicated during this interview that they had been asked to remove their headscarves in front of a group of officers including males. She has stated that they have been subjected to strip-search as a result of a demand consisting of getting undressed and squatting at that position²⁵.

Unfortunately, the case of these female students was not the only one. In the following days, after the denial of the practice by some of the members of the Justice and Development Party (AKP) deputies, especially deputy group chairperson Özlem Zengin, a social media campaign was launched to raise awareness about increasing reports of sexual violence in prisons towards detainees, inmates, and especially many women have revealed their experiences of an unlawful and humiliating strip search on their Twitter accounts. Among these ladies, there were *Nur Ener Kılınc* (journalist, arrested on March 6, 2017, strip-searched by four guards), *Birgül Koçal* (former teacher, dismissed from her job by a state of emergency decree, arrested in 2016, strip-searched four times), *Hacer Koç* (housewife, arrested in 2018, strip-searched while there were gendarmes in the room), *Betül Alpay Kocabıyık* (lawyer, arrested in 2017), *Kübya Yiğit* (lawyer, abused by a guard in 2017, had a lot of clients telling her the existence of the practice), *Yasemin Baltacı*, (housewife, arrested in July 2018, was 9 months pregnant when strip-searched, had to breastfeed her baby with 3 male gendarmes present in the room), *Tuba Özdemir* (former teacher, detained in August 2019), *Zekiye Ataç* (housewife) who have been victimized by this practice²⁶. *Eylem Oyunlu* (detained with her 10-day-old baby), *Pınar Aydınlar* (beaten by guards in May 2018 after refusing a strip search), a five-months-pregnant woman (detained In May 2019), *Pınar Şana* (11-year-old-

²⁴ <https://medyanews.net/strip-searching-in-prisons-has-been-happening-for-years/>

²⁵ <https://boldmedya.com/2020/09/08/kiz-ogrencilere-iskence-kulotunu-indirip-otur-kalk-yaptirdilar/>; <https://stockholmcf.org/female-students-strip-searched-denied-right-to-consult-lawyer/>

²⁶ <https://boldmedya.com/2020/12/19/ciplak-aramadan-gecen-mutedeyyin-kadinlar-konustu/>; <https://stockholmcf.org/scores-of-women-tell-of-unlawful-strip-searches-in-turkeys-prisons-after-akp-deputys-denial-report/>

girl, has spina bifida illness, 95 % disabled, was subjected to strip-search and forced to take off her clothes when they were visiting the girl's jailed father in Samsun province's Bafra Closed Prison in 2018), and Natali Avazyan (human rights activist) and some other victims who have been exposed to strip search²⁷.

Despite these allegations regarding humiliating strip searches in detention centers and prisons in Turkey, Turkey's Judiciary has approached these incidents with the same ruling as the party deputies. Instead of investigating the claims of strip-search, Ankara Chief Public Prosecutor's Office has launched an investigation about those who have shared their experiences in the prisons and detention centers.

Even if security concerns are put forward to legitimize the practice of strip-searching or if the "lawful sanctions" argument is raised as it is allowed under **Article 1** of the "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", this argument cannot be used to make strip-search a common and ordinary practice. Moreover, authorities cannot resort to that argument when the intensity level of these sanctions has risen to the extent that it would correspond to torture or an act prohibited both at the national and the international level. The legislation regulating the employment of strip-search practice in Turkey sets out a strict framework in terms of its utilization only in exceptional situations and in the presence of serious indications related to the existence of prohibited materials. Also, its exercises by taking into consideration the concepts of partial removal of the clothes and measures which would not constitute humiliation and intimidation. Nevertheless, in the current atmosphere in Turkey, the violation of principles creates an exceptional character that translates abnormal practices into normal and acceptable cases. It should be emphasized that following the increasing number of detained women on terrorism charges in Turkey, it is mostly women who are subject to humiliating strip searches.

From another perspective, Turkey's long years of discussion on the legitimacy of the headscarf in state institutions – in a secular state-, the number of Muslim populations in the country, and the state of constant denial of such practices by the current government members result in the cultural unacceptability of the strip-searches²⁸. Furthermore, the reaction provoked within society to the existence of even the slightest possibility of this practice also proves its inadmissibility. In conclusion, this cultural background and individual uniqueness of every case of strip-search add another dimension in regards to the assessment process of its influence on the victim.

²⁷ <https://stockholmcf.org/strip-search-of-women-in-turkey-used-for-humiliation-witness-testimonies-show/>

²⁸ <https://psychologicaldevelopmentinstitute.com/tr/strip-search-analyse/>

Considering the discussion above, the state of powerlessness inflicted upon the women detained or arrested, the intentional and purposeful character of the strip search practice, the fact that this practice has been carried out by authorities acting on behalf of the State, the infliction of mental pain or suffering based on the conviction of individuals, on the cultural and personal values and the humiliating and intimidating aspect of strip search practice and finally systematic and deliberate violation of the victims' privacy, dignity, and sexual integrity situate directly this notion under the scope of the psychological torture and thus constitutes a violation of the **Article 5** of the Convention.

2. Detention and Arrest

In parallel with the declaration of the state of emergency following the controversial coup attempt of July 15, 2016, the respect for human rights and basic principles of law like due process, independence of the judiciary, the presumption of innocence, the principle of individual criminal responsibility, the prohibition of torture and ill-treatment has experienced a sharp decline as is stated by a wide range of human right mechanisms within the body of international organizations like United Nations, Council of Europe, and relevant NGOs.

a. Arbitrary Detention and Arrest

It can be easily deduced from the usage of the regime of emergency decrees that arbitrariness and lack of accountability both at the extension of the state of emergency and the decisions made under these circumstances by circumventing the ordinary legislative procedure have led easily to arbitrary mass dismissals, detentions, and arrestations. Furthermore, this atmosphere of arbitrariness has reflected on the attitude and the approach of the law enforcement officials and also judiciary system in terms of their stance at Hizmet Movement related cases and operations conducted against Kurdish people. This privilege(!) bestowed on the security forces in terms of impunity has been stressed in certain international reports and studies²⁹.

Arbitrary detention has been widely used by the government since the 2016 coup attempt³⁰. Alongside the above-mentioned explanations, several other factors have also facilitated and thus

²⁹ OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018; GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

³⁰ Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, (18 September 2020)

accelerated the arbitrary detentions. The establishment of the criminal judgeships of peace, the politicization of the judiciary in favor of the Government, and the abuse of emergency measures to oppress all opponents including members of the Hizmet Movement may be enumerated as these factors. Acquisition of required warrants related to searching, detaining and arresting, presentation of concrete facts instead of vague and imprecise accusations, duration of periods of detention, custodial conditions, the respect to the right to consult a lawyer and the privacy of this consultation, the respect to the prohibition of torture and degrading treatment constitute some of the notions that should be taken into account to be able to decide whether the arbitrariness is present or not before, during and after detention or arrest. At this point, the communication directed to the Turkish Government by the United Nations Working Group on Arbitrary Detention according to which there exist strong allegations of arbitrary arrest, detention, and/or prosecutions of forty-three people reflect perfectly the current situation in the country. Among these individuals are sixteen women (Mrs. Reyhan Akcan, Mrs. Beyza Ayar, Mrs. Nurhan Erdal Bahadır, Mrs. Esra Balci, Mrs. Hanife Çiftçi, Mrs. Derya Gül, Mrs. Demet İkinci, Mrs. Nurdan Kibar, Mrs. Hadice Ogut, Mrs. Ayse Tas Seyma, Mrs. Sultani Temel, Mrs. Tevrat Tezin, Mrs. Ayşe Topçu, Mrs. Fatma Urunga, Mrs. Elif Uzun, Mrs. Selda Devrim Yildirim) nine of whom have been detained with their infants³¹.

When all the changes in the judicial system and the sense of powerlessness imposed on the detainees, prisoners, and their relatives are combined with the impunity of law-enforcement officials fostered by this arbitrariness, the situation is highly prone to result in the appearance of cases of torture or ill-treatment as observed at the following statement³²;

“They took me to the police station, terrorism unit ...They called the prosecutor and told him on the phone, “we have got a wife of a terrorist”. ... Then the police officer started threatening to take off my clothes and that they would show me to the detained men soldiers. He put his hands under my t-shirt and started to take it off. ... I was numb, silent.” (Wife of a man for her ‘alleged’ links to Hizmet Movement, interviewed by OHCHR)

The case of a former judge, Ms.Sultani Temel, could be presented also as another example in terms of arbitrary detention, arrest, and conviction as it has been brought to the attention of the Turkish Government through a communication addressed by the Special Rapporteur on the Independence of Judges and Lawyers³³. Furthermore, in another case submitted to its evaluations, the Working

³¹ Human Rights Council, Working Group on Arbitrary Detention, Communication, 10 November 2020

³² OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018

³³ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24969>

Group on Arbitrary Detention at Paragraph 84 of its opinions adopted at its eighty-ninth session rendered the following opinion ;

« In the light of the foregoing, the Working Group renders the following opinion: The deprivation of liberty of Nermin Yasar, being in contravention of Articles 2, 3, 5, 7, 8, 9, 10, 11 (1), 19, 20 (1), 21 (1), and 25 of the Universal Declaration of Human Rights and Articles 2 (1) and (3), 7, 9 (1), (2), (3) and (4), 10 (1), 14 (1) and (3) (b), (d) and (g), 19 (1) and (2), 22 (1), 25 (a) and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, II, III, and V. »³⁴

Finally in terms of examples, the incident of a female officer having had an abortion due to being subjected to rape by Turkish police while in detention has to be mentioned to be able to put forward the real extent of the torture and ill-treatment faced by women in Turkey at the hands of the law enforcement officials³⁵.

Furthermore, it should be highlighted that under certain circumstances, the imprisonment or other forms of severe deprivation of liberty which would violate the International law and would be carried out in a widespread or systematic manner might lead to the occurrence of crimes against humanity, against the Hizmet Movement volunteers in this case as underlined by the Working Group on Arbitrary Detention of the UN.³⁶

b. Detention of pregnant or puerperal women

Subjected to an atmosphere of fear and judicial harassment in the post-coup attempt period after 2016, victimization of women has been considerably augmented³⁷. The detention of a certain number of women just before or immediately after giving birth merits special concern. The number of babies and the children (cited above) is another aggravating aspect of their detention and arrest. Lastly, to have been obliged to all of this just because they have been considered as “associates” of their husbands who have been declared the primary targets after 2016 or without being provided

³⁴ Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-ninth session, 23–27 November 2020, Opinion No. 66/2020 concerning Levent Kart (Turkey), Opinion No. 74/2020 concerning Nermin Yasar (Turkey)

³⁵ <https://nordicmonitor.com/2020/08/a-women-officer-in-natos-second-largest-army-raped-in-detention-by-turkish-police-became-pregnant/>

³⁶ Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, (18 September 2020)

³⁷ Ibid

personal evidence that would justify the treatment faced by them and support allegations of which they have been accused is the mere proof of the current situation of the rule of law in the country.

The detention of women right before or after giving birth has two facets. Given the analysis made by OHCHR based upon reports received from different sources, the situation faced by mothers and their children arouses some serious concern. Including exposure to sexual assault during the arrest, detention during their visit to their spouses, handcuffing in hospitals during or immediately after giving birth despite resistance displayed by medical staff, to detention by means of shackling by the legs after the miscarriage, to arrest just immediately after delivering with cesarean and in a medically compromised manner demonstrate explicitly the practices exposed which may *amount to torture, cruel, inhuman or degrading treatment*³⁸.

Considering the caring, compassionate nature of women in addition to being a mother, women detainees severely feel the negative effects of such a situation. They either find themselves obliged to raise their kids in the inappropriate environment of prisons or because they are forced to leave their infants outside of the prison under their relatives' care, they feel the pain of being separated from their babies when they are needed the most. Being separated from them, the women detainees feel constant and crushing helplessness when their children outside are exposed to deprivation of their mothers' care at the early stage of their life.

On the other side, a lot of infants or children who have been imprisoned with their mothers are also the victims of the current atmosphere prevailing in Turkey. These children have been deprived of protection provided by international instruments because of the inadequate conditions in which they have been placed. Moreover, they bear the consequence of the treatment faced by their mothers in terms of deprivation from breastfeeding, forced to be breastfed under inappropriate and unhealthy conditions, or of lack of necessary care for a child about which their mothers consider themselves incapable of showing due to stress that they have suffered. The trauma suffered by ill or disabled children or children with special needs by separating them from their parents or obliging them to live in cell conditions is another dimension of the issue.

The incumbent government's approach to these cases constitutes a clear violation of both the country's internal legislation and a contradiction with international regulations. According to Law No. 5275 on the Execution of Penalties and Security Measures, the arrest of pregnant women or the women who had given birth less than six months ago is prohibited. **Paragraph 4 of Article**

³⁸ OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018

16 placed under Section Three which regulates the postponement of execution of the prison sentence, it is provided that;

“(4) The execution of the prison sentence against a woman who is pregnant or who gave birth less than six months ago shall be postponed. If the child has died or has been given to someone else, the prison sentence shall begin to be executed two months after the date of birth.”

In Article 116 of the same law, it is stated that Article 16 is also applicable to the detainees. When the **Articles 16(4)**, 116 of the mentioned law and the presumption of innocence are put into perspective with **Article 19** the Turkish Constitution, and Article 5 of the European Convention on Human Rights, detention of pregnant women and a woman who gave birth less than six months ago is prohibited. Such interdiction articulated in the benefit of convicted persons must be applied unarguably in regards to the detainees³⁹.

Considering the best interests of the children, alternative solutions and non-custodial measures are recommended by international organizations and the documents adopted by them. For instance, Rule 64 of the Bangkok Rules⁴⁰ which is dedicated to the “Pregnant women and women with dependent children”, the regulation is as follows.

“Non-custodial sentences for pregnant women and women with dependent children shall be preferred where possible and appropriate, with custodial sentences being considered when the offense is serious or violent or the woman represents a continuing danger, and after taking into account the best interests of the child or children, while ensuring that appropriate provision has been made for the care of such children.”

The adoption of this kind of alternative measures is also recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) concerning pregnant girls and juvenile mothers⁴¹. Finally, as to putting these statements into perspective in conjunction with the state of the women in Turkey, the employment of non-custodial measures and

³⁹ https://www.change.org/p/adalet-bakanligi-info-adalet-gov-tr-hamile-ve-yeni-dogum-yapmis-tutuklu-hukumlu-anneler-ve-bebeklerine-ozgurluk?recruiter=728397830&utm_source=share_petition&utm_campaign=psf_combo_share_ ; https://www.change.org/p/free-17-000-women-imprisoned-in-turkey-under-the-witch-hunt-carried-out-by-erdogan-government/u/24170368?recruiter=135184905&utm_source=share_update&utm_medium=facebook&utm_campaign=facebook

⁴⁰ United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), December 2010

⁴¹ Factsheet, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Women in Prison, January 2018

calling off the detention of pregnant and postpartum women is one of the recommendations directed by OHCHR to the Turkish Government⁴².

However, Turkish courts have continued to arrest pregnant women and women with infants in 2020 despite the COVID-19 pandemic and unhealthy environment in the prisons.

3. State-Sponsored Extraterritorial Operations

Due to the gravity of the human rights violations within the national boundaries of the country, the notion of state-sponsored abductions and forcible return of Turkish nationals carry the risk of being disregarded within the concept of these violations occurring in Turkey. However, these abductions have started to be applied systematically by the Turkish Government for the last 4-5 years. Over one-hundred individuals whose passports have been canceled have been the subject of the operations carried out by Turkish officials in coordination with some other states. The security cooperation agreements signed with several states to be able to justify this policy by resorting to the argument of combatting terrorism, extradition requests that have been sent to multiple countries, and also the establishment of a separate department whose main mission is to effectuate these operations could be assessed as proofs of this phenomenon⁴³.

Before exposed to abductions or forced to deportation and after they arrive in Turkey, these individuals have been subjected to different forms of torture and degrading treatment. Unfortunately, women have also been victimized by this policy of the Turkish Government. Among these women, the cases of *Mrs. Ülkü Komiş (subjected to a forced transfer with her husband and four minors from Malaysia)*⁴⁴, *Mrs. Meral Kaçmaz (abducted by Pakistani state intelligence, held in secret or incommunicado detention for 17 days, and then involuntarily returned to Turkey with her husband and their two daughters aged 17 and 16 years respectively)*, *Ms. Ayten Öztürk (taken into custody by Lebanese authorities, brought to Turkey on 13 March 2018, submitted to the court, during her hearing which has occurred after over one year, a petition indicating exposure to torture and ill-treatment)*⁴⁵ could be given as examples to facilitate the observation of the whole picture.

⁴² OHCHR, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017, March 2018

⁴³ Human Rights Council, Working Group on Enforced or Involuntary Disappearances, Communication, 5 May 2020

⁴⁴ Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, (18 September 2020)

⁴⁵ Human Rights Council, Working Group on Enforced or Involuntary Disappearances, Communication, 5 May 2020

A. Examination of the Certain Articles of The Istanbul Convention

1. State Responsibility and Due Diligence

Article 5 is one of the articles that should be emphasized, concerning the period of the state of emergency started in the country with the attempted coup d'état in 2016. In Paragraph 1 of the article, the Convention charges both the parties and all the authorities acting on behalf of the State with the obligation of refraining from engaging in any act of violence against women. Paragraph 2 regulates the State's responsibility in terms of exercising due diligence throughout the whole process, in other words from prevention to reparation concerning the acts of violence covered by the scope of the Convention.

Positive (taking the necessary measures in terms of protection) and negative (obligation of refraining from the commission of acts of violence in regards to the article of the Istanbul Convention) duties of the States, the exigence of due diligence as it has been adopted by multiple international instruments and the principle related to the responsibility of the States through the conduct of their agents concerning the International Law Commission's Articles on the Responsibility of States for Internationally Wrongful Acts (2001) are put in perspective at the Explanatory Report of the Istanbul Convention. In addition to these concepts, it is stated that the failure on the part of the States with respect to the obligations imposed by **Article 5** will incur state responsibility⁴⁶.

Within the context of the subsequent declarations of the state of emergency in 2016 as well as the government-led military and counter-terrorism operations in South-East Turkey, the deterioration of the state of the women in regards to the ill-treatment and intimidation alongside the threats of rape, harassment, sexual violence to which they have been exposed by law-enforcement officials are mentioned at the 24th and following paragraphs of the Baseline Report⁴⁷. Nevertheless, women having been detained, arrested, or imprisoned related to the allegations of affiliation to the Hizmet Movement have not been included in either this section of the Report or in the rest. It is also indicated that despite the information presented by the Turkish authorities concerning the obligation of due diligence with respect to required legislative measures and their effective implementation to the case of aforementioned law-enforcement officials, the lack of official data casts doubt on the stance of the authorities.

⁴⁶ Explanatory Report to the Istanbul Convention, Paragraphs 57-59

⁴⁷ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), 15 October 2018

2. Discrimination

The positive obligation falling upon the parties in terms of securing the implementation of the Convention without any discrimination is regulated in **Paragraph 3 of Article 4**. Analyzing the grounds of discrimination mentioned in the article, **“without discrimination on any ground such as gender, race, color, language, religion, political or other opinions, national or social origin, association with a national minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or another status.”**, it can be assessed that discrimination on the ground of political or other opinion occupies an important place when examined in connection with the treatment faced by the women in Turkey, especially after 2016. Although the situation of the lesbian, bisexual and transgender women and also the Kurdish women in the light of the anti-terrorist operations in Southern Turkey is addressed comprehensively at the Baseline Report and despite the fact that a widespread existence of discrimination at the hands of law enforcement agencies or the judiciary is pointed out both at the Baseline Report and at Paragraph 53 of the Explanatory Report to the Istanbul Convention, the situation of the women having been subjected to ill-treatment and torture within the scope of the allegations of affiliation to the Hizmet Movement have been left unexamined.

3. Conclusion

When all the explanations above-mentioned are taken into consideration, We are of the opinion that **Article 4** (Fundamental rights, equality and non-discrimination), based on the discrimination faced by women within the scope of this report due to their conviction, political or other opinion or their alleged engagement within a social group, Article 5 (State obligations and due diligence) and **Article 45** (Sanctions and measures), based on all the practices (acts of torture, arbitrary detentions, state-sponsored abductions) carried out by the state officials and the regime of impunity ensured to all these actors acting on behalf of the Turkish Government and Article 11 (Data collection and research), based on the lack of official data in terms of the number of cases having occurred related to femicides, arrests or detentions and lack of judicial data in terms of the investigations and prosecutions carried out against the potential perpetrators, are violated systematically and constantly during the past five years by the Turkish Government.

V. Our Request based on this Report

According to the World Report 2021 prepared by Human Rights Watch, people alleged to have involvement in the Hizmet Movement are the largest targeted group by the Turkish Government⁴⁸. Thus, the women suspected of having affiliation to this movement have not been excluded from this situation.

While we appreciate the comprehensive approach adopted throughout the Baseline Report of 2018, to be able to reflect the current state of human rights violations against women, we are of the opinion that with all the women who have been subjected to examination within the scope of the Baseline Report, the women detained or imprisoned should also be put under the scope during the evaluation process of the implementation of the Istanbul Convention.

The disregard for rule of law, the regime of impunity concerning law enforcement officials, erosion of judicial independence and impartiality, and the absence of credible judicial and official data that needs to be procured by the government have resulted in cases where women have been subjected to arbitrary detentions or arrests or physical/psychological torture, degrading or ill-treatment and also to strip search practices. Discussions having been carried out concerning the withdrawal from the Istanbul Convention give also some serious indications about the Turkish Government's policy with respect to the current situation of women in Turkey.

Based on the observations and evaluations carried out throughout the report, ASSEDEL calls for an inquiry to be conducted against Turkey under **Article 68 of the Convention, Paragraphs 13, 14, and 15.**

With the hope that this report would help put an end to or at least help to mitigate and prevent potential human rights violation cases against women from happening in the future.

By remaining at your disposal for any kind of complementary information, ASSEDEL respectfully submits this report for due consideration to The Group of Experts on Action Against Violence Against Women and Domestic Violence (GREVIO).

ASSEDEL, L'Association européenne pour la défense des droits et des libertés
assedel.org

⁴⁸ https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf (p.666)