



Responses to Turkey 2020 Report of CoE - Commissioner for Human Rights

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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 violations.¹

INTRODUCTION

Human rights violations have reached historical records in Turkey particularly after the controversial coup attempt in July 2016. Journalists, human rights defenders, members of opposition parties have become the targets of the current government. According to the recent Human Rights Watch Report², individuals who are alleged to have affiliation with the Gulen Movement, constitute the largest group targeted by the government as was confirmed by the Turkish Interior Minister Süleyman Soylu. Referring to the official data of the Ministry of Justice, Mr. Soylu has confirmed that 622,646 people were subjected to investigation, 301,932 to detention 25,467 of whom are still behind bars due to their alleged links to the Gulen Movement³.

In this regard, our main goal throughout the report is to shed light on the human rights violations which are documented and substantiated by international bodies.

ANALYSIS OF THE CURRENT HUMAN RIGHTS SITUATION IN TURKEY IN THE CONTEXT OF COMMISSIONER'S REPORT

Torture and ill-treatment were prevalent practices during the state of the emergency period between July 2016 and July 2018. The number of reported cases has even raised in the post-period. Ill-treatment in

¹ <https://assedel.org>

² https://www.hrw.org/sites/default/files/media_2021/01/2021_hrw_world_report.pdf (p.666)

³ <https://www.aa.com.tr/tr/turkiye/icisleri-bakani-soylu-garaya-giden-hdpli-vekili-acikladi/2151784>

police custody was pointed out in two reports published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴. Various forms of torture and ill-treatment have put in practice by police officers, gendarmerie, or the members of the National Intelligence Service have been documented by the Office of the United Nations High Commissioner for Human Rights⁵ in the context of arbitrary detentions and enforced disappearances. Furthermore, as it was laid out in a study released by the Human Rights Foundation of Turkey (TİHV)⁶, nearly 800 individuals who have taken part in the demonstrations against the appointment of a pro-government rector to Boğaziçi University have had their share (also become victims) of government's current harsh policy against any type of critics.

Another crucial category of human rights violation in Turkey is the detention or arrest of women just before or after giving birth. This inadmissible practice has multi-faced consequences and inevitably triggers the deterioration of the status of women in Turkey. There have been “*cases of women being ill-treated while in detention or intimidated by law-enforcement officials pronouncing threats of rape*”⁷ besides the state of constant denial of allegations concerning unlawful strip-searches during the detention and in prisons by some of the members of the Justice and Development Party (AKP) deputies, particularly deputy group chairperson Özlem Zengin. Taking into account these incidents with the withdrawal of Turkey from the Istanbul Convention can provide a holistic perspective where the women are truly in an alarming situation to be concerned in terms of the safeguards providing them protection

⁴ -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 10 to 23 May 2017 (5 August 2020); 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 6 to 17 May 2019 (5 August 2020)

⁵ 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; Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 10 November 2020; Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 5 May 2020

⁶ <https://tihv.org.tr/wp-content/uploads/2021/02/BogaziciRapor.pdf>

⁷ 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

in a country where femicide and other forms of violence against women is on the rise⁸. Furthermore, a recent report released by a non-governmental organization, Solidarity with OTHERS, has stated that the number of pregnant women and women-with-children under the age of 6 who were subjected to arbitrary detention or arrest with the allegations of affiliation to the Gulen Movement has reached 219 in the post-coup period⁹. As for the children victimized by this policy of the government, the situation of a considerable number of children, who have succumbed to cancer¹⁰ or other serious illnesses because of not being able to carry the unbearable burden that they have suffered due to the detention or arrest of their parents, appears alarming.

State-sponsored extraterritorial abductions; forcible returns based on the secret/clandestine arrangements with other states and enforced disappearances have been carried out by Turkish authorities since 15 July 2016. Such incidents are not mere allegations, but validated facts recognized by international authorities, especially UN OHCHR reports¹¹. Legal documents of the individuals, who were subjected to these practices, were previously annulled and they were not allowed to apply for new ones at the consulates. Hüseyin Galip Küçüközyiğit, about whom a call for urgent action was issued on February 1, 2021, by Amnesty International¹², is one of the latest victims of the enforced disappearances where the prior suspect is Turkish Intelligence Service, MIT.

Arbitrary detention is another tool used on a large scale by the Turkish Government as the Commissioner's Office raised this issue by means of the latter's engagement in Mr. Osman Kavala's case. These arbitrary detentions are carried out in an atmosphere in which the ECtHR's binding judgments are left unapplied and the lower courts defy the rulings of the Constitutional Court at will. Besides, law enforcement officials benefit from a state of impunity¹³ bestowed upon them against this

⁸ <https://www.coe.int/en/web/commissioner/-/turkey-s-announced-withdrawal-from-the-istanbul-convention-endangers-women-s-rights>

⁹ <https://www.solidaritywithothers.com/arbitrary-detention-and-arrest>

¹⁰ <https://stockholmcf.org/turkeys-post-coup-purge-makes-no-exception-for-children/>

¹¹ 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, Opinion No. 51/2020 concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group (Malaysia and Turkey); Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 5 May 2020

¹² <https://www.amnesty.org/en/documents/eur44/3603/2021/en/>

¹³ 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

arbitrariness or the allegations of torture or ill-treatment during the detention or arrest. The arrest of Peoples' Democratic Party (HDP) deputy Ömer Faruk Gergerlioğlu, after being stripped of his MP status and expelled from parliament over terrorism charges linked to a 2016 social media post, is a clear presentation of the broad and unlimited nature of this reckless practice.

Another factor that contributes to this disturbing picture is the vague and imprecise character of the term “membership to an armed terrorist organization”. As it was indicated in a UN letter¹⁴ sent to the Turkish Government, this terminology is being manipulated in a manner to oppress the critics directed to the current Government’s policies, as well as to detain or arrest tens of thousands of people based on the activities which were legal until July 15, 2016. In this regard, another UN letter laid out the incompatibility of the Anti-Terror Law No. 3713 and of the amendments thereto through Law No. 7145 which provides the maintenance of the state of emergency powers by transposing those powers to ordinary laws, with regard to Turkey’s international and human rights law obligations¹⁵.

By highlighting the significant increase in the number of cases involving arbitrary detention, the UN Working Group on Arbitrary Detention states that when imprisonment or other severe deprivations of liberty are committed in a widespread or systematic manner, it may constitute crimes against humanity¹⁶. Moreover, in several opinions, the Working Group concluded that deprivation of liberty of the individuals with alleged links to the Gulen Movement at the cases submitted to it was arbitrary¹⁷. In addition, The Working Group at its 89th session made a landmark decision about one of the former air

¹⁴ Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 10 November 2020

¹⁵ The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers, Letter to the Turkish Government, 26 August 2020

¹⁶ 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, Opinion No. 51/2020 concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group (Malaysia and Turkey)

¹⁷ 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); Human Rights Council, Working Group on Arbitrary Detention Opinions adopted by the Working Group on Arbitrary Detention at its eighty-seventh session, 27 April–1 May 2020, Opinion No. 2/2020 concerning Abdulmuttalip Kurt (Turkey), Opinion No. 29/2020 concerning Akif Oruç (Turkey), Opinion No. 30/2020 concerning Faruk Serdar Köse (Turkey)

force cadets who was sentenced to life imprisonment after the coup attempt in July 2016. While requesting the immediate release of cadet, Mr. Sakaoğlu, as well as the initiation of the necessary steps aiming at remedying the violation, the Working Group pronounced the following observation in paragraph 98 of its decision.

In the light of the foregoing, the Working Group renders the following opinion:

The deprivation of liberty of Ahmet Dinçer Sakaoğlu, being in contravention of articles 1, 2, 3, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and articles 2(3), 9, 14 and 26 of the International Covenant on Civil and Political Rights, is arbitrary and falls within categories I, III and V¹⁸. The importance of this decision resides in the fact that the opinion in question could set a precedent for more than 300 other former military cadets sharing the same fate as Mr. Sakaoğlu.

Following the attempted coup of 15 July, assets of several NGOs were seized after being closed by the state of emergency decrees. Subsequently, their assets were transferred in a “partisan” way to certain NGOs adopting the same approach as the Turkish government. These facts were also mentioned in Commissioner’s latest report about Turkey.¹⁹ In this context, ASSEDEL holds the view that a lot of aspects of this practice, especially its effects on the right of property have been left unexamined. According to the Violations by Article and by State table of the ECtHR²⁰, with the number of 688 among the 3309 judgments finding at least one violation, the breach of the right to property constitutes a significant portion of the total number of judgments against Turkey.

After July 15, 2016, the Turkish Government employed different methods to interfere with the right to property ranging from the appointment of a trustee board, to freezing the assets of individuals especially regarding the persons allegedly having links with the Gulen Movement²¹. Finally, to be able to understand accurately the perspective of the Turkish Government on this subject, ASSEDEL believes that it would be sufficient to look at the statement of the Turkish President related to the right to property

¹⁸ 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. 67/2020 concerning Ahmet Dinçer Sakaoğlu (Turkey)

¹⁹ COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Country Report, p.33, paragraph 134, 19 February 2020

²⁰ https://www.echr.coe.int/Documents/Stats_violation_1959_2020_ENG.pdf

²¹ <http://www.platformpj.org/wp-content/uploads/EROSION-OF-PROPERTY-RIGHTS-IN-TURKEY-1.pdf> (In the Pretext of the State of Emergency and Counter-Terrorism Measures, p.11, March 2020)

of the supporters of the Gulen Movement. Even if it is a right under the protection of both national and international legislation, this protection did not prevent the Turkish President from pronouncing the following statement.

“They do not have any property rights. They have a large debt to pay to this nation,” “So many people were killed [during the abortive putsch]. What will happen to their property rights?”²²

The collective dismissal of judges and academics without justification through the state of emergency decrees (which were considered as “evidence” during some of the court hearings) was also stated in the aforementioned report²³. However, the short characteristic of the time interval covering the adoption of these state of emergency decrees after 15 July 2016 and the suspicions that this situation created in terms of blacklisting and social profiling seem to have not been able to find their place in the report published in February 2020.

As to the freedom of expression, Turkey is being considered today as the largest prison in the world for journalists, ranking 154th place among 180 countries based on the freedom of the press report of the Reporters Without Borders (RSF)²⁴. Besides, in 2021 Freedom in the World Report prepared by Freedom House concerning civil and political rights, Turkey is classified as a “not free”²⁵ state. Furthermore, according to the data presented by the Stockholm Center for Freedom, as of January 8, 2021, there are 81 convicted journalists behind bars, 94 journalists pending trial, and 167 journalists who are in exile and against whom arrest warrants have been issued²⁶.

As the flag bearers of the freedom of expression and freedom of the press, of which the journalists are the prominent victims though, the victims subjected to investigations, detentions, or arrests while benefiting from their rights and liberties are not only journalists. As a result of resorting to article 216 of the Turkish Penal Code in a twisted manner, the number of people investigated for “inciting hatred and

²² <https://stockholmcf.org/erdogan-says-gulen-movement-supporters-have-no-property-rights/>

²³ COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Country Report, 19 February 2020

²⁴ <https://rsf.org/fr/turquie>

²⁵ <https://freedomhouse.org/country/turkey/freedom-world/2021>

²⁶ <https://stockholmcf.org/updated-list/>

hostility among the public” in 2019 reached 15,044, alongside the 36,066 people under investigation over the course of the last year on the ground of insulting President Recep Tayyip Erdoğan²⁷.

The approach of the Turkish government to the Boğaziçi University protests indicates the tendency of hate speech faced by LGBT students. The protesting LGBT students have been called “terrorists” by President Recep Tayyip Erdoğan and “perverts” by the Interior Minister Süleyman Soylu that has been strongly condemned by the EU²⁸ as well as the opposition in the country. Last but not least, the Turkish government has started to impose bans and fines on some of the social media companies under the new social media law adopted by the Turkish Parliament in late July 2020. In this vein, both non-governmental and international organizations expressed their concerns related to its possible undermining effects in terms of freedom of expression (which have been confirmed as of today)²⁹.

The people dismissed from their jobs through the state of emergency decrees are being exposed to “civil death” in the post-coup period as was mentioned in the 2020 report³⁰. These people are being deprived of every single job opportunity because of their dismissal through emergency decrees. In addition to being denied job opportunities in the public sector due to being labeled as “dismissed from public sector” on their social security records, they are also being rejected by the private sector, owing to the political discourse and the atmosphere of fear sustained by the Turkish government officials; and further by the President implying possible sanctions against private sector companies who would potentially employ the dismissed. Their fundamental right to work is completely stripped from them, in addition to having to defend themselves before administrative or judicial procedures.

This situation was also highlighted in the report published by the Governing Body of the International Labor Organization on 24 March 2021. With respect to the representation submitted by the Action Workers’ Union Confederation (Aksiyon-Is) and based on the recommendations of the Committees set up to examine the representation alleging non-observance by Turkey of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87) and of the Termination of Employment

²⁷ <https://boldmedya.com/2021/02/10/73u-cocuk-15-bin-44-vatandasa-kin-ve-dusmanlik-suclamasi/>

²⁸ https://eeas.europa.eu/headquarters/headquarters-homepage/92622/turkey-statement-spokesperson-detentions-students-and-developments-around-boğaziçi-university_en

²⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26129&LangID=E>

³⁰ COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE, Country Report, p.23, paragraph 87, 19 February 2020

Convention, 1982 (No.158), the Governing Body emphasized the two different aspects of the situation. In the first part of the report, one of the aforementioned Committees concluded in paragraph 27 that,

“These workers were punished for their membership in a trade union, without any need for proof of specific action or involvement or even knowledge that they may have had about a possible affiliation with a terrorist organization. In other words, these workers were punished for having exercised their right to join organizations of their own choosing guaranteed by Article 2 of Convention No.87 without any possibility of review of their individual situation.”

As to the conclusions of the second Committee, in addition to being dismissed without due process, these workers, whose passports were annulled, and whose termination of employment indemnities, entitlements under the health, unemployment, and pension systems were stripped of, are deprived of any alternative employment. The Committee further indicates that this situation constitutes a violation of Article 12 of Convention No. 158³¹.

We appreciate the statements and reports which were issued by the Office of Commissioner for Human Rights of the Council of Europe. Nevertheless, by taking into account the information and the specific notions that will be analyzed in the second section of this report, ASSEDEL would kindly like to direct certain questions to the Commissioner’s Office in addition to respectfully submitting this report to the Commissioner’s attention, appreciation and for due consideration,

1. Does the Commissioner’s Office have a predetermined schedule and topics before conducting the country visits?
2. What criteria does the Commissioner’s Office take into consideration in the process of preparing country reports?
3. In the Commissioner’s latest report, ASSEDEL also noticed the comprehensive analysis of the issues of administration of justice and the protection of human rights in the justice system, and human rights defenders and civil society. Furthermore, the Commissioner’s letter addressed to the Minister of Interior and the Minister of Justice of Turkey on February 25, 2021, emphasize the importance of the role of civil society and human rights defenders, and calls the Turkish authorities to refrain from

³¹ International Labor Organization, Governing Body (Institutional Section), 341st Session, Geneva, March 2021

further implementation of the Law No. 7262 on Preventing Financing of Proliferation of Weapons of Mass Destruction by expressing serious concerns in terms of the possible negative effects of the mentioned law³². Nevertheless,

In a country where,

- Infants, children, even the unborn are being aggrieved based on unfounded allegations faced by their parents,
- Female students, lawyers, and even pregnant women are being strip-searched,
- 22-year-old cadets are sentenced to life imprisonment with no claims,
- A total of 130 000 people from different professions are dismissed from their jobs through writing their names on the state of emergency decrees,
- Elderly or disabled people are imprisoned regardless of their age or serious illnesses,
- Democratically elected Kurdish mayors are removed from their posts on the pretext of terror charges, and they were replaced by appointed trustees,
- ECtHR judgments or Turkish Constitutional Court's decisions are being left unapplied by the lower courts,
- Lawyers are being imprisoned because of defending their clients,
- People are being abducted by law enforcement officials both inside and outside of the borders of the country,
- Any criticism to the officials and government by ordinary citizens, students, journalists, human rights defenders are risking imprisonment or at least detention,
- And the countless number of people are being subjected to ill-treatment, torture, physical abuse or even losing their lives due to a wide range of reasons while being at police custody or in prison,

³² <https://rm.coe.int/letter-to-mr-suleyman-soylu-minister-of-interior-of-the-republic-of-tu/1680a18d4c>

ASSEDEL would kindly like to know the considerations behind the preference given to the two themes analyzed throughout the Human Rights Commissioner's report.

By thanking the Commissioner for her response, she may provide, ASSEDEL presents in the following section of this document, some of the key notions which are prevalent, even omnipresent in the country throughout the period following the controversial coup attempt of July 15, 2016.

Torture and ill-treatment

An important issue not mentioned in the report is the pressing existence of torture and ill-treatment in Turkey. Along with the statutory decrees issued after the 2016 coup attempt and the suspended law, many crimes of torture and ill-treatment were committed by the Turkish security forces. While many of these crimes were concealed, some of them could be revealed by social media, but no action was taken by the judicial authorities even against those exposed crimes.

In particular, the torture inflicted upon soldiers and military students who had alleged involvement in the controversial coup attempt received wide coverage in the media, and the media has gone as far as marking the soldiers and military students with brush and paint as so-called “putschists were given lessons they deserve” to the public eye.³³

Turkish Armed forces initiated legal actions against its purged personnel for alleged membership in a terrorist organization and many of the persons detained during police custody were subjected to physical or psychological violence. This torture was applied in police buildings by law enforcement, and in some specific cases by unidentified persons affiliated with the state.³⁴ Many reports regarding these torture allegations were retained by lawyers affiliated with the bar associations, and some of them were put into legal proceedings. However, the files were closed by the Public Prosecutors without serious consideration of the allegations of torture, and by simply making non-prosecution decisions. This is due to the article, which was added to the CCP (Code of Criminal Procedure) with the Decree Laws issued after July 15, that empowers prosecutors to decide there is no room for investigation; and in doing so

³³ <https://www.bbc.com/turkce/haberler-turkiye-38126711>

³⁴ <https://tr.euronews.com/2019/05/28/iskence-iddialar-baro-raporunda-biz-disaridan-geldik-profesyonel-bir-ekibiz>

protects those public officials practicing torture. (CCP 158/6) In addition, a law enacted by the Grand National Assembly of Turkey granted an impunity shield (regarding any type of investigation) to those who acted to suppress the so-called coup on the night of July 15 was passed (Article 121 of Decree-Law No. 696). Even worse, an action for the annulment of this rule was lodged with the Constitutional Court by the opposition, but this was rejected.³⁵

Unfortunately, since 15 July 2016, the torture of public officials in the country is being ignored, even supported, and protected by law. Although many witnesses applied to the judicial authorities and filed a criminal complaint, Turkish authorities attempted to conceal these torture crimes through lawful and unlawful measures. Reports on this subject were published, and torturers were identified concerning many cases. Although there exist serious attempts to conceal "torture and ill-treatment", it remains a highly important agenda item in Turkey. In addition, the fact that the crime of torture is not subject to a statute of limitations, and that it cannot be justified even during the war elevates the intolerable and unacceptable nature of this crime. Unfortunately, taking also into consideration the circumstances that Ankara does not give consent the reports of CPT on Turkey to be published, ASSEDEL is appalled by the fact that such a grave issue was not included in a report written within the framework of "human rights". The independence of the judiciary, the functioning of the criminal justice system, and the healthy accessibility of the system were addressed, but the complete silence of the authorities regarding the torture failed to be addressed. Torture is a major crime against humanity and is treated with higher sensitivity by the Council of Europe.

The Situation of Women and Their Infants in Detention

ASSEDEL believes that this issue which is absolutely within the scope of the protection of human rights in the justice system, one of the main topics of the report, should have been included in the report. Because women with babies are one of the most sensitive segments of the universal society, ASSEDEL believes that the injustices against them should advance to the forefront.

In Turkey, the fact that 780 children are currently suffering the same fate as their mothers is extremely concerning³⁶. Approximately 4000 innocent children were treated as prisoners after the 15 July coup

³⁵ <https://tr.euronews.com/2020/11/11/aym-darbe-girisimine-kars-koyan-sivilleri-cezadan-muaf-tutan-yasan-n-iptali-istemini-redde>

³⁶ <https://silencedturkey.org/wp-content/uploads/2020/04/Captive-Mothers-and-Babies.pdf>

attempt. In this period, many women were arrested and sent to prison on the grounds of being members of a so-called armed terrorist organization. The spouses of many of these women were also subjected to the same treatment. Thus, most of them could not find anyone to take care of their joint children. Similarly, being at a very young age, many babies had to live in prison with their mothers. By January 2018, nearly a hundred newborns or pregnant women were in pre-trial detention, and the number continues to rise due to the repressive attitude of the government. Even more alarming is the fact that at least 50 women were detained or arrested immediately after giving birth.³⁷ Detention is an exceptional measure in the Turkish Penal Code and suspects are detained when important well-grounded reasons necessitate the detention. (TPC Article 100) There are important criteria such as the exigence of a possibility indicating the escape of the suspect or a strong suspicion in terms of destroying or hiding the evidence. In parallel, the jurisprudence of the European Court of Human Rights affirms the same approach regarding pre-trial detention. However, the practical application is not in compliance with the applicable legislation and case law of ECtHR, and women who have given birth, who are not suspected of escaping, are relentlessly being arrested.

Therefore, children of arrested women are punished together with their mothers. In the report of the respected Commissioner, it was stated that the Anti-Terror Law is suitable for broad interpretation. As a matter of fact, it also happens women, who have just given birth, are immediately detained or arrested.³⁸ This dire situation was voiced by many members of the opposition parties and received wide coverage on social media. It is a chronic problem of the Turkish judicial system, but the absence of any mention thereon in the report might lead one to conclude that the report overlooked - or ignored - certain pressing issues.

Important details were given in the report published by OCHR in March 2018. This report was written 15 months before the Commissioner's Turkey trip. Unfortunately, this problem is continuing in the same manner over the years. Also pointed in the OHCHR 2018 report that; *"OHCHR received a report concerning a woman who was sexually assaulted by a police officer during the arrest. Moreover, NGOs brought to the attention of OHCHR at least six cases of women who were detained while they were visiting their spouses in prison. They were either detained together with their children or violently*

³⁷ Report On The Impact Of The State Of Emergency On Human Rights In Turkey, Including An Update On The South-East January – December 2017

³⁸ <https://stockholmecf.org/turkish-woman-returned-to-prison-immediately-after-giving-birth/>

separated from them.”. It turns out that, hundreds of women, if not thousands were harassed by public officials, detained during visits to prisons for their husbands, and/or forcibly separated from their children. Unfortunately, these crucial issues were not included in the report of the respected Commissioner.

Restriction of the Right to Work and Illegal Measures on the Right to Property

In the post-coup attempt period, one of the-most considerable problems in Turkey was the restriction of the right to work guaranteed by the Constitution, and illegal measures put on property rights. ASSEDEL considers that these issues were also excluded from the scope of the report.

Freedom to work is a right guaranteed by the Constitution. In the 48th article of the Constitution; *“Everyone has the freedom to work and contract in the field they wish. It is free to establish private enterprises.”* Despite the provision of the Constitution, those who were dismissed by the Statutory Decrees were almost precluded from proper access to working life. Tens of thousands of people lost their jobs with Statutory Decrees. Also, the bachelor licenses of the individuals were canceled with the provisions enshrined in the Decree Laws. Those who were fired from security forces were not allowed to work in any business line related to their past profession.

In addition to very heavy legal sanctions, people, who were dismissed from their jobs with the Statutory Decree, were demonized by the government and almost isolated from society. While it is almost impossible for many victims of Statutory Decrees to find a job in the field of their expertise, finding a job in other fields is also quite difficult. Since the employers do not want to employ those who were dismissed with the Statutory Decree. When people dismissed by Statutory Decree want to get a job, it is visibly registered in their digital employment records. Even if that person is hired, despite this, a warning letter is sent by the SSI (Social Security Institution) to the employer stating that the person he/she has employed was dismissed through Statutory Decree. Therefore, people who were dismissed through the Decree-Law are almost left to civilian death. The same practice continues even though the state of emergency ended, and thousands of people are still being dismissed from public institutions.

Those purged through the Statutory Decree, who face extreme difficulties to find employment with insurance, tend to work without insurance. The state implicitly leaves no chance for these people other than working without insurance. In addition, judicial operations are carried out against, those who find

them a job so that they can at least work without insurance. Thus, by taking legal action against those who provide any manner of help to these purged officers, they are stripped of the slightest chance to access their survival needs.³⁹

Unfortunately, there is no effective domestic remedy for those whose right to work has been denied. These Decree Laws were subsequently approved by the Parliament and formally became law. Despite the legal action initiated by the opposition parties for their annulment, the Constitutional Court rejected their requests. Therefore, the right to work, which is one of the most fundamental rights, cannot be protected within the justice system.

Another important issue not addressed in the report is the serious violation by the judiciary of the property right. The property right, one of the most fundamental rights, is seen by societies as a right strictly bound to the person. As a result, laws protecting property have been enacted. Property rights in Turkey were under legal protection prior to and in fact after the July 15 coup attempt.

With the issued Decree Laws, many institutions and organizations were closed, and a significant part of their assets was seized. Some of these buildings were assigned to other institutions by the state, while others remained idle. The government went further in this regard; these assets were confiscated by the state who leased their assets to Hizmet Movement Institutions. These institutions were deprived of rental income. Moreover, even if there is a debt or mortgage related to the confiscated property, the state did not undertake this debt. Individuals had not only lost their assets, but also had to pay the debt (if any) of their assets. For example, a school built by a tradesman in Afyonkarahisar, a town in mid-west Turkey, was seized by the government a few days before its inauguration. All the debts relevant to construction were paid by tradesman who made the school for charity by the order of government⁴⁰.

Following the coup attempt, measures were imposed regarding the assets of the persons who were seen as acting in union or junction with a so-called criminal organization or having contacts with the Gulen Movement. Based on the aforementioned decree-laws, a measure was imposed on the possibility of confiscating the assets of persons detained or arrested in the future. It was even witnessed that pensions and bank cards were blocked. With the decree issued, the Criminal Judgeships of Peace could also make

³⁹ <https://kronos34.news/tr/ihrac-edilen-kisilere-sigortasiz-is-bulmaya-calismak-sucundan-23-gozalti/>

⁴⁰ Afyonkarahisar 2. Asliye Hukuk Mahkemesi 2018/1181 E. sayılı dosya

this decision. While individuals were arrested, their assets were confiscated too. In its decision dated 25/9/2019, the Constitutional Court ruled that the long-term measure put on the assets related to being confiscated later violated the property right.⁴¹ However, measures are still in force on the assets of many individuals accused of the so-called “overthrowing the Constitutional Order”.

In addition, there is article 248 of the CCP requiring fugitive suspects to appear before the judicial authorities for judicial proceedings to be furthered. However, with the article amended by the Statutory Decrees, measures were imposed on the assets of many people who were sought from “FETÖ” membership even before they became defendants - while they were suspects. A similar situation happened to the well-known writer Can Dündar and a measure was imposed on his property ⁴².

In paragraph 6 of article 248 of the CCP, it is stated that *“if it determined that the relatives of the fugitive fall into poverty due to the measures taken, it allows the enrollment to provide assistance from the confiscated property in proportion to their social status in order to provide their livelihood.”* Although it reads so, this paragraph was not applied in many substantive cases. The remaining family members faced serious financial difficulties. Even judges sometimes took measures against pensions. Under Turkish law, pensions cannot be seized by enforcement, but they could simply seize benefits concerning the pension of someone facing an armed terrorist organization charge.

Furthermore, it is observed that a dismissed person was included in the “risky/blacklist” by some land registry offices even though there was no investigation or prosecution against them, and in some cases, possession of their assets was restricted without any court decision. ⁴³

Unfortunately, the situation gets worse in Turkey to the extent that even private institutions make life difficult for Decree victims. Garanti Bank operating in Turkey, for instance, did not allow individuals dismissed by statutory decrees to open accounts at the bank.⁴⁴ The freedom to work of the individuals

⁴¹ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/71110?BasvuruAdi=ERCAN+TO%C4%9ERUL>

⁴² <https://www.dw.com/tr/can-d%C3%BCndar%C4%B1n-mal-varl%C4%B1klar%C4%B1na-el-koyma-karar%C4%B1-verildi/a-55187574>

⁴³ <https://twitter.com/gergerliogluof/status/1197096968364986368?s=20>

⁴⁴ https://twitter.com/gergerliogluof/status/1210670017928466432?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1210670017928466432%7Ctwgr%5E%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fkronos34.news%2Ftr%2Fsigortasiz-is-bulmalari-da-suc-khklilarin-calismasinin-onundeki-yasal-engel-ne-hangi-genelge-khklilarin-hayatini-zindan-ediyor%2F

concerned was restricted, their assets were confiscated, and they were unable to make legal transactions on their assets.

Social profiling as a method of discrimination

The dismissals of around 130 000 public workers through emergency decrees and 4000 judges and prosecutors by the Council of Judges and Prosecutors (HSK) in the immediate aftermath of the 2016 coup attempt were mentioned in detail in the Commissioner's report. As underlined in the relevant report, these decisions contained a universal, stereotypical, and non-individualized reasoning and were based on "poorly" defined concepts such as acting in union or junction with a criminal organization ("iltisak") or having contacts with such an organization ("irtibat").

Yet the high number of persons who were dismissed and some other indicators such as the dismissal of a prosecutor who died months before the relevant decree⁴⁵ imply that the lists of dismissed persons were prepared prior to the state of emergency period. There was even a profiling tool called "FETOMETRE" invented by the former Chief of Staff of Turkish Navy Rear Admiral Cihat Yayci. This tool was designed in order to identify and dismiss Turkish Armed Forces staff who allegedly have links with the Gulen Movement⁴⁶. It actually involves absurd and discriminatory criteria such as:

- A money deposit of a relative up to fourth degree to Bank Asya*

- whether or not the officer holds a master's degree*

- whether or not the officer divorced between 2015 and 2016*

- whether or not the officer or any of his or her relative had a marriage anomaly*

- whether or not the male officer sent to her spouse a bracelet attached to a ram's horn before the marriage*

45 <https://www.sozcu.com.tr/2016/gundem/olen-savci-nasil-ihrac-edildi-1465947/>

46 <https://www.al-monitor.com/originals/2019/03/turkey-navys-incredible-algorithm-in-fight-against-gulen.html>

Social profiling is a form of discrimination according to article 10 of the Quebec Charter of Human Rights and Freedoms⁴⁷. The European Court of Human Rights held also in the case of Ciorcan and Others v. Romania that discriminatory profiling is a violation of article 14 on the prohibition of discrimination of the European Convention on Human Rights.

Internal and International Abductions

Enforced disappearance is defined in the *International Convention for the Protection of all Persons from Enforced Disappearance* as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law⁴⁸.”

Pursuant to Article 2 of the said Convention, 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 for enforced disappearance.

Similarly, the ECHR held on many occasions that such a practice is a violation of Article 2 (Right to life), Article 3 (Prohibition of torture), and Article 5 (Right to liberty and security) of the ECHR⁴⁹.

Whilst Turkey has not ratified the former, it was held responsible for numerous cases of enforced disappearance under the latter⁵⁰. Notwithstanding the significant decline in the number of cases of enforced or involuntary disappearance reported to the UN Working Group on Enforced or Involuntary Disappearances between 2002 and 2015 -1 case reported compared to 218 cases between 1990 and 2001, Turkey’s practice of abductions have escalated since 2016⁵¹.

According to the report of the Turkey Tribunal, an initiative of Belgian-based law firm Van Steenbrugge Advocaten (VSA) to adjudicate recent human rights violations in Turkey, there occurred 24 domestic

⁴⁷ <http://legisquebec.gouv.qc.ca/en/showdoc/cs/c-12>

⁴⁸ <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

⁴⁹ Er and Others v. Turkey, Application No. 23016/04, 31 October 2012.

⁵⁰ Çakıcı v. Turkey, Application No: 23016/04, 8 July 1999

⁵¹ Report of the Working Group on Enforced or Involuntary Disappearances, <https://undocs.org/A/HRC/42/40>, Page 46.

abductions in Turkey between 2016 and the Commissioner's visit in 2019. The Commissioner was also briefed by the Human Rights Center of the Ankara Bar Association regarding its reports on internal abductions⁵². After the Commissioner's visit in 2019, many other enforced disappearance cases were targeting Kurdish people and alleged members of the Gulen Movement that took place ⁵³.

When it comes to internal abductions, Turkey denies any involvement. However, regarding the extraterritorial abductions conducted by Turkey, Foreign Minister Mevlut Cavusoglu explicitly announced in July 2018 that the National Intelligence Organization (MIT) had facilitated the return of more than 100 alleged Gulenists as reported by the U.S. Department of State⁵⁴.

Nonetheless, even though it has not been proved that a person has been taken into custody by the authorities, the ECtHR considers that it can draw inferences from the available material and the authorities' conduct and find the applicant's allegations sufficiently convincing and established beyond a reasonable doubt⁵⁵.

As stated in the report of the Human Rights Center of the Ankara Bar Association regarding the applications filed by relatives of 7 abductees, no effective investigation into the enforced disappearances was carried out.⁵⁶ Some of the abductees who reappeared in a police station months after their disappearance faced restrictions regarding their right to choose their lawyer and were prevented from being examined by an independent physician⁵⁷.

These indicators, considered with many others stated in the above-mentioned report of the Human Rights Center of the Ankara Bar Association such as the eyewitnesses, testimonies of the abductees after they resurfaced and even camera footage, put in evidence that there is beyond reasonable doubt that Turkey is conducting a program of enforced disappearance since 2016. Even if the state agencies were

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http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?AVRUPA_KONSEYI_INSAN_HAKLARI_KOMISERLIGINDEN_ANKARA_BAROSUNA_ZIYARET&=3260

53 Disparition of Huseyin Galip Kucukozyigit, <https://www.amnesty.org/fr/documents/eur44/3603/2021/fr/>

54 U.S. Department of State, 2018 Country Reports on Human Rights Practices: Turkey', 28 June 2019

(<https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>)

55 ECtHR (Grand chamber), El-Masri v. the Former Yugoslav Republic of Macedonia, Application No. 39630/09, 13 December 2012.

56 Ankara Bar Association Human Rights Centers' Joint Monitoring Report, 27 June 2019, Page 16, Paragraph 75.

57 Ankara Bar Association Human Rights Centers' Joint Monitoring Report, 27 June 2019, Page 2, Paragraph 7.

hypothetically not responsible in these cases, Turkey has a legal obligation to guarantee the security and the safety of its citizens as a sovereign responsible state.

CONCLUSION

In consideration of the above-mentioned notions, ASSEDEL kindly requests the Commissioner to call on the Turkish authorities to,

- terminate any form of torture and ill-treatment, investigate the alleged cases in regard to these practices, bring before the judiciary the potential suspects and restore the violated rights of the victims of torture or ill-treatment,

- abandon the current practice of detaining or arresting pregnant women and treat the cases of women by assessing the best interests of the children,

- stop and refrain from further violations related to the right to work and right to property of the persons dismissed by virtue of the state of emergency decrees, to restore their social status and to deliver their illegally confiscated assets,

- refrain from discriminating based on social origin and to annul the unlawful emergency decrees which amounted to a sanction of “civil death” for more than a million people including the family members of the dismissed persons

- put an end to the enforced disappearances and to stop their abduction policy which constitutes crimes against humanity⁵⁸.

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⁵⁸ UN Declaration on the Protection of all Persons from Enforced Disappearance, Article 1,
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/EnforcedDisappearance.aspx>