

**HUMAN RIGHTS ASSOCIATION (HRA) REPORT PREPARED FOR THE UN COMMITTEE AGAINST TORTURE IN CONNECTION TO ITS REVIEW OF THE REPORT OF THE REPUBLIC OF TURKEY UNDER THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

**28 March 2016**

**Introduction:**

1. The Human Rights Association (HRA) is the oldest and largest human rights organisation carrying out activities on human rights and freedoms in Turkey, independently from the state, governments and political parties since its establishment in 1986. Currently, it has branches in 34 provinces, representations in 6 provinces and a total of 7,766 members. The HRA is a member of International Federation for Human Rights (FIDH) and Euro-Mediterranean Human Rights Network (Euromed Rights). The HRA continues its activities as the founder and active member of many human rights platforms, coalitions, networks and other groups in Turkey. Within this scope, the HRA is a founding member of the Human Rights Joint Platform (IHOP), Turkey Coalition for the International Criminal Court – Turkey (CICC-Turkey) and the Refugee Rights Coordination. It also works jointly with a number of networks and groups working on the rights of the child and the women's rights on various issues such as the right to education, the constitution etc. The HRA also has a Human Rights Academy.
2. It has prepared a shadow report for the UN Committee against Torture in connection to its review of Turkey's Report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. As the Human Rights Foundation of Turkey (HRFT), established by HRA, will be presenting a comprehensive report, we will only tackle the issues that are deemed significant and that are not tackled without any repetitions of the content of the said report.

**Article 2**

4. There are legal issues with regard to the implementation of detention measures in the criminal legislation of Turkey. Regarding the suspected offenses specified in Article 100 § 3 of the Code of Criminal Procedure, the proof demonstrating strong suspicion of crime is considered as the existence of reasons for detention and the article is frequently used for detention. Among such offenses, the offenses of membership to a terrorist organisation, and aiding and abetting a terrorist organisation are seen most frequently. Article 220 § 6 and 7 of the Code of Criminal Procedure, Article 314 § 3 of the Code of Criminal Procedure

and Article 2 of the Anti-Terror Law are jointly used and many detentions take place based on the charge of aiding an illegal and armed organisation. In addition, the detentions take place due to the charge of direct membership to an armed organisation based on Article 314 § 2 of the Code of Criminal Procedure. The bill - known as the domestic security package - proposed by the government was adopted in 2015 and for the charges based on Article 7 § 3 of the Anti-Terror Law and Article 33 of the Law no. 2911 on meetings and demonstration marches, Article 100 § 3 of the Code of Criminal Procedure is implemented and the scope of detentions were expanded. Recently, the academics who signed the petition titled “We will not be a party to this crime” and expressed that they were still behind their signatures in a second press release were charged with terrorism activities and detained as per Article 7 of the Anti-Terror Law.

5. According to the official statistics of the Ministry of Justice of Turkey, as of 31 December 2011, there were a total of 128,604 inmates comprising 92,617 convicts (410 of these were children) and 35, 987 detainees (1924 of these were children). As of 30 November 2015, there are a total of 176,116 inmates comprising 150.135 convicts (661 of these are children) and 25,981 detainees (1641 of these are children). In the statistics of the Ministry of Justice there is no category for detainees pending appeal. As known, those about whom the sentences are passed and the appeal procedures have not yet been completed while they are in detention are called the group of detainees pending appeal. The numbers regarding those who are in real terms detained are not announced currently. However even the number of the convicts are much higher than the average for the European Union. In Turkey, the maximum period of detention is 5 years in accordance with the Article 102 § 2 of the Code of Criminal Procedure. In addition, it is possible to make an individual application to the Constitutional Code.
6. According to the HRA data, there are 455 cases of enforced disappearance between 1979 and 2004. The list of names in all of these cases was submitted to the UN Working Group on Enforced or Involuntary Disappearances. The Republic of Turkey is not a signatory to the International Convention for the Protection of all Persons from Enforced Disappearances. In addition, the crimes against humanity are listed in Article 77 of the Penal Code and no definition regarding the crime of the enforced disappearances is given among these crimes. The law no. 5237 has entered into force in 2005. Accordingly, the longest period of statute of limitation is 20 years in Turkey for the crimes committed before 2005. If an indictment is prepared within this period of 20 years, an additional period of 10 years should be added to 20 years and the case should be finalised within a maximum period of 30 years. Based on the HRA findings, no one has ever been sentenced for enforced disappearances in Turkey. In Turkey, there is no definition for this crime; the statute of limitations was implemented so far and a policy of impunity has been in place. The Constitutional Court rejected the application of Nurettin Yedigöl (Application number 2013/1566) on grounds of statute of limitation in its decision published in the Official Gazette dated 14 January 2016. Nurettin Yedigöl was

forcefully disappeared in 1981 in Istanbul and his fate or whereabouts are still not known.

7. There are many of ECtHR decisions against Turkey on cases of enforced disappearances and it has been held that the responsible public officials should be put on trial. Despite this, there were only a few cases brought against these and in the cases opened they were acquitted. A good example is the case of *Nezir Tekçi*; the ECtHR found Turkey guilty in its decision on *Tekçi and Others v. Turkey*. (*Nezir Tekçi*, who was a shepherd, disappeared on 26 April 1995 after being apprehended by soldiers in an area close to the village of *Yukariölçek* in *Yüksekova* district of *Hakkari*. In the investigation started by the military prosecutor in 1997 with the application of his father *Halit Tekçi*, the prosecutor shortly decided not to prosecute. In 2010, the investigation restarted upon testimony of *Yunus Şahin* who was serving for compulsory military service on the day of the incident and witnessed the killing of *Nezir Tekçi*. As a result of the investigation, retired Colonel *Ali Osman Akın* and Lieutenant Colonel *Kemal Alkan* were put on trial with charges of “intentional killing with bestial instincts or with torture and ill-treatment” at the *Hakkari Assize Court*. In the case that was transferred to the *Eskişehir 1st Assize Court* for security reasons, the prosecutor demanded the acquittal of the defendants on grounds of not being able to find any evidence above suspicion and sufficient to form an opinion. In the final hearing on 11 September 2015, the panel of judges unanimously decided for the acquittal of retired Colonel *Ali Osman Akın* and Lieutenant Colonel *Kemal Alkan* as the charges were not proven.) There is also the case of the disappearance of 6 villagers who were detained in *Görümlü Village of Silopi*, publicly known as the *Görümlü Case*. In the *Cülaz and Others v. Turkey* case about this incident, the ECtHR found Turkey in violation with its decision dated 15 April 2015. General *Mete Sayar* and his colleagues were tried at the *Ankara Assize Court* on charges of the disappearances. The appeal proceedings are still pending before the Court of Cassation.
8. According to the UNDP Human Development Report, Turkey ranks 69th out of 149 countries in terms of gender equality. Turkey falls down in this ranking every year. This indicates the failure of the political power with regard to the women’s rights. There is an increasing trend of sex crimes against women in Turkey. There are problems of implementation of the legal measures of the government. According to the statistics of the HRA, 165 women in 2012, 214 women in 2013, 281 women in 2014 and 348 women in 2015 were killed. Meanwhile, 722 women in 2012, 691 women in 2013, 776 women in 2014 and 805 women in 2015 survived with injuries. It has not been possible to prevent violence against women in Turkey. There are problems arising from the fact that the *Istanbul Convention on preventing and combatting violence against women and domestic violence*, which was opened for signature in Turkey, is not duly adopted in the domestic law of Turkey. Moreover, there are inequalities due to not having gender equality in Turkey. There are only a few senior bureaucrats and administrators in the public sector. Also, the culture of impunity and the articles allowing for the reduction of sentences for crimes against women can be listed as major issues.

It is observed that there are many problems in the implementation of the protective and preventive measures foreseen by Law No. 6284 and that despite all the novelties introduced by the law, one cannot speak of a positive change. One of the major reasons of this is that women either do not know where to apply to when they face violence or they refrain from applying to any institution because they do not believe they will receive help or for other reasons. In addition to women who have been granted shelter or 'protection' by the law enforcement in response to their requests, there are also cases in which the law enforcement does not know how to act in such instances as well as women who are denied shelter and protection.<sup>1</sup>

According to the data in the Study on Domestic Violence Against Women in Turkey, 89% of women who have been subject to domestic violence have not applied to any organisation or institution. 13% of women have stated that they did not know where to apply to and 4% stated that they did not apply because they did not believe they would receive any help. Between 2008 and 2014, there is a difference of only 3% in the application rate to institutions. Since the necessary data is not kept at the Ministry, and even if so since it is not shared with the public or those who request information, it is not possible to determine, based on concrete data, how many women have benefited from these measures and whether these protective measures really do protect women from violence. When we look at the news reports in the press, we see that the decisions for such measures fail to protect women from violence and that they are not implemented in a way that would afford such protection. The most important reason why this wrong practice is not prevented is that public officials face no sanctions in cases where they fail to issue protective or preventive measures, when they do not duly implement such measures, when they encourage women to make up with their husbands and go back home or try to act as mediators or when they fail to comply with their duty of care. As we can observe from many cases that have occurred and covered in the news after the adoption of Law No. 6284, since the protection granted is not effective women whose lives are under threat continue to be killed despite the protection orders issued. For instance, on January 20th 2015, a woman for whom a protection order was issued was killed by her husband whom she wished to divorce.

According to the data kept by Bianet (Independent Communication Network), ten women have been killed in 2013 and 25 in 2014 despite the fact that they had been granted protection orders or had applied for one.

### Article 3

9. According to the Republic of Turkey Ministry of Interior Directorate General of Migration Management data; as 11 March 2016, there are registered 2.747.946 Syrians refugees who are under "temporary protection" status in Turkey. 272.812, which is the 10% of the whole Syrian refugee population, stay in 26

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<sup>1</sup> Purple Roof Women's Shelter Foundation, "Report on the Implementation of Law No 6284", p. 10. Report can be accessed here: <https://www.morcati.org.tr/tr/yayinlarimiz/izleme-raporlari/255-6284-sayili-kanun-uygulamalari-izleme-raporu>, last accessed 10/03/2015

camps in 10 different cities under The Disaster and Emergency Management Authority (AFAD) in Turkey. These camps are protected like a prison and not open to visits and missions by civil society organisations that are active in this field. Moreover, almost half of these camps are located so close to the Turkey-Syrian border that their distance is contrary to the UN rules of distance from borders. In addition to Syrians, it is stated that there are about 400.000 people, who came to Turkey for international protection, from outside the Council of Europe Member States such as Iran, Iraq, Afghanistan and African countries. The largest of groups of these are Afghans and Yazidis and Turkmens people from Iraq. 6 camps of Yazidis camps were established by local municipalities in Turkey. In this regard, opportunities are same for Syrians and Yazidis who escaped from ISIS attacks in Iraq. These people were welcomed and have been hosted by municipalities in Kurdish cities rather than the central government.

10. In accordance with the Law No. 6458, General Directorate of Turkish National Police' authorities over refugee and migration issues were transferred to the Directorate General of Migration Management. As of 18 May 2015, Provincial Security Directorates' authorities were transferred to the Provincial Directorate of Migration Managements. Removal Centre, where the foreigner subject to administrative detention and is decided to be sent back is held, is under this newly established the Directorate General of Migration Management. There are 16 removal centres, which were transferred from the General Directorate of Turkish National Police and have a capacity to host 2980 people, under the Directorate General of Migration Management
11. There are numerous human rights violation cases particularly right to life, torture and ill-treatment in these Removal centres under the authority of the Directorate General of Migration Management. Lawyers are not allowed to access to these centres or are prevented from accessing and examining their clients' files. These practices are a violation of foreigners' right to access to justice, and also lawyers' professional rights and right to work under the guarantee of the constitution and relevant laws. It is alleged, stated and reported that there are grave human rights violations in these centres for example, many people are held in the same centre and even much more than the capacity of the centre, there are no satisfactory conditions regarding ventilation, hygiene and food, there are cases of sexual harassment, verbal and physical violence, and isolation, limiting phone call or visit and handcuff, chaining people.
12. Furthermore, it was and still is reported that ISIS and other jihadist organisations' activists are not detained by courts and most of these activists are sent to removal centres to be released or sent to other countries through these centres. For example, one of the perpetrators of last bombing attacks in Brussels (22 March 2016) was deported from Turkey through this method. The Directorate General of Migration Management website states that 3124 foreign fighters, who belong to 93 different nations, were deported from Turkey. ([http://www.goc.gov.tr/icerik3/yabanci-savascilar\\_363\\_378\\_4742](http://www.goc.gov.tr/icerik3/yabanci-savascilar_363_378_4742))
13. Lütfillah Tacik (17-year-old boy) was beaten by police in the Removal Centre of Van, a city in the East of Turkey, on 27 May 2014. He was not taken to hospital in time and lost his life resulted from having a stroke in the intensive care unit of Van Bölge Eğitim ve Araştırma Hospital. Suspect police officers Mr. Serdar Oran Sanık and Mr. Hasan Özgür Özdemir were released by the court and the

next hearing (4th hearing) will be held on 21 April 2016 before the 2nd Heavy Penal Court of Van. The suspect police officer Mr. Serdar Oran still works at Tunceli Police Directorate and similarly the other suspect police officer works still at Van Police Directorate.

14. Mr. Dilo Derviş, a Syrian Kurdish refugee, was arrested under the allegation of an illegal organisation in Adana (a city in the South of Turkey) on 18 August 2015 and sent to prison. He was released by the court in the first hearing on 17 November 2015 yet contrary to the court's decision of release, he was sent to the Removal Centre in Erzurum (a city in the East of Turkey) by Migration Management's administrative decision. Foreigners rioted in protesting poor conditions and human rights violations in Erzurum Removal Centre, which was founded through EU funds, on 29 December 2015. Lawyers, civil society organisations and journalists were not allowed to enter in to the Centre and had no chance to talk to people there. Riot police forces intervened the Askale (a district of Erzurum city) Removal Centre about which there were news such as forcing refugees to wear blue-marked uniforms, isolation, beating, putting refugees into cold cells as a punishment, limiting or not providing food etc. There was news about all these human rights in the media. Roads to the Centre were blocked so that journalists could not get information and lawyers were prevented from visiting their clients. Similarly, Human Rights Association (IHD) in other words our association's representatives and People Democracy Party' representatives were not informed but prevented from accessing to the Centre. On 31 December 2015, Mr. Dilo Derviş' relatives and lawyer were notified that had committed suicide in the Centre. The lawyer joined autopsy process and followed the process of delivering the corpse to the family in Haseke a city in Syria. The case of Mr. Dilo Derviş was recorded as a "suicide" by the Public Prosecution Office in Askale, Erzurum. However, the lawyer and the family state that given the development of the case they do not think it is a suicide case.
15. Suspect foreign passengers are held in "problematic passengers room" or "insist passengers room", which are located at inside airports particularly in İstanbul Atatürk Airport, İstanbul Sabiha Gökçen Airport, and Ankara Esenboğa Airport. These "rooms" are used like a detention centre and refugees-as in the case of Syrian refugee Fadi Mansour-can be held there up to 1 year. There is no window in these airport detention centres. Moreover, lights and camera monitoring systems are on for 24 hours. There is no bed or shower in these airport detention centres. No regular food but remaining of flight's catering is provided to people in these centres. For example, a Syrian refugee, M.K, has been arbitrarily held at Sabiha Gökçen Airport under inhuman conditions since 9 November 2015. He faces the possibility of deportation to Syria, where his life is under threat. (For more information: <http://www.acileylem.org.tr/eylem-detay.php?q=234#sthash.nRqvQGWz.dpuf> ). Another example is the case of Mr. Fadi Mansour who was held in "Problematic Passengers Room" at Atatürk Airport. Mr. Mansour was allowed to enter into Turkey on 19 March 2016, after 1 year, and was sent to Adana Removal Centre in accordance with an administrative decision. (For more information: <http://www.acileylem.org.tr/eylem-detay.php?q=227#sthash.NGxoe0Cg.dpuf>).

16. On July 25, 2015, 6 wounded citizens from Rojava/Kobane Canton Ahmed Şêrko, Omer Qadir, Rêber Seyho, Ehmed Helûm, Cemal Ehmed and Beşîr Mihemed were released after being interrogated by the prosecutor's office. However, we directly learned that 6 wounded Rojava/Kobane citizens were handed over to Ahrar us-şam (Jihadist organisation) forces by Turkey after they were sent to Foreigners' Department by Anti-terror Department of Ankara Security Directorate. These people were not deported the Mürşitpınar Border Gate, which they entered legally, but from the Cilvegözü Border Gate. They should have been released in terms of "Temporary Protection Regulations" by giving a temporary ID document. We would like this issue to be asked to Turkish Authorities.

#### **Article 4**

17. In the Articles 94 and 95 of the new Penal code no. 5237, the crime of torture and in Article 96, the crime of torment are defined and it is stated that these crimes shall not be subject to a statute of limitation. However the crimes of torture committed before June 2005, are subject to the statute of limitations. Especially, the hundred thousands of people who were tortured during the period of the military coup of 12 September 1980 were faced with the rule of statute of limitation while seeking justice. The cases opened based on the complaints of those who were tortured during the period of 12 September were unfortunately dismissed and thus the torturers were not punished. For instance, the Konya 3rd Assize Court dismissed the case of torturers based on statute of limitations with the decision no. 2012/475 E, 2013/122 K, dated 28 February 2013. The complaints made by those who stayed at the Diyarbakır Military Prison no. 5 where the most aggravated methods of torture were systematically inflicted on the inmates and the Kurds were tried to be assimilated using torture during the coup of 12 September were not prosecuted due to statute of limitations. The objections made to the decision of Diyarbakır Chief Public Prosecutor's Office (Investigation no. 2011/6268, Dec. No. 2014/7701, dated 30 May 2014) were rejected by the final decision of Diyarbakır 1st Criminal Court of Peace with the decision no. 2014/1532, dated 12 November 2014. The individual applications made to the Constitutional Court against this decision are still pending. However, the decision of the Constitutional Court on the enforced disappearance of Nurettin Yedigöl is an unfortunate one. In the Constitutional Court decision with the application no. 2013/1566 published in the Official Gazette dated 14 January 2016, a reference was made to the general rule of statute of limitations and it was held that the statute of limitations was expired for this case.
18. There were İstanbul Taksim Gezi Park Protests from 31 May 2013 to September 2013 in Turkey. We, as the Human Rights Association (IHD), launched our report on these protests on 26 June 2013. According to our report, 4 protests were killed by police officers, 7.774 people were injured, 63 of them were seriously injured, 2977 people were arrested and 70 people were detained and sent to prison from 31 May to 18 June. (You access to our report at <http://www.ihd.org.tr/gezi-park-direnii-ve-sonrasnda-yaananlara-likin-deerlendirme-raporu/>) On 31 May 2013, IHD applied to the Public Prosecution Office in İstanbul and demanded a judicial investigation against police officers and public authorities who used excessive

force, too much and disproportionate tear gas, endangered citizens' health when they intervened protests by citizens who exercised their democratic rights. Our application was about professional misconduct, exceeding the authority of using force and asked the Public Prosecutor to initiate a criminal case against all these violations. The Chief Public Prosecution Office in İstanbul ruled decision of non-prosecution. Its investigation file's no 2015/56347, its decision file's no 2015/80706 and its date is 10.11.2015. As a result of the Public Prosecution Office's decision, our President Mr. Öztürk Türkdogan appealed the decision in time. This appeal was rejected by the 4th Court of Peace in Istanbul on 17.12.2015 and its decision file's no 2015/4684. Then, Mr. Türkdogan applied to the Constitutional Court. As it is observed, impunity continues.

## **Article 11**

19. According to the IHD data, the figures of torture and ill-treatment cases in prison as follows: 583 people in 2012, 843 people in 2013, 213 people in 2014 and 215 in 2015. In addition to these torture and ill-treatment cases, there are cases of forced transfer from one prison to another one, naked body check/search, medical treatment while handcuffed, naked body check/search of new prisoners, at least 1-day isolation for prisoners who are accused of terrorist activities, and isolation punishment and ban on family visits in F-Type prisons. These are the most problematic issues as regards to torture and ill-treatment in prisons.
20. According to the IHD Data, as of 15 December 2015 there are 757 ill-prisoners and 300 of these prisoners are seriously ill in Turkey. (To get more information: <http://www.insanhaklaridernegi.org/wp-content/uploads/2015/12/19-ARALIK-2015-y%C4%B1l-sonu-hasta-listemiz.pdf>). These ill prisoners are not released as a result of problematic practices by The Council of Forensic Medicine (ATK) Turkey. There are several cases that seriously ill prisoners lost their lives in the past. Turkey does not implement the ECHR's decisions in this regard. ECHR's decision *Gülay Çetin v. Turkey* (5 March 2013 and application no 44084/10) is an important decision in this regard. Principles, which are stated in this decision, are not implemented.
21. The independent non-governmental organisations are not allowed to monitor the prisons in Turkey. Numerous applications to the Ministry of Justice by the HRA are constantly rejected and it is stated that the sole authorised agency is the European Committee for the Prevention of Torture on this matter. Therefore, the NGOs are not permitted to monitor and watch these places. Despite this, the NGOs get in touch with the detainees and convicts in prisons through their lawyers and from time to time identify the issues and propose solutions by talking to the wardens and prosecutors of the prisons and the authorities of the Ministry of Justice. As a result of our applications to the Human Rights Institution of Turkey, we had the chance to visit the prisons of Metris Type R and Sincan Type F1 and F2 together with the members of the Human Rights Boards.
22. We would like to call attention to the fact that the Prison Monitoring Boards and the Provincial and District Human Rights Boards are not independent from the administration, and therefore are dysfunctional for these purposes; and they do not have any deterrent affect.



23. In Imralı Island F Type High Security Prison, Abdullah Öcalan and three other convicts are kept. Upon the application made to the HRA by the lawyers of Abdullah Öcalan imprisoned as a convict in Imralı Island F Type High Security Prison, it is seen that he has not been allowed to see his lawyers since 27 July 2011 and the HDP delegation since 5 April 2015; the visit requests of his family members and legal representative have been arbitrarily refused and he has been completely isolated from the outside world. When we consider Articles 25, 59 and 83 of the Law No. 5275 on the Execution of Penalties and Security Measures, it is clear that Abdullah Öcalan is deprived of his legal rights. Keeping a prisoner in isolation is a serious violation. In addition, in the F Type High Security Prisons (there are 14 of them, each with a capacity of 368 inmates) getting together of the inmates who stay in rooms for one or three is only possible by the Ministry of Justice Circular No. 45/1. The Circular allows for interaction in common areas for only 10 hours a week. Most of the time, the Circular is not put into practice.
24. The rate of detained juveniles pending trial is very high as shown in the statistics given earlier. Currently there are 2302 juvenile inmates; 661 of them are convicts and 1641 are detainees. Convicted juveniles are usually kept in a separate ward in prisons for the adults. Therefore they are frequently abused. The Initiative to Close Down the Children's Prisons established by a large number of NGOs including the HRA has been carrying out its activities for the past three years; however no concrete steps were taken so far on the prevention of juvenile incarceration. The juvenile justice system is not functioning in Turkey.

### **Articles 12 and 13**

25. There is no independent oversight mechanism for the law enforcement in Turkey. The draft law on the establishment of a law enforcement oversight mechanism submitted to the Grand National Assembly of Turkey (GNAT) during the previous parliamentary term has not been adopted. The draft law submitted to the GNAT on 16 March 2016 is still pending. With this draft, a new intra-ministerial control mechanism under the Ministry of Interior, which is not independent or impartial and which resembles the existing governmental control mechanisms will be established. Therefore it will be a board dependent to the government.

### **Article 16**

26. On 28 December 2011, 34 nationals of the Republic of Turkey, all of whom were totally unarmed and most were minors, were killed by the bombing of the military aircrafts of the Turkish Armed Forces in the borderline between Turkey and Syria near Roboski Village of Uludere District in Şırnak. The civilian prosecutor's Office referred the investigation to the military prosecutor and the military prosecutor's Office decided not to prosecute. The Military Court of the General Staff rejected the objection to this decision. Then, individual applications were made to the Constitutional Court of Turkey. The Section No. 2 of the Constitutional Court made a decision on the case of Mehmet Encü and others (Application no. 2014/11864) on 24 February 2016. The application was rejected by majority of votes due to insufficient documentation, more precisely due to not having the originals of the submitted documents in the file.

The decision on this application was published on the Official Gazette dated 23 March 2016. The applicants will now place their applications to the ECtHR. This incident is one of the most significant mass murders in the history of Turkey. Even in such an obvious mass murder case, the state has implemented its policy of impunity and the perpetrators were not brought to justice. The adjudication in this case demonstrates that impunity is a state policy in Turkey, and the judiciary in Turkey has also adopted this policy.

27. The cases of extrajudicial killings, unidentified murders and enforced disappearances under custody perpetrated during 1980s and 1990s in Turkey have not been effectively investigated and prosecuted until today. In the cases opened thanks to the efforts of the human rights defenders, the bar associations and the lawyers, all defendants have been acquitted due to lack of effective prosecution method. For example, the Colonel Cemal Temizöz and others case known as Cizre JITEM Case on the killing of twenty civilians between 1993 and 1995 was tried by the Diyarbakir Assize Court since 2009 and after five years it was transferred to the Eskişehir province with the demand of the defendants' lawyers without any concrete justifications. The case is now tried at the Eskişehir 2nd Assize Court with the case file no. 2015/47. In the last hearing of the trial, Burhanettin Kiyak, the only defendant remaining in detention, was released and there are no defendants left in detention. The secret witnesses rejected their earlier detailed statements. The prosecutor demanded acquittal for all defendants in his legal opinion. All defendants were acquitted. In another case, known as the Vartinis Case, the murders committed by burning individuals to death before the eyes of the witnesses were absolved. This is one of the cases transferred to the Kırıkkale Assize Court by court decision. The Kırıkkale Assize Court tried the defendants of the case on the massacre of 9 Kurdish citizens, who were burnt to death by the law enforcement officers in 1993, and 7 of whom were children, without remand. A legal opinion for the offense of negligent homicide was given for the defendant police officers and soldiers. All defendants were acquitted.
28. We believe that the policy of impunity shall not be eliminated without coming to terms with the past in Turkey. Especially the on-going vehement armed conflicts in the Kurdish issue are among significant factors feeding impunity. Therefore, we believe that Turkey should begin a process of conflict resolution and establish an actual truth commission to come into terms with the past within this scope. Thus, the victims and their relatives can at least continue to have trust in justice to some extent through the method of restorative justice. Otherwise their trust in justice will be entirely diminished.
29. The human rights defenders in Turkey carry out their activities under the pressure of the judiciary. Also we would like to state that Tahir Elçi, a human rights defender and the President of Diyarbakır Bar Association, was assassinated in Diyarbakır on 28 November 2015. The Diyarbakır Chief Prosecutor's Office has not been able to find any suspects so far in the investigation. The murder of Tahir Elçi has created an atmosphere of fear and a huge pressure and on the human rights defenders in Turkey.
30. Turkey has notified the provincial security forces about the UN Declaration on Human Rights Defenders by the Circular No. 2004/139 issued by the Private Secretariat under the Ministry of Interior in 2004. However we can comfortably say that this circular is not implemented. As there is no distinction between

“incitement to violence” and the “expression of non-violent ideas”, anyone can be accused with terrorist activities. Within this scope, the human rights defenders are frequently accused with membership to illegal armed organisations or aiding and abating armed organisations, to be more precise being terrorists or facilitating terrorist activities. There are many on-going cases of this type. In the case no. 2014/235 E at the Diyarbakır 2nd Assize Court, the trial of Muharrem Erbey, the former deputy general president of the HRA; Roza Erdede and Aslan Özdemir, the former directors of the HRA Diyarbakır Branch continue with charges of membership to an illegal armed organisation. Similarly, the publisher and author Ragıp Zarakolu, a member of the HRA Honorary Board, is tried at the Istanbul Assize Court with the case file no. 2014/134 E. Veta Aydın, the member of the Central Executive Board; Abdullah Gürgen and Roja Arslan, the directors of the HRA Siirt Branch are also tried at the Siirt Assize Court with the case file no. 2014/126 E. Lawyer Hasan Anlar, the secretary general of the HRA; lawyer Halil İbrahim Vargün, the director of the HRA Ankara Branch; lawyer Filiz Kalaycı and lawyer Murat Vargün, the former directors of the HRA are sentenced to 6 years and 3 months in prison for membership to an illegal armed organisation by the Ankara 11th Assize Court with the decision no. 2009/309 E dated 24 January 2013. The case is still in the appeal phase at the 16th Criminal Chamber of the Court of Cassation, registered with the file no. 2015/.... Based on our findings, the court will soon deliver a decision. Ali Tanrıverdi, a former member of the HRA Central Executive Committee and the president of the HRA Mersin Branch; Selahattin Güvenç, the former president of Göç-Der and Selahattin Çam, the former president of Kürdi-Der are tried at the Mersin 3rd Assize Court with the case file no. 2014/146 E based on the same charges. Again with the same charges, lawyer Selçuk Kozağaçlı, the general president of Contemporary Lawyers’ Association and 15 other lawyers are tried at the 18th Istanbul Assize Court with the case file no. 2014/117 E. As a matter of the fact, it is possible to provide a much longer list of such cases; those stated above are presented as examples.

31. There are human rights defenders who are still in detention. Erdal Özakçıl, Yavuz Karabudak and Hamit Ateş, the directors of the HRA Erzurum Branch were charged with membership to an illegal armed organisation by Erzurum Chief Prosecutor’s Office and detained on 4 February 2016. Also, Mesut Aslan, a member of the HRA Central Executive Committee was arrested and detained for his posts on the social media and then acquitted and released in the final hearing of the case file no. 2015/477 dated 4 March 2016 by the Gaziantep 2nd Assize Court. Lastly, the lawyers who are members to Association of Lawyers for Freedom were arrested upon the request of Istanbul Chief Prosecutor’s Office on 16 March 2016 and transferred to the court for detention. The Istanbul 1st Criminal Court of Peace released the lawyers. However, due to the objections made later on, Hüseyin Boğatekin, Ramazan Demir, Ayşe Acinikli and Ayşe Gösterişlioğlu from this group of lawyers were detained. Besides, the human rights organisations and human rights defenders critical of the government are constantly targeted and threatened in the newspapers, television channels and websites close to the government. The academics that signed the petition titled “We will not be apart to this crime” are subject to administrative and criminal investigations and are targeted by the websites.

Three of these academics are still in detention. Author and lawyer Eren Keskin, also a member of the HRA Central Executive Committee is frequently investigated and has tens of on-going criminal investigations about her. Eren Keskin is sentenced to 10 months in prison on Article 301 of the Penal Code by the Çerkezköy 2nd Criminal Court of First Instance with the decision no. 2012/827 E, 2014/451 K dated 11 December 2014. The appellate review of the case is pending at the Court of Cassation.

32. Human Rights Foundation of Turkey is a specialised institution fighting against torture and providing rehabilitation services to victims of torture. The Foundation was audited by the Social Security Department on 18-21 June 2013 as the Foundation provided services to demonstrators who were subject to torture and ill treatment during protests named as İstanbul Taksim Gezi Park Protests between 31 May 2013 and September 2013. The Social Security Department issued an administrative fine amounting to 83,329 TL for a part time employee of whom all relevant notifications were made to the Social Security Department timely. The justification for this administrative fine was given as the Foundation did not show this employee as full time. Although it was officially under the registration of the Social Security Department that this employee was working in the other half time in another place, issuing an administrative fine is an obvious harassment.
33. In Turkey, there are currently 30 journalists in prison with accusations of terrorist activities within the scope of the anti-terror law. These are Ali Konar, Beritan Canözler, Cengiz Doğan, Cüneyt Hacıoğlu, Deniz Babir, Ensa Tunca, Erdal Süsen, Erol Zavar, Ferhat Çiftçi, Gültekin Avcı, Hamit Duman Dilbahar, Hatice Duman, Hidayet Karaca, Kamuran Sumbat, Kenan Karavi, Mehmet Baransu, Mehmet Serhat Polatsoy, Mikail Barut, Miktad Algül, Mustafa Gök, Nedim Oruç, Nuri Yeşil, Ömer Gül, Rojda Oğuz, Sami Tunca, Seyithan Akyüz, Şahabettin Demir, Tahsin Sağaltıcı and Ufuk Erhan. Journalist Can Dünder and Erdem Gül were only released with the decision of the Constitutional Court of Turkey. The journalists are treated as illegal organisation members with accusations of aiding and abetting illegal armed organisations based on Article 314 § 3 of the Penal Code and Article 2 of the Anti-Terror Law and detained pursuant to Article 100 § 3 of the Code of Criminal Procedure. In accordance with the paragraphs added to Article 100 § 3 of the Code of Criminal Procedure, it is also possible to detain individuals based on Article 33 of the Law No. 2911 and Article 7 § 3 of the Anti-Terror Law. The Government of Turkey does not accept the notion of detained journalists and consider all these people as suspects for other offenses. This is due to the fact that no distinction is made between “incitement to violence” and the “expression of non-violent ideas” and thus anyone can be accused of terrorist activities.
34. In the case where a total of 72 people including the human rights defender Osman İşçi and 71 other unionists (Case no. 2014/137 E), the Ankara 6th Assize Court decided to take a break until the Constitutional Court makes a decision on similar cases. As known, this case was first opened at the Ankara 13th Assize Court responsible for charges based on Article 10 of the Anti-Terror Law. When Article 10 of the Anti-Terror Law is annulled, the case was transferred to a general assize court for to continue the adjudication. However, another court made an application to the Constitutional Court as the continuation of the adjudication was considered to be in violation of the

constitution. The Constitutional Court has not delivered a final judgement yet. Meanwhile, the Constitutional Court granted an injunction to put a halt on the adjudication until the delivery of judgement.

35. The conscientious objection cases still continue in Turkey. In the ECtHR judgement on the *Bayatyan v. Armenia* case, it is held that the right to conscientious objection should be recognized by all Council of Europe member states. Yet, Turkey has not recognized this right. Instead, Article 318 of the Penal Code was partially amended and new criteria were put forth for the punishment of the conscientious objectors. Turkey is also trying to buy time by frequently making amendments to the military service law. The conscientious objectors are usually tried on the articles on insubordination charges in the Military Penal Code. For instance, on 10 February 2015, Mehmet Tarhan was sentenced to 15 months in prison and a fine of 9.000 Turkish Liras by the Sivas Military Criminal Court; whereas, the ECtHR has found Turkey guilty in the *Mehmet Tarhan v. Turkey* case. The case opened against Mehmet Ali Başaran, the administrator of the website [www.askeregitmeyin.com](http://www.askeregitmeyin.com) making publications on this matter, based on the violation of Article 318 of the Penal Code is still on-going at the Ankara 2nd Criminal Court of Peace. Another on-going case is the trial of Ali Fikri Işık pending at the Çorlu Military Court.
36. The suspicious deaths of the soldiers in the barracks of the Turkish Armed Forces continue. These deaths are usually deemed as suicide cases. We consider these cases as suspicious deaths. According to the HRA data, 57 soldiers in 2012, 61 soldiers in 2013, 44 soldiers in 2014 and 42 soldiers in 2015 have lost their life in the military barracks. Effective investigations and prosecutions are not conducted for the suspicious deaths of the soldiers. On the cases regarding the deaths of soldiers in the military barracks in Turkey, the military prosecutors and military courts are authorised. The families of these soldiers have established the Association of Suspicious Deaths and Their Victims. The HRA carries out joint actions and activities with this association and is making the following demands: first of all, the military courts should be completely closed down and the violations of the right to life and the physical integrity should be investigated and prosecuted by the civilian prosecutors and courts; until such changes are made, all investigations and prosecutions pertaining to the suspicious deaths in the military barracks should be renewed; the right to conscientious objection should be recognized; the soldiers who lost their lives should be granted the status of martyrs and their families should be given the respective social aids.
37. We hold the following position with regard to the general steps to be taken for the protection of human rights in Turkey. In the democratization process of Turkey, the peace and solution process of the Kurdish Issue and the European Union accession negotiations have a direct impact; we would like to state that any hesitation or retrogression on these two issues would negatively affect the human rights in Turkey. The end of the peace and solution process, and the EU accession negotiations transformed into a bargain on the refugees have completely damaged the human rights milieu.
38. The government made major legal amendments against the basic rights and freedoms with an alleged justification of ensuring public security. Following the amendments to the Law on the National Intelligence Agency, the Internet Law, the Law on the Supreme Board of Judges and Prosecutors, and the Law on the

Court of Cassation and the Law on the Council of State, the Law no. 6638 amending several basic laws, also known as the domestic security package expanding the mandate and authorities of the police was adopted and entered into force on 4 April 2015. With this law, the state has transferred many of the major powers in these laws to the governors and district governors without the need to declare a state of emergency; it has brought major limitations on the freedom of assembly and demonstrations and the freedom of expression against the EU legislation and expanded the police authority to use weapons. It is possible to say that Turkey is now being ruled exactly like a police state with these laws.

39. Turkey is ruled with the understanding of a typical police state. Despite this, there is a regular dialogue and a partial collaboration on various issues between the human rights organisations and the Human Rights Institution of Turkey. While the human rights organisations were demanding to make the Human Rights Institution of Turkey abide by the Paris Principles and the efforts to this end were on-going during the preparation of the draft law; the government made a bad surprise. It has even begrudged the much-criticised Human Rights Institution of Turkey. The bill on the establishment of the Institution of Equality and Human Rights submitted to the Grand National Assembly will close down the existing Institution. The new institution to be established will be totally dependent to the Prime Minister's Office and will be less relevant to the Paris Principles.
40. Turkey has international obligations on effectively combatting torture. Within this scope, Turkey has ratified the Optional Protocol to the Convention against Torture (OPCAT). The national preventive mechanism to be set up accordingly was not established independently. The Human Rights Institution of Turkey was designated the National Preventive Mechanism with the Decision of the Council of Ministers no. 2013/5711, dated 9 December 2013 and published in the Official Gazette no. 28896 dated 28 January
41. The armed conflicts in the Kurdish issue have restarted since 24 July 2015. This time, the curfews declared under the pretext of removing the barriers and ditches prepared by the armed groups in various neighbourhoods and streets of several Kurdish cities and the armed conflicts reflecting the state of war throughout these curfews were the major aspects of the conflicts. With the decisions of the governors and district governors in Turkey, the curfews were declared during this on-going process that began on 16 August 2015 until 18 March 2016, 34 times in Diyarbakır, 11 times in Mardin, 9 times in Şırnak, 5 times in Hakkari, once in Muş, twice in Batman. In total the curfew was applied in 22 districts minimum 63 days (24hours/day) as officialy identified. Due to the curfews declared, the basic rights for survival and health of minimum 1 million 642 thousand people who live in these districts according to 2014 census were violated. According to the statements of the Minister of Health on 27 February 2016, 355.000 citizens forcibly displaced by leaving their districts and provinces.
42. The curfews are declared and implemented based on the authority of the governors and district governors for taking general security measures in Article 11 § c and Article 32 § ç of the Law No. 5442. However it should be clarified that in accordance with Article 13 of the Constitution any limitation on the basic rights and freedoms can only be implemented by regulating the matter in law

and there is a clear role that the substance of the rights cannot be changed. In the legislation of Turkey, a curfew is one of the highest security measures that can only be resorted to if a state of emergency or martial law is declared. In this case, there is a clear violation of the law on the declaration and implementation of the curfews. The governors and district governors who are appointed officials, are in violation of the law in making such decisions, as such decisions are in the mandate of the Council of Ministers and the Grand National Assembly of Turkey (GNAT), and thus seize the powers of the GNAT. The government has taken up a practice in violation of the law through the governors and district governors and thus by-passed the GNAT. This constitutes a major violation of the Constitution. A main reason of this lawlessness in the implementation of the curfews is the avoidance of Article 15 of the ECHR. The government of Turkey is trying to avoid the CoE review on such violations. This incident is a clear indication of major violation.

43. The major violations arising during the curfews are the violation of the right to life and the right to freedom from torture and ill-treatment. Also, the access to healthcare is impeded and forced displacement or deportation takes place. With regard to the violation of the right to life, between 16 August 2015 and 31 December 2015, 126 civilians lost their life under the curfews, or more precisely the martial law and the picture is getting worse. Only in Cizre district, approximately 300 civilians died between 14 December 2015 and 2 March 2016. The city of Cizre is no longer any different than the war struck cities of Gaza or Kobane. The reports and studies prepared by the HRA, the HRFT and many other organisations will soon be shared with the public. Our inquiry reports on the curfews in many of these districts are currently available on our website.
44. The violation of the right to freedom from torture and ill-treatment: In the curfew areas, the use of excessive force and the environment of fear created by the shocks and noise coming from the armoured vehicles, tanks and field guns have affected the residents as a form of psychological torture. Also, in the applications made about the methods of detention, transfers to the detention centres and treatment in these places, there are frequent complaints about torture.
45. The violation of right to residence (Forced Displacement or Deportation): A total population of approximately 1 million 642 thousand live in the 22 districts of 6 provinces where the curfews were declared. According to the statements of the Minister of Health on 27 February 2016, 355.000 citizens forcibly displaced by leaving their districts and provinces. So to speak, they are relocated. Besides the displacement, many residences, workplaces and public buildings were destroyed as a result of the interventions of the security forces. It should be emphasized that many school buildings were damaged as a result of the attacks of the armed militants on the security forces occupying the public buildings and the reprisal attacks. After the forcefully evacuated 3428 villages and hamlets in Turkey in 1990s by the state, many districts including Cizre, Sur, Silopi, Nusaybin, Dargeçit Batman and once in Elazığ.
46. The violations of the right to health: As can be seen in the social media or the news programs on the television channels, all of the hospitals in the curfew areas are surrounded by the special operation police and the armoured military units and a whole floor in the Cizre State Hospital is allocated for the soldiers.

This prevents the citizens from going to the hospitals. In addition, as there is a curfew, those who are sick cannot go to the healthcare centres. It is seen that the patients can only go out on the street by holding a white flag and leave for the healthcare centres if they can get permission. The family physicians cannot deliver preventive healthcare in the curfew areas and therefore the citizens' right to health is violated. There is an important study by the Turkish Medical Association (TMA) on the violations of the right to health, taking place during the curfew between 4 and 12 September 2015 in Cizre. As it can be seen in the report, the right to health was not implemented during the curfews. Based on the inquiry report prepared on the events taking place in Beytüşebap District of Şırnak on 25 September 2015 by the Union of Health Workers and Social Workers (SES) and the HRA, Şeyhmus Dursun, driver of 112 emergency service was killed by the gunfire of the special operation police. This incident demonstrates that the healthcare workers are at great risk. Before this incident, Eyüp Ergen, medical assistant, was shot in the head and killed while trying to perform first-aid to a wounded civilian and on 30 December 2015, Abdulaziz Yural, nurse, was also shot in the head and killed while trying to perform first-aid to a wounded civilian in the district of Cizre. In both cases, there is strong evidence that the special operation police were responsible for the shootings. The witness statements also support this point of view. Abdulaziz Yural was also providing voluntary service to the Human Rights Foundation of Turkey.

47. The ECtHR judgements are not implemented. The ineffectiveness of the domestic remedies was demonstrated with the decision of the Constitutional Court of Turkey on not taking an interim measure for the curfews. For this reason, many individuals made applications to the ECtHR. The HRA, as a third party, submitted an information file to the ECtHR regarding the case of Çağlı and others v. Turkey. In this case, the ECtHR did not deliver a decision of interim measure and yet stated that it would be possible to reapply. Of the ECtHR decisions regarding the interim measures for Serhat Altun, Hüseyin Paksoy, Cihan Karaman, Helin Öncü and Orhan Tunç who were injured during the attacks due to the curfew, only the interim measure for Helin Önce was put into practice and it was possible to hospitalize this person. For the others, these decisions were not implemented and they lost their lives, as they were not taken to the hospital. The European Court of Human Rights did not grant "interim measures" as asked in the applications made for 178 people who took shelter in the basements of three different blocks and asked help while wounded. This is a grave situation for the European Court of Human Rights. Despite of all these aggravated violations of the human rights and the humanitarian law, the lack of effectiveness of the ECtHR decisions results in ineffectiveness of the European Convention of Human Rights.
48. Curfew was declared in Cizre district of Şırnak (a city in the South East of Turkey) from 14 December 2015 to 2 March 2016. Most of the corpses, who lost their lives in these military operations, were sent to morgues in different districts and cities. They were sent to these morgues to be identified. In total, 178 corpses were sent to different morgues in the region. 78 of these people were sent to Habur district, 13 were sent to Şırnak, 28 were sent to Urfa, 20 were sent to Antep, 17 were sent to Mardin, 16 were sent to Cizre and 6 were sent to Malatya morgues. We would like to underline there are still corpses that have not been identified yet. Some of these people were applicants to the ECHR



for other cases namely Yavuzel and others v. Turkey application no. 5317/16, Derya Koç and others v. Turkey application no. 8536/16 and Ferhat Balcal and others v. Turkey application no. 8699/16. All of these people lost their lives as a result of a military operation and even a massacre. No fundamental rules were obeyed as regards to the investigation of their death. Therefore, we strongly believe it should be reminded to Turkey that this massacre needs to be investigated by an independent and impartial committee in accordance with the ECHR decision about M. and others v. United Kingdom case and based on Jordan Principles, and in accordance with the Supreme Board of Judges and Prosecutors' Circular No. 9, which is about the Minnesota Protocol, in 18.10.2011.

49. The trade unionists in Turkey are also under pressure and threat. There are significant pressures on the activists and administrators of the trade unions of the civil servants in the public sector. According to the data of the Confederation of Public Workers' Unions (KESK), between 7 August 2015 and 7 February 2016, 284 civil servants were exiled by changing their duty stations; 29 were expelled; 1497 were sanctioned with various disciplinary measures; 403 were forced to retire through mobbing; 2 were physically attacked; 102 were arrested and detained; and also 259 union protests and demonstrations were prevented. Also on 10 October 2015, the meeting organised in Ankara by KESK, the Confederation of Revolutionary Workers' Unions of Turkey (DİSK), Turkish Medical Association (TMA) and the Union of Chambers of Turkish Engineers and Architects (UCTEA) was attacked. 101 demonstrators lost their lives as a result of the attacks by 2 suicide bombers in the area in front of the Ankara Train Station where thousands had gathered for the meetings.