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**RIGHT INITIATIVE's SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW OF
TURKEY**

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About the Hak İnisiyatifi (Association of Rights Initiative)

The Right Initiative is a human rights organization which was founded by a group of human rights activist who were liquidated by MAZLUMDER (Association of Human Rights and Solidarity for Oppressed People) from 16 MAZLUMDER branches in 2015 because of the political reasons. The Right Initiative implements all kinds of activities such as conducting campaigns, reporting and forming public opinion in the framework of human rights with the motto of "against the oppressor whoever he is with the oppressed whoever he is".

ENFORCED DISAPPEARANCES

1. During the State of Emergency, Turkey has faced again the practice of abductions and unlawful detentions which were common in 1990s. As there is no detailed documentation system in Turkey about unlawful detention or abduction of persons by security, intelligence or military personnel, the exact number of the cases remains unknown. However, as the Rights Initiative, we have prepared a report on persons allegedly being forcefully detained by persons who have identified themselves as public officials.¹
2. This report includes the stories of 22 people out of 28 allegedly detained persons between 2016 and February 2019 based on interviews with the relatives of the disappeared, similar allegations on social media accounts and various web sites, many of which are considered to be close to the Gülen Movement, existing claims in the official applications and court files and the information contained in the two questions submitted to the parliament. Three of these people have given comprehensive and detailed statements in the judicial processes that they have been subjected to torture. The experiences of 6 forcefully detained persons in February 2019 were reported using the interviews conducted face-to-face by four of them and related official documents, the interview conducted by the lawyer of one of them and the information shared with the public by the relatives of the one of the related persons. It was understood that 16 out of 28 people were detained in Ankara, 26 of them were detained with the alleged relationship with Gülen Movement, one of them was alleged to have relations with the PKK and one with the DHKP-C identified as the “terrorist organisations”. In addition, Human Rights Center of the Ankara Bar Association has also prepared a report on the alleged detainees in February 2019.²
3. About all six allegedly detained persons in February 2019, there exists investigations or legal proceedings on suspicion of belonging to the Gülen Movement. The relatives of all of them have also filed criminal complaints along with many official applications, but none of them were able to achieve a serious legal result. It was observed that all the relatives of the disappeared were concerned that their relatives were forcefully detained by the state officials and that they might be punished for some crimes that they did not have a relationship with by signing some documents under torture. It is generally stated that Volkswagen Transporter vehicles are frequently used in the allegations of unlawful detention in 2016 and afterwards, which reminded the *Toros* brand vehicles used in the unlawful detentions in the 1990s and mentioned in hundreds of files. It is claimed that no action was taken by law enforcement authorities although there were witnesses in three out of six cases and video footages in two cases. No information has been found on the fate of most of the 22 persons disappeared before February 2019 and six persons disappeared in February 2019 are still missing.
4. A series of parliamentary questions were raised to the Minister of Interior and then-Prime Minister to reply in the last two years. Kars Deputy of the People’s Democratic Party (HDP) Ayhan Bilgen on 16.12.2016³; Kocaeli Deputy of HDP Ömer Faruk Gergerlioğlu on 13.07.2018, 22.02.2019, 06.03.2019, 04.03.2019 and 23.03.2019⁴; Istanbul MP of the Felicity Party (SP) Cihangir Islam on 30.05.2019⁵; the Niğde Deputy of the Republican People's Party (CHP) Fethi Gürer on 04.02.2019 and 04.10.2018⁶; the Izmir Deputy of CHP Ednan Arslan on 15.08.2018⁷; Istanbul Deputy of CHP Sezgin Tanrikulu on 21.06.2019, 27.03.2019 and 11.02.2019⁸ have given questions about the fate of the disappeared persons in custody or for political reasons and about the kind of studies carried out on them, but none of these questions were properly addressed.
5. The only regulation on enforced detention or disappearance is the Article 109 of Turkish Penal Code on deprivation of liberty. The detention procedure by means of force, threat or deception, by a public official or with a weapon is regulated as a situation requiring more severe punishment. However, even if the relatives of a person or the person himself who has been disappeared under detention by the police or forcefully detained by the intelligence or military personnel apply to the police with this complaint, an

effective investigation is not conducted to identify the suspects and even the evidence presented is not investigated properly although a record is made for this complaint. In most cases, the Law Enforcement Forces declares that the person is released and not in their own custody records although the person is still in custody, or on the contrary, after the person illegally is kept under detention for a long period of time, they issue documents as if the person surrendered himself/herself. In some cases, people are killed as a result of the torture under detention, and are released after torture in others, as in some cases subject to this report.

6. Considering the events of the last two years, it is concluded that most of the recommendations, of which some are guaranteed to be considered by Turkey, were not put into domestic law and carried into practice properly, and some of the mechanisms established to end torture and enforced disappearances do not function accordingly.
7. Turkey has mentioned the legal protections regarding the right to liberty and security of persons in its National Report to the Universal Periodic Review.¹ However, the state could not prevent the events of enforced disappearances where these protections were totally insufficient and could not develop an effective investigation system. In its National Report, Turkey has stated that a draft law for the establishment of an Independent Law Enforcement Monitoring Commission and a centralized registration system, which shall be in charge of investigating complaints concerning law enforcement officials is before the Parliament and the legislation procedure is expected to be completed soon, but this mechanism has yet to be established although its law was enforced on 3 May 2016²
8. TİHEK is authorized to “prepare annual reports in the areas of protection and improvement of human rights, combatting torture and ill-treatment and the fight against discrimination, to be submitted to Presidency of the Republic and the Grand National Assembly of Turkey”³ and these reports were prepared according to the annual activity reports of 2017 and 2018.⁴ However, except these activity reports, there is no information about the reports supposed to be submitted to the parliament. In accordance with the OPCAT provisions, TİHEK is obliged to conduct visits to institutions where persons are held. The 2017 and 2018 annual reports do not contain any information or study about missing persons. The reports included visits to some of the open and closed penitentiary institutions except for the F-Type, repatriation centers, care centers, psychiatric clinics and a small number of detention rooms. Yet, since 2017, no visits have been made to the Combatting for Financial Crimes Branch and Anti-Terrorism Branch of the Ankara Police Department, which has been mentioned in numerous media outlets on allegations of torture. Visiting duty is not performed to fit its purpose. The 2018 annual report states that the institution received 598 applications in 2018, of which 103 were filed for torture and ill-treatment of persons deprived of their liberty. It is stated that “non-prosecution decision” given for 13 applications, “compromise verdict” for 5 applications because the alleged practice that violate the human rights has already terminated or necessary solutions were provided for the victim which guarantees this result, and “no violation decision” for 11 applications. At the end of the year, there exists 103 applications pending in which the investigations were still ongoing, but none of them are for violations due to torture.⁵ It is obvious that this does not reflect the real situation when the violation decisions of ECtHR are taken into consideration.

¹ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/194/36/PDF/G1419436.pdf?OpenElement> p. 68

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/194/36/PDF/G1419436.pdf?OpenElement>, p.81

³ Law No. 6701, Art. 9, 1/k.

⁴ https://www.tih.gov.tr/upload/file_editor/2019/03/1552307015.pdf 4.2.1.8., page 21,

⁵ https://www.tih.gov.tr/upload/file_editor/2019/05/faaliyet_raporu_2018.pdf, page 37, chart 16, 17

Recommendations

9. The impunity granted by the SoE Decrees to officials and individuals for their acts during the State of Emergency should immediately be lifted and the perpetrators of the abductions and unlawful detentions should be brought to the courts. Full compliance to the Article 4(2) of the International Covenant of Individual and Political Rights should be ensured.
10. International Convention for the Protection of All Persons from Enforced Disappearance should be ratified with no further delay in order to protect people from the enforced disappearances.
11. Adopt without delay comprehensive legislation on enforced disappearances, which should provide, a specific procedure for filing complaints with regard to enforced disappearances; a mechanism for investigation and verification of reported cases of enforced disappearance; A national register of forcibly disappeared persons, and of reported and discovered burial sites; Full access to the above-mentioned register for relatives, lawyers, human rights defenders and any other concerned person; Introduction of the declaration of absence following the enforced disappearance, making certain that the issuance of certificates of absence will not terminate the rights of victims' families to pursue truth and justice and will cover all disappearances regardless of the time of their occurrence; (Full protection and support for the relatives of disappeared persons and witnesses; The right to full reparation, including compensation.
12. To establish a supervisory institution consisting only of civil society representatives, to have the authority of this institution to interview with victims and supervise the law enforcement forces related to the allegations of torture and enforced disappearance, to make necessary arrangements for this institution to be publicly visible, and to publish detailed statistics involving information about victims' ethnic identity, residency, age, gender, the related investigation if any and the alleged offense.
13. To establish a separate bureau in the context of enforced disappearance, torture and ill-treatment within each of the Chief Public Prosecutors, and to examine the investigations and prosecutions carried out in these contexts by judges and prosecutors by the Council of Judges and Prosecutors in particular.
14. To amend the appointment procedure of the members of the Constitutional Court in a democratic way,
15. To organize regular yearly seminars for all judges and prosecutors on the issue of enforced disappearance and prohibition of torture within the Court of Cassation or the Council of Judges and Prosecutors,
16. To harmonize TIHEK with the Paris Criteria, to allocate quotas to the representatives of civil society and to take rights violations reports prepared by civil society organizations into account as denunciation, and to establish a unit under TIHEK in order to be able to evaluate the implementation of the UPR recommendations in a proper way,
17. To set up a regulation for police officers particularly working in the Anti-Terror Branch, where the allegations of ill-treatment are intensified, to provide them to wear 7/24 continuous recording cameras and to keep these video footages for a month,
18. To prepare written and audio-visual materials that will appeal to all citizens about the scope and procedures of the application mechanisms of the Constitutional Court, ECtHR, OPCAT, ICCPR, UN Human Rights Committee and to disseminate these materials in various ways including public service ads (or compulsory broadcasting) to be broadcasted on TV.

END NOTES

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<https://hakinisiyatifi.org/34y34e/2019/06/Hak%C4%B0nisiyatifi.2019Al%C4%B1konulma%C4%B0ddialar%C4%B1Raporu.pdf>

2 <http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?DUYURU&=3214>

3 <https://www2.tbmm.gov.tr/d26/7/7-9965s.pdf>

4 <https://www2.tbmm.gov.tr/d27/7/7-0033s.pdf> <https://www2.tbmm.gov.tr/d27/7/7-9503s.pdf>

5 <https://www2.tbmm.gov.tr/d27/7/7-13123s.pdf>

6 <https://www2.tbmm.gov.tr/d27/7/7-8368s.pdf> <https://www2.tbmm.gov.tr/d27/7/7-3910s.pdf>

7 <https://www2.tbmm.gov.tr/d27/7/7-1642s.pdf>

8 <https://www2.tbmm.gov.tr/d27/7/7-13594s.pdf> <https://www2.tbmm.gov.tr/d27/7/7-10653s.pdf>

<https://www2.tbmm.gov.tr/d27/7/7-8945s.pdf>