

Accountability for Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

Attending to the call of the Special Rapporteur on the Accountability for Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for Thematic Report of the Special Rapporteur on Torture to GA76, ASSEDEL human rights advocacy association responses to the questionnaire in this document.

The Emphasized Country in this Report

ASSEDEL is a Strasbourg-based human rights advocacy association. The current report responds to the cruel, inhuman, degrading treatments and punishments in Turkey. An important reason for this choice is the drifting shift of the Turkish regime toward a dictatorial form since the July 2016 coup attempt. Until that date, it was possible to mention the existence of a form of democracy in Turkey. After July 2016, Turkey has rapidly shifted from being an EU candidate to becoming a Middle Eastern country. According to the Freedom House reports, Turkey has fallen into 'Not-free' status in the last five years¹²³⁴⁵, was considered 'Partially-free' before 2016⁶⁷⁸. Having the declaration of the state of emergency right after the coup attempt, the regime followed a path that directly interfered with the functioning of democratic institutions, thereby democratic mechanisms were suspended, if not revoked. Decree laws have been declared to suspend legal mechanisms, to fire social workers, and to terminate the license of legal private institutions. Although it has been over six years, yet, democratic institutions and functions have not returned to normal in Turkey.

The intention of the declaration of the state of emergency is, undoubtedly, to have more control, precisely to say, to extend the control of power on behalf of the regime. During the past six years, the regime has targeted every person, group, and institution that they did not feel comfortable with⁹. Individuals, families, and institutions still have been experiencing tragedy-level human rights violations in a country where legal mechanisms are suspended, the arbitrary use of force becomes the 'new normal'.

Past five decades, Turkey has experienced three military coups (1960, 1971, 1980), one post-modern coup, without actual take over but a forced military interference in politics (1993). Arbitrary practices in post-coup periods have been forming a considerable slice of the history of the Turkish state. However, there were no earlier examples that the arbitrary practices of a

¹ <https://freedomhouse.org/country/turkey/freedom-net/2016>

² <https://freedomhouse.org/country/turkey/freedom-world/2017>

³ <https://freedomhouse.org/country/turkey/freedom-world/2018>

⁴ <https://freedomhouse.org/country/turkey/freedom-world/2019>

⁵ <https://freedomhouse.org/country/turkey/freedom-world/2019>

⁶ https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf

⁷ https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2014_Booklet.pdf

⁸ https://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet_0.pdf

⁹ <https://www.hrw.org/news/2016/07/26/turkey-rights-protections-missing-emergency-decree>

post-coup period of the military, have been put into practice as arbitrary as in a post-military coup period by the attacked government. The July 2016 post-coup period of Turkey under the current regime, possibly, is the first of its kind in modern history. A ‘democratic government’ has used its power to dissolve the established institutions and purge their civil servants.

Based on the arguments above on post-2016 period of Turkey, ASSEDEL’s responses to the questionnaire of the special rapporteur are as follows:

1. Challenges to accountability: What are the most important legal, practical, and other challenges that are conducive to the current worldwide accountability gap for torture and ill-treatment?

One of the most crucial obstacles that contributes to the current global accountability gap for torture and ill-treatment is that human rights violations are not priority topics in the agendas of powerful democratic countries. Unfortunately, these countries prioritize their economic interests, mostly ignoring other key issues, including human rights violations, as long as they can find solutions to their ‘priority’ topics.

As a recent example, the President of the European Council and the President of the European Commission have made an official visit to Turkey last month. The prioritized topics of the agendas are, as seen from the press releases¹⁰, increasing trade, developing relations between the EU and Turkey, and returning to a period of healthy relations. During this visit, which took place right after Turkey's withdrawal of the women's rights convention GREVIO, the issue was included only in a sentence¹¹ in the statement of Ms. Von der Leyen. Turkey’s vast number of human rights violations could not find a place more than a sentence in the same statement¹². The cries of women and men rising from the reports of UN special rapporteurs¹³, the CoE CPT¹⁴, US State Department¹⁵, world-renowned human rights institutions^{16 17} and associations¹⁸, unfortunately, have not been prioritized topics on the agenda at these important meetings.

However, an important detail is that authoritarian leaders who are tolerated for their human rights violations, gain courage and increase their persecution. Consequently, these leaders become increasingly 'courageous', move on to the stage of creating political and economic problems for developed countries¹⁹. In addition, people who are persecuted in their own country take refuge in developed countries^{20 21} in search of freedom so that immigration becomes a challenging problem for developed countries.

2. Functions, forms, and levels of accountability: Please identify, explain, distinguish, or compare the different functions (e.g., punitive/reparative, or proactive/preventative, etc.),

¹⁰ <https://www.consilium.europa.eu/en/press/press-releases/2021/04/06/remarks-by-president-charles-michel-after-his-meeting-in-ankara-with-president-recep-tayyip-erdogan/>

¹¹ https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_1603

¹² https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_21_1603

¹³ <https://digitallibrary.un.org/record/3843477?ln=en>

¹⁴ https://www.coe.int/en/web/portal/home/-/asset_publisher/ke6Wfgn94238/content/anti-torture-committee-publishes-two-reports-on-turkey?inheritRedirect=false

¹⁵ <https://www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf>

¹⁶ <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>

¹⁷ <https://www.hrw.org/world-report/2021/country-chapters/turkey>

¹⁸ <https://assedel.org/assedel-research-has-submitted-the-ill-treatment-and-torture-report-to-coe-cpt/>

¹⁹ <https://www.france.tv/france-5/c-dans-l-air/2325449-erdogan-le-sultan-qui-defie-l-europe.html>

²⁰ <https://www.theguardian.com/world/2016/jul/22/germany-expects-rise-in-political-asylum-claims-after-turkish-coup-attempt>

²¹ <https://manaramagazine.org/2021/03/16/turkeys-new-emigration-wave-and-its-implications/>

forms (e.g., legal, political, economic, or social, etc.) and levels (e.g., individual, collective, institutional, State, etc.) of accountability for torture and ill-treatment.

As we stated in the third article below, torture and ill-treatment are not limited to physical maltreatment of the individual. The physical dimensions of torture and ill-treatment have been clearly defined by the relevant institutions and associations. However, torture and ill-treatment are not limited to a person's experience and definitions of these terms should be expanded. Psychological dimensions of torture should also be included in official definitions and in the relevant articles of the criminal law. Not just the victim but also the loved ones, relatives, and acquaintances of the maltreated person and the public conscience are also affected by the evil experienced by the victim.

In a recent case, Hüseyin Galip Küçüközyiğit, a former prime minister's reporter and lawyer who was fired by the decree after the 2016 coup attempt, has been missing and cannot be found²² since December 20, 2020. The strongest doubt about his fate is his alleged abduction by the Turkish Intelligence Service, MIT²³. MIT agents are the strongest suspects, since they have been exemplified the same practice multiple times before²⁴. Hüseyin Galip Küçüközyiğit's daughter Nursena Küçüközyiğit, 20, a medical faculty student, has been crying out for months from her Twitter account (@babammerede) and demanding her father be found or released²⁵. Instead of concentrating on her education and future, a daughter screams 'free my dad!' every day since Dec.20, 2020. Neither she nor the public conscience following the incident can get an answer.

In this case, we are facing a psychological torture method that is professionally put into practice by the Turkish regime. Hüseyin Galip Küçüközyiğit's daughter, the rest of the family members, his relatives, former colleagues, and the ones who follow the incident on social media, experience long time physiological ill-treatment and torture. The Turkish regime seems to aim to intimidate, tire people, and leave them physiologically to die. Many variations of this situation, which we explained with a single example, have emerged since July 2016. Therefore, the relevant definitions and laws should include the psychological dimensions of ill-treatment and torture as well as the physical experience of the victim.

3. Rights of victims: *Who should be recognized as a victim of torture and ill-treatment, and what are – or ought to be – victims' procedural and substantive rights within accountability processes? Who else, if anyone, should be entitled to have access to and/or participate in accountability processes and mechanisms?*

The 1984 United Nations Convention Against Torture (Article 1)²⁶ defines torture. International humanitarian law (IHL) Rule 90²⁷, differs somewhat from this definition in not requiring the involvement of a person acting in an official capacity as a condition for an act intended to inflict severe pain or suffering to be defined as torture. The ICRC uses the broad term "ill-treatment" to cover both torture and other methods of abuse prohibited by international law, including inhuman, cruel, humiliating, and degrading treatment, outrages upon personal dignity, and physical or moral coercion²⁸. The legal difference between torture and other forms of ill-treatment lies in the level of severity of pain or suffering imposed. In

²² <https://www.amnesty.org/en/documents/eur44/3603/2021/en/>

²³ <https://twitter.com/rebharms/status/1345717421198467075?lang=en>

²⁴ <https://turkishminute.com/2018/04/16/opinion-dutch-german-intelligence-agencies-uncover-turkish-kidnapping-murder-plots/>

²⁵ <https://twitter.com/neredebabam?lang=en>

²⁶ <http://www2.ohchr.org/english/law/cat.htm>

²⁷ https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule90

²⁸ <https://www.icrc.org/en/doc/resources/documents/faq/69mjxc.htm>

addition, torture requires the existence of a specific purpose behind the act. Methods of ill-treatment may be both physical and/or psychological and both methods may have physical and psychological effects.

While agreeing with these definitions, we provide sound examples and propose an expansion of the definition of ill-treatment and torture beyond their limited definitions, for instance:

Putting reverse handcuffs on civil servants²⁹, teachers³⁰, shopkeepers³¹, homemakers³² who have lived honorably throughout their lives, accusing a university professor of terrorism with no claims³³, challenging a man to persuade him to speak by threatening him to rape his wife³⁴, arresting a mother as soon as she gives birth in a hospital³⁵, leaving a child with cancer at the age of 11 because his parents are in prison³⁶, placing 23 people in wards made for 8³⁷, leaving prisoners to their fate under the threat of Covid-19³⁸, and many other practices of the Turkish officials should be included in the scope of ill-treatment and torture.

4. Recommendations: *Based on your experience and/or analysis of accountability in (2) and (3) above, what are the most effective mechanisms/measures and/or good practices that can or should be taken to respond to the challenges you identified in (1) so as to ensure accountability for torture and ill-treatment worldwide?*

Our historical experiences have shown that ill-treatment and torture that disregard human dignity eventually arise. While Hitler's concentration camps were in the implementation phase, we did not have as much detailed information as today. The commanders, the executors, and the victims were behind closed doors and in secrecy. Thousands of families and people were subjected to the most brutal conditions history has ever seen in these camps. We have read in Anne Franck's diary some of her experiences she had to go through in her early youth, how she went from normal life to a fearful period. We had to wait for the end of the Hitler era to find out the rest.

Today, we do not have to wait for the Hitler wannabe to be overthrown to know what happened in the torture chambers. Based on historical experiences, we have established bodies, institutions, and officials to protect human rights and human dignity. These bodies, institutions, and officials should function according to international conventions. Those responsible for torture and ill-treatment will eventually come to light, and even if there are no laws, history will hold to account.

Conclusion

Human rights issues in Turkey fade away and gradually turns into an area that is overlooked by society. The regime exhibits an unfavorable attitude towards individuals and groups who demand democracy and targets their lives and try to get them tired of the struggle. It responds

²⁹ <https://kronos34.news/tr/khkli-emniyet-muduru-ve-akademisyene-ters-kelepce-alisveris-icin-disari-cikiyor-sik-kiyafet-degistiriyor/>

³⁰ <https://kronos34.news/tr/ihrac-4-sinif-emniyet-muduru-ve-fen-bilgisi-ogretmeni-esine-de-ters-kelepce/>

³¹ <https://www.evrensel.net/haber/363912/esnafa-polis-dayagi-ve-ters-kelepce>

³² <https://www.tr724.com/izmirde-66-gozalti-muayeneye-ters-kelepce-ile-goturulduler/>

³³ <https://tr.sputniknews.com/turkiye/201809251035371677-canakkale-onsekiz-mart-universitesi-rektor-sedat-laciner-feto-dava/>

³⁴ <https://twitter.com/sevincozarslan/status/1293647918176624640>

³⁵ <https://www.cnnturk.com/turkiye/dogum-yaptiktan-bir-gun-sonra-gozaltina-alindi>

³⁶ <https://kronos34.news/tr/turkiye-anne-babasi-tutuklu-losemili-hakanicintekyurek-oldu-annesi-yaninda-olsun/>

³⁷ <https://www.tr724.com/turkiyede-cezaevleri-8-kisilik-kogusta-23-kisi-kaliyor/>

³⁸ <https://www.hrw.org/tr/news/2020/04/03/340334>

with a variety of courts, arrests, prisons, and ill-treatment against individuals and groups who strive independently for the good of their country. Lawyers and human rights defenders who put themselves forward to defend the rights of these individuals and groups face the same fate and face various intimidation procedures.

Human rights defenders are increasingly condemned to loneliness and desolation by the regime. The last and striking example is MP Ömer Faruk Gergerlioğlu, who was the only human rights defender in the parliament, was expelled from the Parliament **based on a tweet he posted**³⁹. Human rights defender and a member of the parliament Dr. Gergerlioğlu will serve 2.5 years in prison due to the court orders against him.

We expect the Special Rapporteur to raise these important issues at the 76th General Assembly in September 2021.

Sincerely

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³⁹ <https://turkishminute.com/2021/03/17/mp-expelled-turkish-parliament-over-a-2016-tweet/>