

FACTSHEET: ENFORCED DISAPPEARANCES AND TURKEY



THE ARRESTED LAWYERS INITIATIVE

WWW.ARRESTEDLAWYERS.ORG

FACTSHEET: ENFORCED DISAPPEARANCES AND TURKEY

DEFINITION OF ENFORCED DISAPPEARANCE

Enforced disappearance is considered to be 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 place such a person outside the protection of the law.

(International Convention for the Protection of All Persons from Enforced Disappearance, Article 2. See also, General Comment on the definition of enforced disappearance, para.2.)

The 1992 Declaration for the Protection of All Persons from Enforced Disappearances affirms the connection between enforced disappearances and crimes against humanity. It states, in the 4th Preambular paragraph that the “systematic practice [of enforced disappearances] is by its very nature a crime against humanity”.

The crime of enforced disappearances is defined in a joint report by **Hafiza Merkezi** and **ECCHR** as follows: It is a multifaceted crime. It violates the right to liberty and security of a person, and in many emblematic cases also the right to life, the prohibition of torture and the right to respect for private and family life. Due to its characteristics, the offence of enforced disappearance is of a continuous nature. Apart from violating the victims’ rights, it also inflicts continuous suffering, anguish and distress on the victims’ relatives, as it is the perpetrators’ aim to conceal the fate and whereabouts of the victims. The suffering of the victims' relatives often continues for a life-time, if the fate of the victim remains unknown.

As such, the crime of enforced disappearance has strong implications on any social development, commemorative culture and reconciliation.

(International Convention for the Protection of All Persons from Enforced Disappearance, Article 2, para. 18.)

A CRIME AGAINST HUMANITY

According to the United Nations General Assembly, **any act of enforced disappearance is an offence to human dignity. It is condemned as a denial of the purposes of the Charter of the United Nations and as a grave and flagrant violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and reaffirmed and developed in international instruments in this field .**

(Declaration on the Protection of all Persons from Enforced Disappearance, Article 1, Adopted by General Assembly resolution 47/133 of 18 December 1992) ”.

According to the Working Group on Enforced or Involuntary Disappearances, enforced disappearance can amount to be a crime against humanity when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

(General Comment of Working Group on Enforced or Involuntary Disappearances www.ohchr.org/Documents/Issues/Disappearances/GCas_crime_against_humanity.pdf)

TURKEY AND ENFORCED DISAPPEARANCE PRAXIS

‘During the 1990s enforced disappearances became a pattern of human rights violations against Kurdish civilians’, this pattern had been disappeared in 2000s. A coalition consists of various human rights NGO has collected the names of more than 1,300 persons allegedly disappeared by state agents between 1980 and 2002 (the year the emergency rule was lifted) mostly in the Kurdish region. However, after the attempted coup of 2016 it was reemerged, and as mentioned above more than 25 enforced disappearance incidents have been reported since 2016. Sunay Elmas, Mustafa Özgür Gültekin, Hüseyin Kötüce, Turgut Çapan, Mesut Geçer, Önder Asan, Ayhan Oran, Mustafa Özben, Cemil Koçak, Murat Okumuş, Fatih Kılıç, Durmuş Ali Çetin, Cengiz Usta, Ümit Horzum, Hıdır Çelik, Enver Kılıç, Zabit Kişi, Orçun Şenyücel, Hasan Kala, Ahmet Ertürk, Yasin Ugan, Özgür Kaya, Gökhan Türkmen , Salim Zeybek, Erkan Irmak, Fahri Mert, Mustafa Yılmaz, Ayten Ozturk have become victims of enforced or involuntary disappearances in Turkey.

(Hafıza Merkezi & ECCHR, Monitoring Report (15 January 2016), para.7

https://hakikatadalethafiza.org/wp-content/uploads/2016/03/Rule-9-2-Communication-on-Turkey-Jan.-2016-HM_ECCHR.pdf

Regarding these incidents, the Human Rights Watch concluded that “*There were credible grounds to believe that government agents forcibly disappeared the missing men.*” Further to this, 13 journalists from nine media in eight countries have investigated Turkish Government’s global abduction operation by which some one hundred victims were enforcedly brought to Turkey. Zabit Kisi and Ayten Ozturk who have been subjected to this crime for respectively 108 and 184 days, then were handed over to the police. Both victims told their gruesome story in the Courthouse.

(www.hrw.org/news/2017/08/03/turkey-investigate-ankara-abductions-disappearances

Black Site Turkey, correctiv.org/en/top-stories-en/2018/12/06/black-sites/

https://boldmedya.com/en/2019/06/21/ayten-ozturk-who-survived-the-secret-torture-center-in-ankara-i-was-tortured-for-6-months/

https://boldmedya.com/en/2019/07/01/zabit-kisi-who-was-tortured-for-108-days-i-no-longer-find-odd-the-ones-who-committed-suicide/



The Arrested Lawyers Initiative is a human right organization consists of lawyers across the Europe
www.arrestedlawyers.org - @arrestedlawyers - 6 July 2019, Brussels.

FACTSHEET: ENFORCED DISAPPEARANCES AND TURKEY

TURKEY'S OBLIGATION UNDER NATIONAL AND INTERNATIONAL LAW

Republic of Turkey is the member of the United Nations and party to the ICCPR and the ICECSR.

Turkey is also party to:

- the European Convention on Human Rights (ECHR),
- the International Covenant on Civil and Political Rights (ICCPR),
- the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment,
- the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,
- the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT),

under these treaties Turkey is obligated to prevent torture and cruel, inhuman or degrading treatment or punishment.

Considering Art.4 ICCPR and United Nations' Human Rights Committee's General Comments numbered 29, 32, 35, it can prima facie be said the derogations of the right to an effective remedy (Art. 2§3), the right to humane treatment in detention (Art. 10) and the protection of minorities (Art. 27) are invalid, as they refer to non-derogable rights. (*International Commission of Jurists, 'Justice Suspended: Access to Justice and the State of Emergency in Turkey' (2018), 9 <icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf> accessed 4 March 2019.*)

Although the right to life, the prohibition of torture and enforced disappearance are stipulated in a non-derogable way under Art. 15§2 of the Constitution, Art. 15 ECHR and Art. 4§2 ICCPR, various Decrees and ordinary laws enacted by the Turkey have resulted in the de facto derogation from the right to life, the prohibition of torture and the prohibition of enforced disappearance:

- a) Emergency Decree (no. 667, Art. 9§1) stipulated that "legal, administrative, financial & criminal liabilities shall not arise in respect of the persons who have adopted decisions & who fulfill their duties within the scope of this Decree",
- b) Emergency Decree no. 668 (Art. 37) has further expanded this principle of impunity, specifying that there will be no criminal, legal, administrative or financial responsibility for those making decisions, implementing actions or measures, or assuming duties as per judiciary or administrative measures for suppressing coup attempts or terror incidents, as well as individuals taking decisions or fulfilling duties as per State of Emergency Executive Decrees.
- c) By Emergency Decree no. 696 (Art. 121), the impunity provided to public servants under Emergency Decrees nos. 667-668, was also extended to civilians. More precisely, it was stipulated that those civilians acting to suppress the coup attempt of 15/7/2016 and the ensuing events will have no legal, administrative, financial or criminal responsibility,
- d) Emergency Decree 667, 668, 696 were approved by the Turkish Parliament and have acquired qualification of permanent law (Law Nos. 6749, 6755, 7079).

Under Article 17, 19 and 38 of the Constitution of Turkey, *'Everyone has the right to life and the right to protect and improve his/her corporeal and spiritual existence. The corporeal integrity of the individual shall not be violated except under medical necessity and in cases prescribed by law; and shall not be subjected to scientific or medical experiments without his/her consent. No one shall be subjected to torture or mal-treatment; no one shall be subjected to penalties or treatment incompatible with human dignity (Art.17), The person arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offences committed collectively within at most four day (Art, 19), No one shall be compelled to make a statement that would incriminate himself/herself... or to present such incriminating evidence (Art 38§5)'*.

DEFICIENCIES

Subsequent to the coup attempt of 15 July, 2016, on 21 July, 2016, the Turkish Government declared a state of emergency. The state of emergency was effective until 18 July, 2018. In Turkey's notification lodged with the Secretary-General of the United Nations *'Art. 2§3 (right to an effective remedy), Art. 9 (right to liberty and security), 'Art. 10 (right to humane treatment in detention), Art. 12 (freedom of movement), Art. 13 (procedural guarantees in expulsion proceedings), Art. 14 (right to a fair trial), Art. 17 (right to privacy), Art. 19 (right to freedom of expression), article 21 (right of peaceful assembly), Art. 22 (freedom of association), Art. 25 (political rights), Art. 26 (equality before the law) and Art. 27 (protection of minorities) of the ICCPR'* were mentioned as the rights which would have been effected from the derogations.

Pursuant to these decree laws, public prosecutors have given non-prosecution decisions on criminal complaints that were filed for alleged

murder and torture incidents. Trabzon Prosecutorial Office thus gave a non-prosecution decision under Article 9 of Emergency Decree no. 667 on a complaint filed by an individual who alleged that he was tortured during police custody. Likewise, the Istanbul Prosecutorial Office gave a non-prosecution decision on a complaint that was filed by the family members of a military cadet who was murdered by civilians during the coup attempt after surrendered to the police. Since the enactment of these decrees, wide-spread torture, ill-treatment and enforced disappearance incidents have been reported in Turkey by the United Nations' High Commissioner for Human Rights, the UN Special Rapporteur on Torture, Human Rights Watch as well as many other credible institutions.

