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Communication from a NHRI (Human Rights Foundation of Turkey) (16/09/2019) in the BATI AND OTHERS group of cases v. Turkey (Application No. 33097/96)

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1369^e réunion (mars 2020) (DH)

Communication d'une INDH (Human Rights Foundation of Turkey) (16/09/2019) dans le groupe d'affaires BATI ET AUTRES c. Turquie (requête n° 33097/96) (**anglais uniquement**).

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

DGI

16 SEP. 2019

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

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16 September 2019

COMMUNICATION

In accordance with Rule 9.2. of the Rules of the Committee of Ministers regarding the supervision of the execution of judgments and of terms of friendly settlements by Human Rights Foundation of Turkey under the group of *BATI AND OTHERS v. Turkey* (Application No. 33097/96)

Introduction

1. This communication sets out the judicial and legislative problems in Turkey and the recommendations of *Türkiye İnsan Hakları Vakfı* (Human Rights Foundation of Turkey - HRFT) regarding the execution of the judgments of the European Court of Human Rights (hereinafter the ECtHR) on the cases that have been supervised by the Committee of Ministers (hereinafter the CoM) under the *Bati and others* group of cases¹.
2. *Human Rights Foundation of Turkey* is an independent human rights organization with a center in Ankara and five representative offices in Istanbul, Izmir, Diyarbakir, Cizre and Van. HRFT mainly provides rehabilitation and treatment for torture survivors since 1990, and also elaborates medical documentation whenever requested. HRFT also regularly monitors human rights violations in Turkey and publishes daily and annual human rights reports, as well as reports devoted to special violations and incidents².
3. The CoM examines the *Bati and others* group of cases under the enhanced procedure due to the complex nature of the matters it raises. This group of cases mainly concerns the ineffectiveness of investigations and serious shortcomings in subsequent criminal and/or disciplinary proceedings initiated against members of security forces following the account of death of the applicants' next-of-kin or torture or ill-treatment of the applicants (violations of Articles 2, 3, and 13).
4. This communication provides the CoM with updated information on torture and ill-treatment in the most recent period. This matter is of relevance to the assessment of the implementation of the cases comprised in the *Bati and others* group.

Torture and ill-treatment practices

5. Torture and ill-treatment has been a long-standing problem in Turkey's recent past. The ECtHR in large number of applications alleging violation of prohibition on torture, inhuman and degrading treatment has found that Turkey violated the prohibition on torture, inhuman and degrading treatment under the European Convention on Human Rights (Article 3) in a significant number of these applications revealing its widespread and systematic nature.

¹ *BATI AND OTHERS v. Turkey* | Application No. 33097/96 | Date of Judgment: 03/06/2004 | Judgment became final: 03/09/2004 | Latest Decision: CM/Del/Dec(2016)1265/H46-27.

² For further information please visit <http://en.tihv.org.tr/>

6. While a culture of police violence (mainly against demonstrators and detainees on arrest) remained, between 2004 and mid-2015 a relatively decrease in reports of torture and ill-treatment in police custody observed. The following information focuses on the overall situation of torture and other ill-treatment practices following mid-2015 that we believe relevant to all cases examined under the *Bati and others* group of cases.

Current situation

7. With the collapse of the peace process in July 2015, reports of torture and ill-treatment in police custody were on the increase³. More significantly, in the weeks following the attempted coup in July 2016, reports of torture and other ill-treatment in police custody significantly increased⁴.
8. Notwithstanding that, shortly after the attempted coup in July 2016 state of emergency has declared and during the state of emergency, provisions in at least 154 laws were amended by Emergency Decrees⁵. The Emergency Decrees adopted by the National Assembly and enshrined in law with having an effect to be applicable even after the lifting of state of emergency. These amendments included the removal of the crucial safeguards that protect detainees from ill-treatment and torture⁶.
9. Until today many consistent reports and statements have been issued on allegations and credible evidence that detainees in Turkey are being subjected to beatings and torture, including rape, in official and unofficial detention centers in the country⁷. These reports also reveal a lack of effective investigation of torture and ill-treatment allegations.

³ For more detailed information, please see the Human Rights Watch's "Submission to the United Nations Committee against Torture on Turkey" available at <https://www.hrw.org/news/2016/04/22/un-committee-against-torture-review-turkey>

⁴ The Anadolu Agency published photographs and videos in the immediate aftermath of the attempted coup showing detainees with injuries and bruises likely to be signs of torture and ill-treatment. The said video is available at <https://www.youtube.com/watch?v=FJgFlwztnio>; please also see the images and video embedded within the BBC Turkey's news, available at <https://www.bbc.com/turkce/haberler-turkiye-38126711>.

⁵ Under the State of Emergency, the Council of Ministers, led by the president, had power to pass emergency decrees that have the force of law.

⁶ For more detailed information, please see the Report "When State of Emergency Becomes the Norm" available at https://tr.boell.org/sites/default/files/ohal_rapor_ing_final_version.pdf. Also please see the updated report of Human Rights Joint Platform "State of Emergency in Turkey" available at http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf

⁷ For further information, please see the reports by Amnesty International "Turkey: Independent monitors must be allowed to access detainees amid torture allegations" available at <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>; Human Rights Watch "A Blank Check: Turkey's Post-Coup Suspension of Safeguards Against Torture" available at https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf and "In Custody: Police Torture and Abductions in Turkey" available at <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>; Human Rights Association Istanbul Branch "State of emergency in Turkey" (only in Turkish) available at <http://www.raporlar.org/wp-content/uploads/2018/04/Adszdoksman.pdf>; Mazlumder "Report on Torture Allegations in Sapat, Hakkari" (only in Turkish) available at https://drive.google.com/file/d/0B71K_GYRz2NKTVI2UHV0c2NaWUk/view; Council of Europe the Commissioner for Human Rights's Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, available at [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35); Office of the United Nations High Commissioner for Human Rights "Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East" available at https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf; the Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment on his mission to Turkey, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/362/52/PDF/G1736252.pdf?OpenElement>

10. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out an ad hoc visit to Turkey from 29 August to 6 September 2016 to examine the treatment and conditions of detention of persons who have been detained in connection with the attempted coup. The CPT submitted its report in November 2016. Turkish authorities have not authorized the publication of the CPT's report yet⁸. Following this, CPT conducted its periodical visit from 10 to 23 May 2017⁹, then later made a further "unannounced/ad hoc" visit to Turkey from 6 to 17 May 2019¹⁰.

Torture and other ill-treatment practices at official detention locations

11. In 2018, 584 individuals applied to HRFT and when 51 relatives of applicants and those who were subjected to torture outside the country are kept aside, out of the 505 applicants that were directly subjected to torture or other methods of ill-treatment, 257 (50,9%) applied for subjection to torture at police directorates, whereas 85 (16,8%) applied for subjection to torture at police stations. Other than torture at such official detention centers, 198 (39,2%) applicants also stated that they were subjected to torture in vehicles belonging to security forces.¹¹
12. In only the first eight months of 2019, 602 individuals applied to HRFT for rehabilitation and medical documentation¹².
13. It would not be consistent to assume a linear relationship between the number of these applications and the number of torture victims across the country, however, this data, too, is a significant indicator regarding the widespread and serious nature of torture practices at official detention centers.
14. Among the many of the reported torture and ill-treatment cases at official detention locations, we would like to mention the most recent and significant case i.e, the accounts of individuals subjected to torture in the Halfeti district of Urfa province.
15. The series of events that began on 18 May 2019 with the detention of 51 individuals in the Dergili neighborhood of the Halfeti district of Urfa province constitutes a special example of the level the violation of the absolute prohibition on torture has reached. In addition to the investigation and observation of HRFT, the report confirming the subjection of these individuals to torture and other forms of ill-treatment prepared by the commission formed by the Urfa Bar Association and the Gaziantep Bar Association reveals the practices including rear-handcuffing, blindfolding, hooding, electric shock, beating, bastinado, sexual torture, verbal insults, threats against the individuals and their relatives (especially concerning their daughters and wives)¹³.

⁸ The news flash of the visit is available at <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-turk-1>

⁹ The news flash of the visit is available at <https://www.coe.int/en/web/cpt/-/cpt-carries-out-periodic-visit-to-turkey>. Publication of the report has not been authorized by the authorities.

¹⁰ The news flash of the visit is available at <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-turk-2>. The report of the visit is under preparation.

¹¹ Turkish version of the Treatment and Rehabilitation Centers Report 2018 is available at <https://tihv.org.tr/wp-content/uploads/2019/07/TedaviRaporu2018TIHV.pdf>; previous years' reports are available at <https://tihv.org.tr/category/tihv-tedavi-raporlari/>

¹² Non-published data of HRFT.

¹³ Please see Şanlıurfa Bar Association "Torture Report on the Incidents in Halfeti" (only in Turkish) available at https://www.raporlar.org/wp-content/uploads/2019/06/UrfaBarosu_Halfeti_iskence_Raporu.pdf; Gaziantep Bar Association Human Rights Commission "Report on Torture at Anti-Terror Department in Urfa" available at <https://docs.google.com/viewerng/viewer?url=https://www.raporlar.org/wp-content/uploads/2019/05/urfa->

Torture and ill-treatment in prisons, including under detention conditions, and deaths in detention

16. According to Ministry of Justice's data, the number of detainees and sentenced prisoners stood at 55,870 in the year 2005, rising to 260,144 in November 2018 (202,434 sentenced prisoners and 57,710 detainees)¹⁴. The Ministry has, for a long time, stopped providing the number of individuals whose sentence has not yet been upheld. They have since been included in the figure indicating sentenced prisoners.
17. The fact that, as of 31 August 2019, 701.992 individuals are included within the scope of probation measures¹⁵ reveals the general atmosphere of the country, in other words, how society as a whole is kept under inspection, and how a very large proportion of the population has its freedom restricted, or is completely deprived of liberty.
18. In an unprecedented course of events in the history of our country, in a matter of only 13 years, the number of sentenced prisoners and detainees increased approximately five-fold, thus providing, at one level, a summary of developments in our country in the same period of time. The alarming nature of the situation is worsened when this extreme increase is considered within the context of figures of the annual number of individuals whose entry and exit record has been held, as published on the official web site of the Turkish Statistical Institute (TÜİK). For instance, in the period from 1 January to 31 December, 215,761 persons entered penal institutions, while 193,662 persons exited during the same period. Considering that the current prison capacity is 211,766, the constant increase in the prison population in recent years has also led to the deterioration of physical conditions and an increase in the deprivation of rights¹⁶.

Torture and other ill-treatment at non-official detention locations or non-detention environments

19. There are reports of human rights institutions and international organizations, as well as video and visual evidence published in the media showing that the use of "extreme and disproportionate force" (handcuffing and rear-handcuffing, the use of pressurized water, baton, pepper gas and lachrymose chemicals, canisters and gas bombs, plastic/rubber bullets, firearms) by security forces targeting individuals exercising their right to assembly and demonstrate at peaceful demonstrations across the country has reached a level that corresponds to torture and other forms of ill-treatment¹⁷.

[halfeti-toplu-iskence-raporu.pdf&hl=en](#); and Human Rights Foundation of Turkey (only in Turkish) available at <https://tihv.org.tr/urfadan-yukselen-iskence-iddialari-karsisinda-yetkililer-hicbir-sekilde-sessiz-kalamazlar/>

¹⁴ Please see https://www.tbmm.gov.tr/develop/owa/komisyon_tutanaklari.goruntule?pTutanakId=2222 (only in Turkish)

¹⁵ Please see http://www.cte-ds.adalet.gov.tr/istatistik/2019/agustos_2019.pdf (only in Turkish)

¹⁶ More recently, a video showing the conditions of the detention centers and the moments of a teacher Gökhan Açıkollu while having a heart attack in his cell has been released, the video is available at <https://www.independentturkish.com/node/58396/haber/g%C3%B6zalt%C4%B1nda-%C3%B6len-fet%C3%B6-%C5%9F%C3%BCphelisi-%C3%B6%C4%9Fretmenin-son-anlar%C4%B1-nezarethane-kameras%C4%B1nda>

¹⁷ For example, public workers started to protest on 09 November 2016 to get their jobs back together with their supporters in front of the Human Rights Monument on Yüksel Street. Police took protesters in custody countless times during the protests ongoing for more than 500 days, intervening the protests with tear gas, rubber bullets and pressurized water. During these interventions, protesters and supporters suffer from broken nose, arms, foot and ribs as well as some protestors' hair were pulled from their roots during the custodies. 75-year-old supporter Perihan Pulat was hit with a police shield. In May-day protest, Pulat, who was standing on the side, was thrown on the floor by a police officer and wounded in the face. The perpetrator received a suspended 3000 liras of penalty as a result of a trial concerning the ill-treatment of 75-year-old Perihan Pulat. Please see, <http://en.tihv.org.tr/08-february-2019-hrft-documentation-center-daily-human-rights-report/>

20. The perilous dimension of torture and other ill-treatment practices in non-official detention centers in recent years is seen in data regarding torture and other ill-treatment in the year 2018, when 221 (43,2%) of HRFT applications were about incidents that took place at demonstrations, and 87 (15,8%) were about incidents that took place at home or in the workplace¹⁸.

Conclusions

21. As a consequence of erosion of rule of law, torture and other ill-treatment practices are recklessly carried out in an overt and explicit manner. Moreover, the amendments made through Emergency Decrees but now enshrined in law, not only removes the crucial safeguards that protect detainees from ill-treatment and torture but also fosters the impunity.
22. Although the Government in many instances restates the policy of zero tolerance for torture, as of mid-2015 alarming pattern of torture and ill-treatment prevails. In addition, investigations carried out into the allegations of torture and ill-treatment remains rare.

Recommendations

- A. Turkey should;
- (i) ensure torture investigations are conducted in accordance with the Istanbul Protocol
 - (ii) establish an independent unit to investigate complaints against law enforcement officers suspected of torture to eliminate the perpetrator's interference with investigation
 - (iii) abolish authorization procedure for investigation of law enforcement officers
 - (iv) abolish the postponement of execution of sentences given in criminal proceedings related to the crime of torture
 - (v) give Istanbul Protocol trainings to relevant public officials on prohibition of torture, and conduct these trainings with the participation of non-governmental organisations.
- B. Turkey should take the necessary measures to rescind the provisions of the Emergency Decrees which removes the crucial safeguards that protect detainees from ill-treatment and torture.
- C. Turkey should authorize the publication of the reports of the CPT and implement, without delay, any recommendations that the CPT may address therein.

¹⁸ Please see <https://tihv.org.tr/wp-content/uploads/2019/07/TedaviRaporu2018TIHV.pdf> (only in Turkish)