
ADVANCE UNEDITED VERSION

Committee against Torture

**Fifth periodic report submitted by Turkey under
article 19 of the Convention pursuant to the
optional reporting procedure, due in 2020***

[Date received: 27 October 2020]

* The present document is being issued without formal editing.

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ABBREVIATION LIST

CAT	Committee Against Torture
CCP	Turkish Code of Criminal Procedure No. 5271
CJP	Council of Judges and Prosecutors
CoE	Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EU	European Union
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
HREIT	Human Rights and Equality Institution of Turkey
ICCPR	International Covenant on Civil and Political Rights
SoE	State of Emergency
SPT	Subcommittee on Prevention of Torture
TPC	Turkish Penal Code No. 5237

CONTEXT

1. In order to accurately reflect on the period under review, it is important to put things into their full context at the beginning of the report. In this context, the Government would like to refer to the comprehensive observations that were submitted to the CAT, as a follow-up to the concluding observations (CAT/C/TUR/CO/4/Add.1) dated 8 November 2016.

2. On 15 July 2016, Turkey was faced with an unprecedentedly large-scale and brutal coup attempt organized and perpetrated by the Fethullah Terrorist Organisation (FETO). The coup attempt targeted the Turkish democracy and constitutional order, fundamental rights and freedoms, including the right to life. Terrorist acts perpetrated by FETO on that night cost the lives of 251 Turkish citizens and injured over 2000. Several key institutions representing the will of the Turkish people, first and foremost, the Parliament,¹ were heavily assaulted.

3. The State of Emergency (SoE) was declared shortly after the terrorist coup attempt in order to ensure the continuity of the Turkish democracy and to protect the rule of law, rights and freedoms of Turkish citizens and to effectively combat FETO posing a grave threat to the security of the state through its clandestine infiltration into state organs along with its presence in private sector and media. The decision was endorsed by the Parliament on 21 July 2016.

4. Following the declaration of the SoE, Turkey resorted to the right of derogation from the obligations under the ECHR and the ICCPR. Notifications of derogation were duly submitted to the Secretary-General of the CoE in accordance with Article 15 of the ECHR and to the Secretary-General of the UN in accordance with Article 4 of the ICCPR, concerning the rights permitted by these Conventions.

5. During the SoE period, 32 Decree-Laws were enacted. All Decree-Laws as well as the decisions concerning the extension of the SoE were duly endorsed by the Parliament.

6. Turkey acted in full awareness of its obligations under international law throughout the implementation of the SoE. Turkey paid full respect to the rule of law and observed the principles of necessity and proportionality. The SoE was terminated on 19 July 2018. Notifications of derogation were duly revoked as of the same date. Following the termination of the SoE, Turkey focused on its reform agenda.

7. Finally, The Government would like to refer to the *“Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey: comments by the State”* no: A/HRC/37/50/Add.2 submitted to the Human Rights Council on 21 December 2017. The Government hereby emphasizes that the comments given in the said document remains relevant to the principal subjects listed by the Committee and should be taken into consideration along with the responses given in this present report.

REPLIES TO THE LIST OF ISSUES

Article 1 and 4

Reply to paragraph 2 of the list of issues prior to reporting (CAT/C/TUR/QPR/5)

8. According to Article 90/5 of the Constitution, international agreements duly put into effect have the force of law. Turkey acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on August 2, 1988. The crime of torture is defined in Article 94/1 of the TPC in line with the Convention. In practice, Article 94 of the TPC and Article 1 of the Convention are applied together. In addition, forcing to testify or to make a statement by torture is prohibited in Article 148/1 of the CCP.

9. In the decision dated 13.12.2012 of the Court of Cassation,² it is noted that for the existence of the crime of torture, act of intentional injuries are not mandatory; it was

¹ Grand National Assembly of Turkey.

² 8th Chamber, Case no: 2012/29994, Decision no: 2012/38227.

emphasized that continuing and frequently repeated ill-treatment may also constitute the crime of torture.

Article 2

Reply to paragraph 3 of the list of issues

10. The SoE, which was declared on 21 July 2016 was terminated on 19 July 2018. Notifications of derogation were duly revoked as of the same date. Turkey has implemented the SoE measures in accordance with its international obligations and observed the principles of necessity, proportionality and legality (see Context section).

Reply to paragraph 4 of the list of issues

Relevant CCP provisions

11. Article 90/2 of the CCP states: “In cases where an arrest warrant issued by the judge or issuance of an apprehension order is required, and there would be peril in delay; if there is no immediate possibility to ask permission from the public prosecutor or their superiors, the officers of the security forces shall be entitled to apprehend the individual.”. Paragraph 4 of the same article provides: “The officers of the security forces shall inform the individual apprehended promptly about his legal rights, after taking measures to prevent him from escaping, and harming himself and others.”.

12. Article 91/1 of the CCP states: “If the individual, who has been apprehended in accordance with the above-mentioned article is not released by the public prosecutor, then it may be ordered that he be taken into custody with the aim of completing the investigation. The duration of the custody shall not exceed twenty four hours, beginning from the moment of the apprehension; the necessary time for transporting the suspect to the nearest judge or court of the place where the apprehension had occurred, shall not be included. The necessary time for transportation to the nearest judge or court where the apprehension had occurred, shall not exceed 12 hours”. Paragraph 3 of the same article provides: “If the crime has been committed collectively³ and if there are difficulties in collecting evidence of the crime, or there are a large number of suspects, the public prosecutor may order in writing an extension of the detention period for 3 more days, not exceeding one day at a time. The order of extension shall immediately be notified to the individual who has been taken into custody.”.

13. Article 91/4 of the CCP states: “Provided that they are limited to cases of offenses in flagrante delicto, for the offenses specified in the following paragraphs, a decision may be taken to detain up to twenty-four hours by law enforcement officers assigned by administrative authorities; or up to forty-eight hours during public incidents that may lead to serious deterioration of the public order and in collective crimes. In the event that the reason for detention disappears or upon completion of the proceedings, immediately and in any case at the end of the aforementioned periods at the latest, the public prosecutor is informed and following actions are conducted in accordance with his instructions. If the person is not released, the procedure is carried out according to the above paragraphs. However, the person shall be brought before a judge within forty-eight hours at the latest, and within four days in case of collectively committed crimes. Provisions on detention are also applicable to persons detained by law enforcement under this paragraph”.

14. Article 91/5 of the CCP states: “The apprehended person, his defence counsel or his legal representative, his spouse or a blood relative of first or second degree may file a motion against the written order of the public prosecutor regarding the apprehension, detention and extension of the detention period to the Magistrate’s Office in order to achieve an immediate release from custody. The Magistrate shall conduct an immediate inspection on the files and shall make a ruling before the period of 24 hours has expired. If the apprehension or taking into custody or extension of detention period is deemed appropriate, the motion shall be

³ The state of a crime being "collectively committed" is defined by the article 2/1-k of the CCP as the requirement of at least three individuals' involvement in the offence even if they have not acted with the will of complicity.

denied or a decision shall be rendered stating that the individual apprehended shall be immediately arraigned before the public prosecutor's office, accompanied by investigative documents". In the continuation of the same article (paragraph 7), "In cases where the individual who is taken into custody is not released, he shall be brought before the Magistrate's Office and interrogated the latest at the end of these periods. During the interrogation, his defence counsel shall also be present."

15. Article 147 of the CCP provides: "(1) During the interview or interrogation of a suspect or an accused the following rules apply:

a) The identity of the suspect or accused shall be established. The suspect or accused is obliged to provide correct answers to the questions related to his identity;

b) The charges against him shall be explained;

c) He shall be notified of his right to appoint a defence counsel, and that he may utilize his legal assistance, and that the defence counsel shall be permitted to be present during the interview or interrogation. If he is not able to retain a defence counsel and he requests a defence counsel, a defence counsel shall be appointed on his behalf by the Bar Association;

d) The situation of the apprehended individual shall be immediately notified to the relatives of his choice, unless Article 95 provides otherwise;

e) He shall be told that he has the legal right to not give any explanation about the charged crime;

f) He shall be reminded that he may request the collection of exculpatory evidence and shall be given the opportunity to invalidate the existing grounds of suspicions against him and to put forward issues in his favour;

g) The individual who is interviewed or interrogated shall be asked about information of his personal and economical status;

h) During the recording of the interview or interrogation, technical means shall be utilized;

(...)"

16. Article 92 of the CCP states: "In the course of their judicial duties, the chief public prosecutors or public prosecutors appointed by them shall inspect the custody centres where the individuals taken into custody shall be accommodated, including, if any, the rooms where interviews are conducted, the factual situation of the individuals in custody, the grounds for being taken into custody and for the detention periods, as well as all the records and procedures related to being taken into custody (...)"

17. Article 141 of the CCP provides the apprehended or arrested individual who suffer losses as a result of unlawful apprehension or arrest a right to claim compensation.

Detention Periods for Terrorism Offenses and Crimes Against the Constitutional Order

18. With the Law no. 7145, which came into force on 31 July 2018, provisional Article 19, which is envisaged to be in force for 3 years from the date the said Law entered into force, was added to the Law on Combating Terrorism no. 3713. According to the provisional article, in terms of offenses against national security, the constitutional order and its functioning, national defence, state confidentiality and espionage along with terrorism offenses and offenses committed within the framework of the activities of an organization, maximum detention period has been set to 48 hours. In terms of collective crimes, this period will be applied as 4 days. Due to the difficulty in collecting the evidence or the fact that the file is comprehensive, these detention periods issued by the public prosecutor can be extended up to 2 times at most, upon the decision of the judge, provided that it is adhered to the specified periods and the suspect shall be listened. The general legal provision regulating the periods of detention will remain to be the article 91 of the CCP after the lapse of validity term of aforementioned provisional article, by 31 July 2021.

The right to benefit from counsel for suspects detained for terrorism offenses

19. The statements and queries of the suspects taken into custody are carried out within the framework of the CCP's articles mentioned above. Before the statements of the suspects are taken, they are asked if they request a lawyer. For those who request a private lawyer, lawyers of their choice are called. For the suspects who do not request a private lawyer, legal aid is provided and a lawyer is appointed from the bar association. The suspect is interviewed with his/her lawyer before, during and after the testimony, and the minutes stating that the interview has been held are kept in the file of the suspect. During the detention, meetings of suspects in detention with their lawyers are made within the framework of Articles 149 and 154 of the CCP and Articles 20 and 21 of the By-law on Apprehension, Detention and Statement-Taking.

20. Article 149/3 of the CCP states: "The right of the lawyer to consult with the suspect or the defendant, to be present during the interview or interrogation, and to provide legal assistance shall not be prevented, restricted at any stage of the investigation and prosecution phase.". Article 154/1 provides: "Any suspect or defendant at any time shall have the right to an interview with a defence counsel in an environment where other individuals are unable to hear their conversation; a power of attorney is not required. Written correspondence by these individuals to their defence counsel are not subject to control."

21. According to the provision added to Article 154/2 of the CCP with Decree Law no. 676, which came into force on 29 October 2016, the right to meet a lawyer of the suspect in custody in the scope of the crimes listed in Law on Combating Terrorism no. 3713 can be restricted for a maximum of 24 hours upon the request of the public prosecutor and the decision of the judge, and the statement of the suspect cannot be taken during this period. This provision is rarely applied if necessary, and the detainees are transferred to the Chief Public Prosecutor's Office, as soon as their proceedings are completed.

Reply to paragraph 5 of the list of issues Article 173/1 of the CCP states: "The victim of the crime may object within 15 days of the notification of the "decision on no ground for prosecution", to the Magistrate's Office, which is in the nearest location to the court of assizes to which the public prosecutor who rendered this decision is attached".

23. Pursuant to the end of the SoE, detention and its following procedures are conducted in accordance with the Provisional Article 19 (see paragraph 4.11) of Anti-Terror Law no. 3713.

Maximum 30 days of detention period during the SoE and the right to legal counsel

24. The detention periods, which was increased to a maximum 30 days, being limited to the period of SoE in accordance with the Decree Law no. 667, was decreased to 7 days in accordance with Article 10/a of the Decree Law no. 684 which came into force on 23 January 2017, and it was set forth that the public prosecutor may extend this period for a maximum of 7 days.

25. With Article 11 of the Decree Law no. 684, sub-paragraph (m) of Article 3 of the Law no. 6755 which states, "The detainee's right to legal counsel may be restricted for 5 days with the Public Prosecutor's decision. The detainee cannot be questioned during this period." was repealed on 23 January 2017. For detainee's further rights to legal counsel, see paragraphs 19, 20 and 21.

Safeguards regarding the health of detainees

26. The health checks of the detainees are conducted in line with Article 9 of the By-Law on Apprehension, Detention and Statement-Taking. Paragraph 9 of the By-Law in particular states: "(9) In cases where it is found in the course of the forensic examination that the offences of torture, aggravated torture on account of its consequences and torment, which are respectively set out in Articles 94, 95 and 96 of the Turkish Penal Code no. 5237, have been committed, the doctor must immediately inform the public prosecutor of this situation. In this case, the action shall be taken in accordance with Article 7 and 8 of the By-Law on Physical Examination, Genetic Examinations and Physical Identification".

27. There are no restrictions set forth in the Decree Laws regarding the health controls of the people detained during the period of the SoE. In practice, during the period of the SoE and afterwards, all the suspects' medical examinations were routinely conducted in line with the aforementioned By-Law during their detention and these reports were added to the suspects' documents.

Reply to paragraph 6 of the list of issues

28. In accordance with Article 95/1 of the CCP, when a suspect or defendant is apprehended, detained or his/her detention period is extended, one of his/her relatives or a person he/she chooses shall be promptly notified of the situation, upon the order of the public prosecutor. Procedures and principles of notifying the person's relatives are set out in Article 6 and 8 of the By-Law on Apprehension, Detention and Statement-Taking. There are no findings regarding restriction of detainees' right to communication for periods up to 30 days, or regarding any sort of abduction or forced disappearance. Communications from the UN Working Group on Enforced Disappearances are duly responded to.

Reply to paragraph 7 of the list of issues Article 12 of the Law on the Establishment of Law Enforcement Monitoring Commission no. 6713, which entered into force on 20 May 2016, states that the Central Registry System shall take effect a year after the promulgation of the said Law. The provision setting forth the establishment of central registry system hereby entered into force on 20 May 2017, and "*the By-Law on the Implementation of the Law on Establishment of Law Enforcement Monitoring Commission no. 6713*" published in the Official Gazette on 7 August 2019, set out the operational procedures and principles of the central registry system. Regarding the implementation of the Law, on 6 March 2020, the "*Directive on the Operation of the Law Enforcement Complaint System and the Central Registry System*" entered into force. As of January 2020, the central registry system has been put into practice throughout the country. Law enforcement complaint units were established in the central and provincial units of Governorships, District Governorships, General Directorate of Security, Gendarmerie General Command and Coast Guard Command throughout the country and necessary training was provided to the personnel. Audit of these units by the Directorate of Civil Inspection has been largely concluded for this year.

30. On the other hand, the Twining Project with the EU for "The Complaint System for Independent Police Complaint Commission and General Directorate of Security, Gendarmerie General Command and The Coast Guard Command", which aims to support the operational practice of the complaint system, is underway. Within the scope of the project, necessary plans for the training of the local authorities, law enforcement personnel and the prospective personnel of central registry system is completed.

Reply to paragraph 8 of the list of issues

Regarding places of detention

31. The alleged unofficial places of detention do not exist. Due to the fact that the Ankara Provincial Directorate of Security building was damaged and its detention rooms became unusable as a result of the attack from FETO terrorist organization during the coup attempt, and the numbers of detained people were high, temporary detention places were established. The detainees were brought to the indoor sports hall of Ankara Provincial Directorate of Security, and to the detention rooms of Foreigners Department and Public Security Branch Office for the purpose of detention. Furthermore, Başkent Sports Hall, which belongs to Turkish Volleyball Federation and the locations built temporarily within the compound of Sincan Prison was used temporarily for the purpose of detention. In October 2016, a building, which belonged to General Directorate of National Lottery was allocated to Ankara Provincial Security Directorate. In this context, new detention rooms, built in accordance with Article 25 of the By-Law on Apprehension, Detention and Statement-Taking, are being used.

About the Complaints of Torture and Ill-treatment

32. The numbers of complaints made with the claims of battery, torture and ill-treatment in the Tekirdağ High Security F-Type Penal Institution No. 1 and 2 are stated in the following

2 tables. These complaints were sent to the authorized chief public prosecutor's offices for legal action.

Tekirdağ High Security F-Type Penal Institution No. 1

Type of the Complaint/Year	2016	2017	2018	2019
Battery	3	-	1	-
Torture	-	-	-	-
Ill-treatment	-	-	1	2

Tekirdağ High Security F-Type Penal Institution No. 2

Type of the Complaint/Year	2016	2017	2018	2019
Battery	2	7	2	2
Torture	1	1	-	2
Ill-treatment	8	1	4	2

Reply to paragraph 9 of the list of issues Ziyet Sağlam in her statement before the Tarsus Chief Prosecutor expressed that she was not subjected to torture by Turkish authorities in Syria or in Turkey. Therefore, no investigation has been initiated in this direction in Turkey.

34. Upon Human Rights Association's letter dated 17 July 2018 an investigation was initiated by the Tarsus Chief Prosecutor's Office for ill-treatment claims 14 August 2018. On 27-29 August 2018 Sağlam's statement was taken via official translators. Sağlam, in her statement said, "I have not been tortured in any way in Kilis Penal Institution or in Chief Prosecutor's Office or in Tarsus." Upon this statement, no further investigation was deemed necessary.

35. Sağlam's health has been regularly checked and she has been treated accordingly since her apprehension at the Syrian border. A translator is present during her medical examinations. Sağlam, in accordance with the law, has all the rights that other convicts/detainees have, such as using phone, sending/receiving letters, filing petitions, meeting with a lawyer, visits and participating in social activities.

Reply to paragraph 10 of the list of issues

Officers found guilty of Torture or Ill-treatment

36. With the intention of conducting active investigation on the claims of abuse by the law enforcement officers, and the swift completion of the investigation, prosecution and legal remedy phases; an additional provision is included to the CCP with Article 10 of the Law on the Establishment of the Law Enforcement Monitoring Commission no. 6713. The provisional Article 1 states: "The public prosecutors conduct primarily and in person the investigations on the claims about law enforcement officers; including killing, intentional injury, torture, exceeding the authority of using force, crimes of founding a crime organization with felon intent and crimes committed pursuant to the operations of an organization. The cases filed against the law enforcement officers for these crimes are regarded as urgent. The examination of these cases' legal remedies is conducted primarily". It is also set forth that for the proceedings of these crimes, the hearings cannot be adjourned for more than 30 days and the trials will continue during judiciary recess to prevent dismissals of the cases due to lapse of time.

37. With Article 13/2 of the State Personnel Law no. 657, deterrence is aimed by providing an opportunity for recourse to the liable state personnel, where the State is found responsible by ECtHR to pay compensation on grounds of the crimes of torture, inhuman or degrading treatment.

38. Decree Law no. 682, sets out torture as a ground for removal from public service. The provision regarding the public servants' not being liable to legal, administrative, financial

and criminal liabilities, on the other hand, are only limited to the decisions taken and the duties carried out under the Decree Law and by no means sets forth any prevention for the sentence of the public servant, who inflicted torture or conducted ill-treatment to a suspect or a defendant.

39. Provisions of decree laws have not granted public officials any kind of impunity. Alleged unconstitutionality of the relevant provisions has already been brought before the Constitutional Court and underwent judicial scrutiny. Underscoring the fact that use of the authorities or fulfilment of the duties prescribed by the law or making decisions in this scope is lawful in our legal system, the Court concluded that it does not correspond to creating ground for unlawfulness. In other words, the Court made it clear that any act surpassing the boundaries of the duty as prescribed by the law shall remain resulting in individuals to be held legally responsible (The Constitutional Court, Case no. 2016/205, Judgment no. 2019/63).

40. The Constitutional Court, in its individual application decisions with regard to right to life, construes Article 5 of the Constitution, which sets forth the aims and the duties of the State, and Article 17, which sets forth the immunity, physical and spiritual existence of an individual; that they impose an obligation of investigation for the state. According to the Constitutional Court, "In the event of a justifiable claim regarding an individual being subjected to an unlawful treatment by a state personnel or a private person, in violation of Article 17 of the Constitution, the said article construed together with the general liability in Article 5, whose title line is "The Fundamental Aims and Duties of the State", requires an effective official investigation." (*Salih Akkuş*, App. no: 2012/1017, 18.09.2013, §.30; see also *Serpil Kerimoğlu and others*, App. No: 2012/752, 17.09.2013, §.50,54; *Musa Erdem and others*, App. no: 2013/1845, 07.11.2013, §.19,20; *Mehmet Ali Emir*, App. no: 2012/850, 07.11.2013, §.48.).

41. According to established decisions of the Constitutional Court; "... the State, within the context of procedure liability, is liable to conduct an effective investigation, ensuring the determination and if necessary, the punishment of those responsible of every unnatural cases of death. The main objective of such an investigation is to assure the effective practice of the law, which protects the right to life and to ensure that the public servants or institutions to give account for the events they are involved in and for the deaths that happened under their responsibility." (*Bilal Turan and others*, App. no: 2013/1942, 04.12.2013, §.47; *Serpil Kerimoğlu and others*, App. no: 2012/752, 17.09.2013, §.54).

42. In its decision dated 12 May 2014, the Court of Cassation states: "... in accordance with Article 160 of the CCP no. 5271, as soon as the public prosecutor comes to know of a situation, giving the impression of a crime, he must investigate the essence of the matter and has to gather all the evidence for revealing the truth and for a just trial, in an effective way to determine those responsible and to punish them if necessary.". By this statement, the Court stresses the importance of an effective investigation.

43. Between 15 July 2016 and 28 July 2020, pursuant to Articles 94 and 95 of the TPC, 17 cases were resulted in conviction while 41 cases were resulted in release.

The investigation regarding Gökhan Açikkollu

44. Gökhan Açikkollu was referred to the Haseki Training and Research Hospital with an ambulance, as a result of his falling ill on 25 August 2016. Upon the said person's death, an investigation was initiated by the Istanbul Chief Public Prosecutor's Office with the crime allegation of "causing a negligent homicide". Within the scope of the investigation, statements of the relevant detention room officers were taken and the camera footage and the Forensic Medicine Institution's autopsy report were examined. The aforementioned report states that the death of Açikkollu was caused by "Acute Myocardial Infarction" (Heart Attack). In the light of the evidence found during the investigation, upon understanding that there was no intentional or negligent action of any person, it was concluded that no suspicious situation was present and there was no need for prosecution.

45. All of the 32 Decree Laws adopted during the SoE enacted as Laws.

Reply to paragraph 11 of the list of issues

46. Turkey simultaneously combats against multi-terror threats, particularly PKK, YPG/PYD, DAESH, FETO and DHKP-C. The PKK, mentioned in the question, is a terrorist organization and the expression of "Kurdish insurgency" is rejected. For the responses to the claims in this section, see paragraphs 36-39 and 47-51.

Reply to paragraph 12 of the list of issues Acting in accordance with "zero tolerance for torture" policy, the Republic of Turkey, especially since the beginning of 2000s, made arrangements setting out severe sanctions against torture. The penalties of the crime of torture was increased and the statute of limitations was repealed. In 2016, it was set out that the investigation on the crime of torture was to be conducted by the public prosecutors primarily and in person, the cases filed against law enforcement officers on grounds of the crime of torture is to be regarded as urgent, and such cases' examination of legal remedies is to be conducted primarily (see paragraph 36). The international standards and principles on the matter were adopted, in particular the Conventions of the UN and the Council of Europe. These principles were also guaranteed in the Constitution and became a part of the national legislation. In this regard, the Istanbul Protocol is widely referred to especially by Bar Associations and Turkish Medical Association, for it to be a part of national legislation, particularly in the prosecution of the claims of torture and ill-treatment. During the apprehension of the suspects, defendants or convicts and during their entry to the penal institutions and detention centres or their exit, medical reports are drawn up to ensure their protection from ill-treatment. The Penal Institutions, at the national level, can be monitored any time by the Human Rights Inquiry Commission of the Parliament, HREIT, Ombudsman Institution, Public Prosecutors and Justice Inspectors, Penal Institution Controllers and Monitoring Boards. At the international level, it can be monitored any time by CPT, UN Working Group on Arbitrary Detention and SPT. The provision enacted regarding removal of the public servants, who inflict torture, from public service with the Decree Law no. 682 of 23 January 2016, which was issued during the SoE, is an indicator of the serious combat against torture.

48. Within the context of judicial inspection, the decisions of the penal institution's administration are inspected by judges of execution, authorized by the Law on Judges of Execution no. 4675. The convicts and detainees can make an application of complaint to the judge of execution, on the complaints of the execution of punishment or on the life conditions, and they can also object to the high criminal court against the decision of the judge of execution. Thus, all the actions and operations of the institutions can be subject to judicial review.

49. There are by no means any systematic torture or ill treatment inflicted on the convicts/detainees in the penal institutions. The claims of torture and ill treatments are immediately investigated by the judicial and administrative authorities and the legal remedies are always available for objecting to the decisions taken within the context of disciplinary investigation. The complaints of the convicts and detainees in the penal institutions regarding the institution practices are made initially to the offices of judge of execution. Objections to the decision of the offices of judges of execution can be made to the assize courts.

50. The current national preventive mechanisms for the fight against torture are the following:

- In compliance with Article 92 of the CCP and Article 26 of the By-Law on Apprehension, Detention and Statement-Taking; the custody rooms, interrogation rooms, the conditions of the detainees, the reasons and periods of their detention and all the records and actions regarding the apprehension and detention are inspected by the Chief Public Prosecutors or the Public Prosecutors they will assign, as a part of their judicial duties. In accordance with Article 9 of the By-Law, during their moment of apprehension and their detention period, the health conditions of the detained people are subject to medical control in line with the relevant legislation. The health

condition of the detainee is determined by a doctor report, also prior to the procedures of his/her relocation for any reason, extension of detention period, being released or being referred to judicial authorities;

- The police stations and the custody rooms are inspected within the context of the provincial and district general inspections, which are conducted regularly by the civil inspectors. The relevant observations, evaluations and criticisms in these inspections are reflected in the inspection reports and the follow-up and implementation of these reports are ensured by sending them to the relevant law enforcement units;
- Camera and surveillance systems are present in 3.913 of the 3.946 detention centres that are under General Directorate of Security. Installation of said systems for the remaining 7 detention centres is in the process. Installation of camera systems to the 1.946 of 2.012 detention rooms under the Gendarmerie General Command is completed;
- In addition, the Law Enforcement Monitoring Commission was established to ensure the effective and swift functioning of the law enforcement complaint system, enhance its transparency and accountability, record and monitor the actions carried out or needed by the administrative authorities due to the actions, attitude or behaviours requiring disciplinary punishment or due to the alleged crimes committed by law enforcement officers;
- The penal institutions can be inspected regularly or any time when needed by the parliament and national/international inspection mechanisms;
- Within the context of administrative inspection, the penal institutions are inspected by the inspectors of Ministry of Justice, the controllers of General Directorate of Prisons and Detention Houses, other officers of General Directorate of Prisons and Detention Houses, Chief Public Prosecutors and Public Prosecutors responsible for penal institutions;
- The Ministry of Justice's Memorandum on Investigations of Human Rights Abuses and Torture and Ill-treatment Claims no. 158 of 20 February 2015 states that the investigations on the human rights abuses, torture and ill-treatment claims shall not be left to law enforcement officers but conducted efficiently and effectively by a chief public prosecutor or a public prosecutor assigned;
- The provincial or district human rights boards established by civil society representatives of provinces and districts can also visit and inspect the penal institutions;
- The Human Rights Inquiry Commission of the Parliament, members of monitoring committee, judges of execution, probation officers, boards and people authorized by laws can have private conversations with the inmates;
- In addition to these inspection mechanisms, a unit under Ministry of Justice was established in the post July 15 period to keep track of the claims in the press about ill-treatment and torture in the penal institutions. The aforementioned unit meticulously keeps track of every news and comment in the press and it notifies the competent authorities for an immediate examination. It also announces the results of the examination to the public.

Cases involving the claims of torture

51. The ECtHR, between 1 March 2012 and 31 December 2019, gave only 2 decisions of violation on prohibition of torture, out of all the applications regarding Article 3 of the ECHR. These judgments are *Ateşoğlu v. Turkey* (53645/10) dated 20 January 2015 and *Afet Süreyya Eren v. Turkey* (36617/07) dated 20 October 2015. These judgments pertain to the events that took place in 2002 and 1999 respectively.

Reply to paragraph 13 of the list of issues Article 3/5 of the Law no. 6713 on the establishment of the Law Enforcement Monitoring Commission states, “No organ, authority or person may give orders and instructions or recommendations and suggestions in order to influence Commission decisions.”. Article 4/1 of the Implementation By-Law provides, “All works and proceedings regarding the law enforcement complaints system shall be conducted in accordance with the principles of specialization, transparency, accountability, timeliness, participation, independence and impartiality.”. Article 4/2/e of the By-Law states, “The fact that the Commission conducts its duties independently and impartially under its authority and responsibility means the fair, impartial and independent execution of the duties of the superintendents in the group of inspectors assigned for conducting research, investigation or preliminary examination regarding the law enforcement complaints and other personnel assigned for this purpose.”.

53. The Law Enforcement Monitoring Commission (the Commission) was established as a permanent board within the Ministry of Interior. Pursuant to Article 245 of the Presidential Decree No. 1, the Ministry of the Interior is responsible for protecting the fundamental rights and freedoms enshrined in the Constitution. In this respect, it has been deemed appropriate that the Commission be established within the body of the Ministry of Interior in order to ensure coordination and cooperation among general law enforcement agencies throughout the country and to ensure the protection of fundamental rights and freedoms.

54. The Commission is chaired by the Deputy Minister of Interior and consists of the Head of HREIT, Head of Civil Inspection Board, Director General for Legal Affairs of the Ministry of Interior, Director General for Criminal Affairs of the Ministry of Justice, one member from the faculty members lecturing at the university departments of penal law and law on criminal procedure and one member from self-employed lawyers qualified to be elected as the bar president, to be elected by the President of Turkey. The term of office of the members to be elected as commission members from among the faculty members and self-employed lawyers is four years, and these members cannot be removed from office except for statutory conditions. The Commission should perform its duties and powers independently under its own responsibility. All ministries and other public institutions and organizations are obliged to submit the requested information and documents to the Commission without prejudice to special provisions in the law.

55. Law no. 6713 and the implementing By-Law aims to establish a structure that could function independently. The representatives of law enforcement are not included as members of the Commission according to Article 3 of the Law. Besides, more than half of the total number of members of the Commission consists of members from outside the Ministry of Interior. The Commission performs its duties and powers independently under its responsibility. It has been envisaged by the Budget Law that necessary allowance be granted to the budget of the Ministry of Interior every year for the expenses of the Commission. This has been legally guaranteed and no power of discretion has been granted to the administration.

Reply to paragraph 14 of the list of issues The mentioned regulation was introduced to protect public officials from false allegations and manifestly ill-founded accusations that they may be subjected to in their continued fight against terrorism. It is not intended to provide security forces impunity from being subjected to investigations regarding torture or ill-treatment allegations. No investigation permit regarding the said crimes has been requested against any personnel so far.

Reply to paragraph 15 of the list of issues

57. The Fundamental Law on Healthcare Services no. 3359 contain regulations regarding the supervision of the activities of all health personnel, public and private institutions in terms of compliance with policies and regulations. The said law and its addendum do not restrict or interfere with the access of persons who claim to have been tortured and ill-treated or other persons to health services.

Reply to paragraph 16 of the list of issues

HREITHREIT acts as the national prevention mechanism in accordance with Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

59. According to Law no. 6701, HREIT is an independent public legal entity with administrative and financial autonomy and a private budget.

60. Article 149 of the Decree Law no. 703 dated 9 July 2018 stipulating an amendment in Law no. 6701, states that all members of the Board shall be appointed by the President. Two months before the expiration of term of office of the members elected by the President, the vacancy is announced to the public by appropriate means of communication. Applications and candidate notifications are made to the Presidency. Therefore, the election process is transparent and open to every citizen who can be elected as a Board member without any restrictions.

61. In accordance with the Paris Principles, the current members of the Board have been elected in line with the principle of pluralistic representation among those working previously in the field of human rights and working in various civil society organizations, including management. In this framework, two of the members of the Board have been senior executives in various non-governmental organizations, one is an academic in the field of human rights and the other worked as a manager in media organizations. The other members are postgraduates in the field of human rights. In addition, a visually impaired woman who has been engaged in various activities in the international human rights field is also a member of the Board.

62. HREIT's national prevention mechanism (NPM) function is carried out by a separate unit within the Institution. 18 personnel work at the NPM Unit. The financial resources of the NPM are allocated from the national budget separately from the Ministry of Justice's budget. The NPM Unit functions on a separate floor within the Institution building, has its own staff and the opportunity of using the autonomous budget allocated to the Institution.

63. Within the scope of NPM function, 37 places of detention or protection were visited in 2019. After each visit, reports including the findings, evaluations and recommendations of the NPM are prepared and forwarded to the relevant institutions. The activities in this context are carried out on the basis of cooperation.

64. HREIT is entitled to examine the allegations of discrimination and torture, and violation of the prohibition of ill-treatment upon application or *ex officio*. It has been stipulated that the Institution shall prepare annual reports to be submitted to the Presidency of the Republic of Turkey and the Parliament in the fields of protection and improvement of human rights, fight against torture and ill-treatment and fight against discrimination.

Opening Visit Reports to public access

65. The reports of the Human Rights Inquiry Commission of the Parliament are available via "<https://www.tbmm.gov.tr/komisyon/insanhaklari/index.htm>". The reports of HREIT are available via "<https://www.tihk.gov.tr/>" and, other relevant reports could be found through open sources. The Ministry of Justice publishes a report every year, disclosing the number of the reports issued by the monitoring committees of the previous year, their subjects, their recommendations and whether the recommendations were fulfilled or not with reasons to the public, excluding the issues related to the security of the penal institution.

66. The CPT reports regarding its visits to Turkey on 10–23 May 2017 and 6–17 May 2019 and Turkey's observations have been made public on 5 August 2020. The SPT visit report dated 14 July 2016 and the Government reply is published by SPT on 17 October 2019.

Reply to paragraphs 17 and 18 of the list of issues

67. As per the request of the Committee, the Government had previously provided information on the subject in its initial observations as a follow-up to the concluding observations (CAT/C/TUR/CO/4/Add.1) dated 8 November 2016. The Government further

assesses that the subject does not exactly fall within the scope of this report. Nevertheless, in spirit of cooperation, the following information is provided.

68. Article 159 of the Constitution states; “The Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges.”. Article 3/6 of the Law No. 6087 on the Council of Judges and Prosecutors provides, “The Council is independent in performing its duties and exercising its powers. No organ, authority or person may give orders or instructions to the Council.”. Article 3/7 of the same Law states, “The Council performs its duties within the framework of the principles of justice, impartiality, integrity and honesty, consistency, equality, competence and merit, taking into account the independence of the courts and the tenure of judges and prosecutors.”.

Regarding the legality of dismissal from duty

69. It is not possible for a country governed by the rule of law, democratic values and human rights to allow any structure to replace the legitimate authority of the state and laws in force, which was the very aim of FETO. In a democratic country, public officers must behave in accordance with the Constitution, with their obligation of loyalty and the relevant law that regulates their duties. It is legitimate for a democratic state to require that public officers display loyalty to the constitutional order. Therefore, dismissals from public duty were founded on legal grounds.

70. Within the Turkish system, duties and obligations of public servants are set out in Article 129 of the Constitution which states: “Public servants and other public officials are obliged to carry out their duties with loyalty to the Constitution and the laws.”. The duties and obligations of public officers are more specifically regulated by Law no. 657 on Civil Servants that introduces in Article 6 the obligation of loyalty towards the State. Article 7 of Law no. 657 brings additional elements to the obligations of loyalty: “Civil servants cannot be members of a political party, they cannot act in a manner that would benefit or harm a political party, person or group; while performing their duty they cannot discriminate on the basis of language, race, gender, political thought, philosophical belief, religion and sect; they cannot make declarations and take action for political and ideological purposes and cannot participate in these actions. Civil servants are obliged to protect the interests of the state in all cases. They cannot pursue any activity that is contrary to the Constitution and laws of the Republic of Turkey, that would damage the country's independence and integrity, that would compromise the security of the Republic of Turkey. They cannot participate in or assist any movement, grouping, organization or association operating in the same nature.”.

71. Therefore, it is explicitly forbidden for a civil servant to act in contradiction with the constitutional order, and the Turkish State has the right to require from those employed in public service to act in conformity with their obligation of loyalty.

72. Civil servants undergoing an investigation on the basis of membership to a terrorist organization (Article 314 of the TPC) or violation of the Constitution (Article 309 of the TPC) are suspended from their duties because of the seriousness of the offence charged against them, the disruption of the public service and the threat they represent to national security. The measure of suspension from duty is foreseen in Article 137 of Law no. 657 as an interim measure that can be taken at any stage of the investigation regarding civil servants who may be inconvenient to remain in office. Those civil servants undergo disciplinary proceedings that can lead to four different types of sanction, namely warning, reprobation, suspension of grade advancement or dismissal from public duty.

73. Civil servants who were members of FETO undertook important public duties by secretly infiltrating into all public institutions, manipulated public proceedings and transactions for the interests of FETO by acting together through groups they established, assisted the plotters in the coup attempt, communicated private and confidential information of the state and violated their loyalty obligations towards the state. Therefore, in addition to the interim measure of suspension from duty explained above, as the fact that they remain in office would undeniably constitute a great threat to national security, measures taken through Emergency Decree Laws were applied.

74. Citizens who are subject to the Decree Laws are not isolated from life or stripped off all social rights. However, because of unlawful activities they undertook, it was vital for Turkey to prevent members of FETO from operating in certain areas related to national security and public order.

Examination of the petitions submitted by suspended judges and public prosecutors

75. Prior to launching investigations and disciplinary procedures, the CJP received several allegations from the public as well as from other prosecutors regarding the misuse of legal proceedings by some judges and prosecutors to the advantage of FETO. Therefore, an important number of administrative and judiciary investigations were already initiated before 15 July 2016 and those investigations have constituted one of the grounds leading to the decision of the CJP.

76. Inspection Board of the CJP identified a large number of judges and prosecutors as members of FETO. Before the coup attempt, 1.479 files were opened by the CJP concerning complaints regarding 2.146 judges and prosecutors. In addition, there were 989 judges and prosecutors against whom permission to launch an investigation were issued.

77. In accordance with the investigations and disciplinary procedures it had previously launched, after the coup attempt, 2.735 judges and prosecutors were suspended. Therefore, contrary to the allegations, judges and prosecutors against whom there was a strong suspicion of membership to or affiliation with FETO were first suspended by the CJP, and they were dismissed only after sufficient evidence was collected against them through the investigations and disciplinary procedures carried out by the CJP.

78. The Decree Law no. 667 states in Article 3/1 “Continuation in the profession of those who are considered to be a member of, or have relation, affiliation or contact with terrorist organizations or structure/entities, organizations or groups established by the National Security Council as engaging in activities against the national security of the State, shall be found to be unsuitable and their dismissal from the profession shall be decided by the Plenary Session of the High Council of Judges and Prosecutors in so far as judges and prosecutors are concerned.”.

79. Within the scope of Article 3/1 of Decree Law no. 667, the CJP has decided the dismissal of judges and prosecutors affiliated with FETO. In order to decide on dismissal cases, the CJP analyzed the activities carried out by persons in question and based its decisions on evidences that indicated affiliation with FETO.

80. It is necessary to underline that the CJP has also admitted the petitions of hundreds of judges and prosecutors who were dismissed from profession with respect to re-examination of their cases.

81. Pursuant to appeal, hundreds of judges and prosecutors have been reinstated through the administrative review of the CJP. In addition, the finalized dismissal decisions of the CJP are subject to judicial review of administrative courts as well as the Council of State.

82. The Council of State began to examine the cases in terms of merit as of 23 January 2017, the date the Decree Law no. 685 came into force.

83. The complainants were provided convenience by initiating the term of litigation against the relevant decisions not from the date of issuance of the Decree Law no. 685, but from 8 March 2018 when the Law no. 7075 on the amendment and approval of the Decree Law by the Parliament, entered into force.

84. The complainants’ claim of legal aid is accepted.

85. Regarding cases with trials, the complainants who are in the penal institutions and could not attend the hearings due to their excuses have been given the opportunity to benefit from the Audio and Video Information System (SEGBIS) in order for them to attend the trials easily and to conclude the trial with the least possible expense within the shortest time.

86. In order to provide equity regarding the right to a fair trial and the principle of adversarial proceedings, the rules of procedure have been interpreted quite broadly in these cases. All information and documents submitted to the case file are communicated to the

complainant at every stage of the proceedings, and the complainant is given the right to respond by giving additional time following the defendant's second reply petition.

87. Efforts are made to finalize the cases that were filed in the 5th Chamber of the State Council as soon as possible. The files, which have been made available for decision, are forwarded to the Office of the Advocate General of the Council of State for compulsory opinion in accordance with the procedural legislation.

Inquiry Commission on State of Emergency Measures

88. Pursuant to the recommendations of the CoE, “*Inquiry Commission on State of Emergency Measures*” (the Commission) was established with Decree-Law no. 685 and started functioning on 22 May 2017 in order to assess and conclude the applications concerning administrative acts which were carried out directly by the Decree-Laws within the scope of the SoE.

89. The Commission started to receive applications on 17 July 2017. The Commission received 126.300 applications. As of 3 July 2020, the Commission issued 108.200 decisions, 12.200 of those were decisions of acceptance of the claims. Accordingly, the Commission has decided regarding more than 85% of the total applications in two and a half years. Domestic legal remedies are available against the decisions of the Commission. The Commission was recognized as a domestic remedy to be exhausted by the ECtHR.

90. The decisions of the commission are delivered to the relevant institutions. The assignment proceeding of those whose applications are accepted shall be made by those institutions. Regarding the decisions of the Commission, within sixty days from the notification of the decision, an annulment case may be filed before the Ankara administrative courts.

91. As an effective domestic remedy, the Commission makes individualized and reasoned decisions on applications as a result of rapid and comprehensive review. In this context, it is targeted that all application files, which are still under examination, will be finalized within 1 year.

92. The Constitutional Court decided that the expression in Article 2/3 of Law no. 7075 “... *with additional measures...*” is contrary to the Constitution and abolished it (The Constitutional Court, Case no: 2018/74, Decision no: 2019/92, dated 24.12.2019). Pursuant to the decision, the parties concerned could apply to the Commission against measures such as public dismissal or closure of institutions and organizations, as well as against measures such as the cancellation of the arms license and passport due to dismissal from public office or transfer of the assets to the Treasury depending on the closure of institutions and organizations.

Reply to paragraph 19 of the list of issues

93. The freedom of opinion and expression is guaranteed in the Constitution. In this context; in the TPC, there is no crime that can be described as a “*crime of opinion or expression*”. There are no convicts and detainees held in penal institutions merely for press activities. It is examined whether the convicts and detainees in penal institutions who claim to be press employees have records registered to the Social Security Institution and press credentials according to the records of the Presidency of the Republic of Turkey Directorate of Communications or not. Some convicts and detainees who are members of other professions are falsely presented by some organizations as members of the press. There are no complaints that falls within the scope of the mandate of the Committee. The judicial procedures regarding the individuals mentioned in this paragraph continue.

94. The institutions closed based on the provisions of the Decree Law could make applications to the Inquiry Commission on State of Emergency Measures against the closure proceedings.

Reply to paragraph 20 of the list of issues

Measures Applied on Gender-based Violence

95. The Law no. 6284 to Protect Family and Prevent Violence Against Woman entered into force on March 20, 2012. The purpose of the law is to regulate the procedures and

principles with regard to the measures to be taken in order to protect women, children, family members who have been subject to violence or at the risk of violence and individuals who are the victims of stalking and to prevent violence against those people. In case of a request to benefit from legal assistance, applicants are not charged for the expenses regarding procedures carried out under the Law.

96. The persons within the scope of the law and exposed to violence or are at risk can apply to governorates, district governorates, police stations, gendarmerie stations, Chief Public Prosecutor's Office, Family Courts, Provincial Directorates of Family and Social Policies, Violence Prevention and Monitoring Centres and health institutions for complaints and notices and benefit from emergency telephone lines such as Family, Woman, Child and Disabled Persons Social Service Consultancy Hotline, Domestic Violence Hotline and Gelincik Hotline. Provincial Directorate of Family and Social Policies, non-governmental organizations, municipalities, centres for family consulting and community centres provide services for counselling, support, shelters / guesthouses and financial aid.

97. The procedures related to the matters within the scope of the Law no. 6284 are carried out immediately by the relevant law enforcement units, and the "*protective and preventive measures*" decisions are taken by law enforcement officers in case of a non-delayable situation.

98. "*Combating Violence against Women and Domestic Violence*" units which, alongside with the bureau offices in district level totalling 1.005 offices, have been established within the Department of Public Order of the Ministry of Interior General Directorate of Security and the Branch Offices in 81 Provincial Directorates of Security, in order to ensure that the services related to combating violence against women and domestic violence are carried out more effectively, to set standard investigation methods by identifying problems in practice, to improve the existing services and to put the measures for victims into practice in cooperation with institutions and organizations with a multi-dimensional understanding. For following up the actions taken pursuant to Law no. 6284, 96 department offices have also been established within the "*Juvenile and Combating Domestic Violence Branch Directorate*" in 81 Provincial Gendarmerie Commands.

99. An application called "*The Women Emergency Assistance Notification System (KADES)*" was launched on March 24, 2018 for female smartphone users in case of emergency and through this application women may reach 155 Police Emergency Call Centre with just one click by unlocking their device's location information which afterwards nearest police teams and patrols are sent to the location.

100. Police officers have been appointed at "*The Violence Prevention and Monitoring Centres (ŞÖNİM)*" established in the provinces to ensure support and monitoring services regarding the prevention of violence against women, the effective implementation of protective and preventive measures.

101. Ensuring that the law enforcement officers can take measures to protect the victims of violence from those people who have committed or are likely to commit violence, pilot implementation of "*electronic bracelet*" has been put into effect.

Training for Judges and Prosecutors

102. The Justice Academy of Turkey provides lectures on the Law no. 6284 on the Protection of Family and Prevention of Violence Against Woman and on Victim Rights and Practices for candidate judges and prosecutors.

Training for the Units of the Ministry of Interior

103. Regarding the training of law enforcement officers, in order to ensure that the services related to combating violence against women and domestic violence are conducted more effectively, that effective crime investigation is carried out, and that protective and preventive measures are taken within the scope of Law no. 6284; in 81 provinces, personnel working in all units in the field of combating violence against women and domestic violence are being trained on the related subjects. The Academy's curriculum includes national and international legislation on domestic violence and violence against women, manner of approaching to

victims of violence and law enforcement practices, juvenile law, prevention of juvenile delinquency, child development and psychology.

104. With the "*Circular on Combating Violence Against Women*" published on January 1, 2020, vocational training will be provided to all the personnel of the General Directorate of Security, Gendarmerie General Command and Coast Guard Command on the prevention of domestic violence and violence against women between 2020-2021. Around 500.000 law enforcement personnel are planned to be trained on these issues.

105. Within the scope of the "*Law Enforcement Capacity Building Training Cooperation Protocol on Combating Violence Against Women*" signed between UN Population Fund Turkey Country Office (UNFPA) and the Ministry of Interior, for 134 gendarmerie personnel in the Children's and Women's Section Chiefs, the Gendarmerie and Coast Guard Academy personnel and Guidance and Counselling Centres, training was provided for a 5-days each in 6 terms between the dates of 16 April and 12 May 2018. 11,641 Gendarmerie personnel in total were trained in 2018. 131 civil administrators on the other hand attended the training on "*Women and Children's Rights Based on Human Rights*" in 2019 within the framework of the cooperation protocol signed with UNFPA.

106. Online course "*Training on Prevention of Violence Against Family and Women*" has been made available to all Ministry personnel as of March 2020, through the e-Interior Academy system of the Ministry of Interior.

107. Within the scope of the 2019 Presidential Program, in cooperation with the Ministry of Family, Labour and Social Services and UNICEF, a training seminar on "*Combating Early and Forced Marriages and Violence Against Women*" was provided for 146 personnel working in the field of combating domestic violence and juvenile delinquencies within the Gendarmerie General Command between 8-12 April 2019.

108. For more information on the subject, see Turkey's periodic reports submitted to Committee on the Elimination of Discrimination against Women (CEDAW).

Article 3

Reply to paragraph 21 of the list of issues

Steps Taken in Compliance with the Convention

109. Turkey is a party to the 1951 Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees. Article 33 of the 1951 Geneva Convention ensures the "*Prohibition of Expulsion or Refoulement*".

110. Accordingly, Article 4 of Law no. 6458 on Foreigners and International Protection, states that "No one within the scope of this Law, shall be returned to a place where he or she may be subjected to torture, inhuman or degrading punishment or treatment or, where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.". All the procedures regarding the foreigners in Turkey are carried out within the framework of these provisions.

Access to Asylum Procedures and Execution of Individual Assessment Requests

111. In Article 65 of Law no. 6458, it is ensured that international protection applications shall be lodged with the governorates in person and the procedures related to the application shall be carried out by the relevant governorates. The same regulation stipulates that the persons who apply to the governorates for international protection within a reasonable period of time on their own accord shall not be subjected to criminal action for breaching the terms and conditions of legal entry into Turkey or illegally stay in Turkey, provided that they provide acceptable reasons for such illegal entry or presence.

Applied Procedures for timely identification of victims of torture among asylum seekers

112. In 2017, "*Data Update Project*" was conducted in cooperation with the Ministry of Interior Directorate General of Migration Management and the United Nations High Commissioner for Refugees (UNHCR) and within the scope of this project "*Protection*

Desks” have been set up. The project is completed by the end of 2018 and the “*Supporting Provincial Directorates of Migration Management Project*” was launched. Thus, the scope of the protection desks has been extended to include also the foreigners under international protection within the framework of this project.

113. Protection desks carry out detailed interviews with the people with special needs and gather information about the special needs and family of the foreigner. As a result, foreigners who are considered to have special needs are directed to relevant public institutions and organizations according to their needs. At the same time, the files of families considered to be suitable for resettlement by the protection desks are sent to the Directorate General of Migration Management within this scope and submitted to the third countries through the Directorate General and UNHCR.

1951 Convention

114. Paragraph 4.25.2 of the “National Action Plan of Turkey for the Adoption of EU Acquis” published in the Official Gazette No. 24352 of 24 March 2001 reads, “removing the geographical restrictions introduced by Geneva Convention of 1951 regarding asylum will be evaluated depending on realising the amendments to legislation and infrastructure in a way that would not encourage an asylum flow into Turkey and EU countries’ being sensitive about sharing burden.”. In this framework, necessary legislation and infrastructure work is envisaged to be completed until the day when Turkey becomes a member of the EU in line with the principle of burden sharing with the EU, before removing geographical restrictions.

Turkey-EU Agreement of 18 March 2016

115. Pursuant to the cooperation clauses regarding migration in the “*Turkey-EU Statement*” agreed between the Republic of Turkey and the EU on 18 March 2016 in Brussels, the return of all new irregular migrants crossing from Turkey to the Greek islands as of 20 March 2016 started on 4 April 2016. Among the migrants who reached the Greek islands only those whose international protection application is rejected or who do not need international protection are accepted to return.

116. Within the scope of the Agreement, in exchange for a Syrian migrant repatriated from the Greek islands, it is envisaged to place a Syrian migrant in the Member States under temporary protection. Liaison officers are currently assigned on the islands of Lesbos, Kos, Chios, Samos and Leros to monitor the procedures and obtain regular information of irregular migrants crossing to the Greek islands.

117. Syrian migrants who returned to Turkey, are transferred to the city of residence or to the appropriate sheltering centres and they are taken under temporary protection in accordance with the amendments made in the By-Law on Temporary Protection. However, other foreign nationals are sent back to the removal centres.

118. The resettlement method established in order to prevent irregular migration from Turkey to the EU is called “*resettlement within the scope of one-for-one*”. The resettlement procedure under one-for-one formula has been implemented since 4 April 2016. Below is a table with statistics on the subject.

Statistical Information Relating to the Syrians Exiting Turkey within the scope of One-for-One Formula

Country	Total
Grand Total	26,143
Germany	9,501
France	4,549
Netherlands	4,464
Finland	1,950
Sweden	1,917
Belgium	1,301
Spain	754

Statistical Information Relating to the Syrians Exiting Turkey within the scope of One-for-One Formula

Italy	396
Croatia	250
Portugal	244
Austria	213
Luxembourg	206
Lithuania	102
Bulgaria	85
Estonia	59
Latvia	46
Slovenia	34
Romania	31
Denmark	24
Malta	17

Reply to paragraph 22 of the list of issues

119. Tables related to the subject are below.

International Protection Application Numbers by Years

2014	34,112
2015	64,232
2016	66,167
2017	112,415
2018	114,537
2019	56,417

Number of Syrians Under Temporary Protection by Years

2014	1,519,286
2015	2,503,549
2016	2,834,441
2017	3,426,786
2018	3,623,192
2019	3,576,370
2020 (as of June)	3,591,892

Number of Syrians Staying Inside and Outside Temporary Accommodation Centres

Outside	63,653
Inside	3,529,239

Reply to paragraph 23 of the list of issues

120. Tables related to the subject are below.

Number of Irregular Migrants Caught by Years

2014	58,647
2015	146,485
2016	174,466
2017	175,752
2018	268,003
2019	454,662

Number of Irregular Migrants Caught by Years

2020 (as of June)	63.560
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Number of Deportees by Years

2016	15,848
2017	35,307
2018	56,459
2019	103,858

Articles 5-9

Reply to paragraph 24 of the list of issues

121. Articles 8, 11 and 12 of the TPC, regulating the jurisdiction in respect of the principle of territoriality, active and passive personality principles, respectively, as well as Article 10 by which the jurisdiction over the offences committed by public officials during the performance of their duties abroad, are still in effect and include the circumstances stipulated in Article 5 of the Convention. No new legal regulation has been made on these issues.

Reply to paragraph 25 of the list of issues Turkey has made Extradition Treaties with 30 countries. Turkey is also a party to the European Convention on Extradition. International Judicial Cooperation on Criminal Matters Law no. 6706 adopted on 23 April 2016 also regulates the principles on extradition.

123. In the European Convention on Extradition and bilateral extradition treaties, there exists no direct restrictive provision for the extradition of the offenders who commit torture or participate in torture to the requesting countries.

124. In accordance with the similar regulation in the European Convention on Extradition, sub-paragraphs 11/1-(b) and (d) of Law no. 6706 provides the circumstances under which the request for extradition shall not be accepted: "...if there are strong reasons for suspicion that the person for whom the extradition is requested would be subjected to an investigation or prosecution or punished or subjected to torture or ill-treatment due to race, ethnicity, religion, citizenship, membership of a particular social group or political views" (11/1-b) and "if the extradition request is related to the offence that requires *the death penalty or a penalty incompatible with human dignity.*" (11/1-d).

125. Pursuant to Article 10/2-in which the minimum period related to extradition of offenders is regulated-of the International Judicial Cooperation in Criminal Matters Law no. 6706, with the provision "Request for extradition may be accepted during the investigation or prosecution phase for offences which require the upper limit of the sentence of deprivation of liberty to be at least one year according to both the law of the requesting State and Turkish law. With regard to finalized convictions, the request for extradition may be accepted if the imposed sentence is deprivation of liberty for at least four months....", it is intended that the required minimum amount of penalty during the extradition is brought in conformity with the European Convention on Extradition on the minimum amount of penalty.

Reply to paragraph 26 of the list of issues Turkey is a party to the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959. Turkey also signed bilateral agreements with 32 countries regarding judicial assistance in criminal matters.

127. As per the provision in Article 1/2 of the International Judicial Cooperation in Criminal Matters Law no. 6706 stating "This Law shall cover the judicial cooperation to be conducted with foreign States in criminal matters", the parties of the judicial cooperation in criminal matters shall merely be States. Hence, judicial assistance could not be made with the other international institutions and courts.

128. Despite the lack of the explicit provisions regarding the transfer of evidence in the International Judicial Cooperation in Criminal Matters Law no. 6706, the transfer of evidence is allowed in the European Convention on Mutual Assistance in Criminal Matters to which Turkey is also a party and in some of the bilateral agreements that Turkey has signed with other countries.

Reply to paragraph 27 of the list of issues Turkey applies different proceedings for those whose extradition was requested as to whether they are Turkish citizens or not. Within this frame, if someone whose extradition is requested is a foreigner in Turkey and there is an extradition request regarding him/her for the offence of torture, the extradition procedures of this person to the requesting State shall be conducted in accordance with the bilateral agreements in force between the requesting State and Turkey or pursuant to the European Convention on Extradition and the Law on International Judicial Cooperation in Criminal Matters, no. 6706.

130. If the requested person for extradition has the Turkish citizenship, the Turkish citizens may not be extradited to a foreign country as per Article 38 of the Constitution. However, the Office of Chief Public Prosecutor shall be notified to launch investigation about the Turkish citizen in question for the offence of which extradition is requested.

Article 10

Reply to paragraph 28 of the list of issues

Training for the Personnel of the Penal Institutions

131. Human rights have a special place in the training programs of the personnel working in penal institutions. In the four-week training for the new penal institution wardens and in the trainings provided on the basis of unit or subject by the characteristics of the duty, the personnel are informed on the need for respect and protection, non-infringement of human rights and the elimination of the human rights violations and the absolute prohibition of torture.

132. The courses include the case-law of the ECtHR regarding the execution practices carried out in other member countries of the Council of Europe and in Turkey (by exemplifying the Court judgments separately for each article of the Convention). In addition to the face-to-face trainings and practices, the content of the course is also delivered to the trainees through books distributed to each trainee participating in the training.

133. In the "*Professional Intervention Techniques and Tactics*" course, the necessity for moderate and legal use of force merely as a last resort when the circumstances allow is taught by mentioning the international standards (the Council of Europe's Prison Rules (2006) the UN Nelson Mandela Rules) on the use of force originating from the legal regulations in the penal institutions.

134. Through the courses given by the faculty members of the Institute of Forensic Medicine and the Public Prosecutors and including also the "*Istanbul Protocol*" as a private course, the forensic medicine trainings are organized for the administrative officers for the effective execution of the forensic medicine procedures including torture and ill-treatment cases in the penal institutions.

135. At the end of all training programs carried out in personnel training centres of the penal institutions, the post-training questionnaire studies are conducted regularly to determine the effectiveness of the trainings. The post-training assessment reports regarding all training programs are prepared and the results are analysed by the personnel of the Bureau of Assessment and Evaluation of the Directorate General for Prisons and Detention Houses.

136. In 2019; 20.761 penal system personnel participated in 134 different types of training programs. In addition to face-to-face training at training centres, vocational service quality and training needs of the personnel working in the penal system are also supported by regular distance training and on-site training practices.

137. The national and international execution legislation and standards, human rights, occupational ethics, convict / detainee psychology, coping with difficult behaviour, effective communication, and use of force are the key topics in the training contents of the penal system personnel. The effectiveness of the trainings is measured via assessment and evaluation practices that are regularly applied in electronic environment, and the training programs and contents are updated in accordance with the determined requirements.

Training for Healthcare Personnel

138. The responsible doctors and nurses of the psychiatry clinics with 10 and more beds, the Psychiatric Hospitals and the High Security Forensic Psychiatric Hospitals participated in the training courses prepared by HREIT.

Trainings for Law Enforcement Personnel

a) *Training for Police Officers*

139. Provincial General Directorates of Security and other relevant law enforcement units receive in-service training on the issue of torture and the prevention of torture. For the police officers, trainings such as "Police for Children Training" and "Child Sexual Abuse Investigation Training" continue. "Human Rights" course was provided for 63.808 personnel in 2018, 33.731 personnel in 2019 and 4.602 personnel in 2020 as of 20 August.

140. In general, a total of 251.470 personnel of the General Directorate of Security have been trained in the field of human rights since 2017, of which 64.135 in 2017, 118.403 in 2018, 65.044 in 2019 and 4.248 in 2020 were given training.

141. On the other hand, it is ensured that the personnel working at the headquarter and in the provincial organization of the Counter Terrorism Department of the Ministry of Interior receive regular in-service trainings on protection of the individual rights and freedoms, public order and security and public peace. In this context, in 2017, 3.914 personnel, in 2018, 587 personnel and in 2019, 4.177 personnel participated in human rights courses.

b) *Training for Gendarmerie Personnel*

142. Audio-visual Basic Human Rights training is given to privates and non-coms. In addition, the points to take into consideration regarding the basic human rights are explained through case studies for minimum 2 hours each week. The training is provided on the basic rights and freedoms for 4 weeks in the training units, 2 hours each week in the units for the officers, sergeants, specialist gendarmes and specialized sergeants.

143. "The Acts of Torture and Ill-treatment and the Absolute Prohibition of Torture", Turkish Criminal Law and Criminal Procedure Law trainings are provided in the human rights courses for the trainees at the Training Centres of the Officers and Sergeants. Besides, the quarterly on-site trainings are organized in order to strengthen the coordination between the headquarters and units by enhancing the knowledge of the personnel on human rights issues, to introduce the human rights manuals to the personnel, to inform on the standards of the CPT and the case-law of the ECtHR, to explain the national and international human rights legislation during the discharge of the duties and activities. In the on-site training activities carried out between 2009-2019, 3.164 personnel were trained.

Article 11

Reply to paragraph 29 of the list of issues Following the closure of the penal institutions which are not in line with the contemporary penal system regime in terms of the physical conditions and where the required improvement could not be provided, modern penal institutions with high security conditions are currently built, by taking into consideration the location and physical conditions, and with more capacity. These new penal institutions complying with the criteria included in the standards of the UN and the CoE have the physical structure and facilities which will in practice eliminate the safety and security problems, offer opportunities for contemporary rehabilitation methods, provide a favourable environment for social, cultural and physical activities. Since 2002, 210 such institutions have been constructed.

145. The minimum penal institution standards stated in the Council of Europe Committee of Ministers Recommendations on the Criminal Enforcement have been taken into consideration. According to the standards determined by the CPT, the minimum living area for the single rooms is 6 square meters, the desirable living area is 9 square meters and in multiple rooms the minimum amount of living area for each person is determined as 4 square meters.

146. Currently the single rooms in the penal institutions are determined as 11 square meters minimum and 16 square meters maximum. The minimum living area for each convict in multiple rooms is 4 square meters.

147. As per Article 63/4 of the Law on the Execution of Penalties and Security Measures, heating systems for penal institutions are installed considering the geographical and climatic conditions of the location.

148. Improvements are made to current penal institutions in terms of sanitary order by means of maintenance and repair done within the scope of the General Budget Allowances in accordance with the received requests.

149. Concrete results of these efforts are acknowledged. After the coup attempt on 15 July 2016, many interim measure applications concerning the conditions in prisons have been submitted to the ECtHR by applicants affiliated with FETO. The ECtHR communicated to the Government 37 of them that they considered serious. All of the interim measure applications have been rejected by the ECtHR after the information provided by the Government regarding the conditions in prisons.

150. To prevent overcrowding, the Law no. 7242 came into force on 15 April 2020 overhauling the penal execution system and introducing a set of measures to reduce overall prison population. It reregulated, inter alia, prison terms that have to be spent prior to conditional release, enhanced alternatives to imprisonment (special procedures in executing prison sentences of those in vulnerable situations, such as women, elderly, seriously ill or disabled convicts), and introduced a pandemic-specific leave for the convicts placed or eligible to be placed in open institutions.

Reply to paragraph 30 of the list of issues Regarding durations of holding in the detention rooms, see paragraph 24.

152. According to Article 22 of the Detention Room Guideline of the General Directorate of Security, “(1) Detention rooms are kept clean. In these terms, (a) Daily cleaning is made when the detention rooms are empty. (b) Following the persons’ exit of the detention room and when necessary, the cleaning is made. Regular controls are made to ensure that any foreign matter or tool does not exist in the detention room and these are recorded.”. According to Article 14 of this Guideline, in each corridor (common area 9.80-1.50 square meters); there exists 1 bathroom (2.20-1.25 square meters), 2 WCs (2.20-1.10 square meters), 2 washrooms (2.20-1.45 square meters) and one WC which is used for the disabled persons.

153. The detention rooms are in compliance with the standards articulated in Article 25 of the Guideline. According to the article “The detention rooms should have at least 7 square meters of width and 2.5 meters height and there should be at least 2 meters of distance between the walls. Efficient natural lighting and ventilation should be provided. However, if

the facilities of the detention room are insufficient due to the high number of suspects, other places having the physical conditions that are fit for the detention rooms can be used. In the detention rooms, sufficient areas of sitting and relaxing is ensured for the persons who are under custody. Considering the season and the material conditions of the custody places, sufficient number of blankets and beds shall be provided for the persons who will stay under custody overnight. Necessary precautions shall be taken to fulfil the needs of toilet, bathroom, and cleaning. In the entrance of the detention room, the approved directions for detention rooms shall be displayed. Importance shall be attached to use of the places whose internal and external security is ensured, which are specially prepared, have technical equipment and which are independent as interrogation rooms.”. Article 26 of the Guideline provides, “In order to ensure that the detention and interrogation rooms are in line with the standards, supervision shall be made by the authorized units of the law enforcement forces. The Chief Public Prosecutors or other prosecutors to be appointed, as required by their judicial task, supervises the detention rooms where the persons under custody are kept, the interrogation rooms, if any, the situation of the persons, the reasons for being under custody and the duration of custody and all the records and procedures regarding taking into custody and records the conclusion to the Book of the Records of the Persons in Detention Room.”. Article 11/b of the Guideline states, “More than five persons cannot be kept in the detention room except for the unavoidable circumstances.”.

154. The average temperature of the detention rooms is kept at 25°C. There are windows in the corridors to ensure that the rooms of custody receive day light. The detention rooms are watched with the cameras 24 hours a day. The detention rooms are cleaned periodically and the heating and bedding facilities are provided. In case of overcapacity, people are not taken into custody. The people who are under custody are not faced with continuous shining light and their access to clean air is ensured.

155. In accordance with the legislation provisions which is currently in force, voice and image record systems in the detention and interrogation rooms in the Anti-Terror Branches of Provincial Directorates of Security are reviewed and necessary systems are established each year.

Reply to paragraph 31 of the list of issuesIn Article 46 of the Regulation on the Administration of Penal Institutions and Execution of the Penalties and Security Measures; the following provisions are stated: “(1) Unannounced searching can be made any time in the institutions, rooms and annexes, on the body of the convict and on his belongings. Searching shall be made at least for once in a month throughout the institution. The convict shall be present in the searching of the rooms and annexes. (2) In case of existence of serious and reasonable indications regarding the presence of prohibited substance or belonging on the body of the convict, and if the most superior officer of the institution finds it necessary, the searching can be made on the naked body of the convict or on the body cavities according to the following procedures. a) Naked searching shall be made in a way that does not violate the sense of embarrassment of the convict and by taking measures to not allow anyone to see, b) During the searching, first the garment on the upper body shall be taken off and the garment on the lower body shall be taken off after the upper body garment shall be made put on, c) During the naked searching, required attention is paid not to touch on the body. In case of reasonable and serious indication regarding the existence of something in the cavities of the body of the searched individual, the convict is asked to take off the material or belonging by himself/herself; otherwise, he is informed that this will be made by using force. The searching on the cavities of the body shall be made by the doctor of the prison, d) Naked searching shall be finalized as soon as possible. (3) The searching on upper and lower body shall be made by the same sex security officials and supervisors... (9) Respect for the human honour shall be taken as a basis.”.

157. According to Article 10 of the By-Law on Apprehension, Detention and Statement-Taking: “(a) The person shall be duly searched before being placed in the detention rooms or in the places to be used for the same purpose in case of unavoidable circumstances. The body search of woman shall be made by a female officer or other woman who is assigned for this task. (b) The person shall be cleared off belt, tie, rope and any sharp objects that may harm himself/herself.”.

158. The Constitutional Court, in its decision dated 6 April 2017⁴ states that; making naked searches on the convicts and detainees cannot be considered as a situation violating the prohibition of ill treatment by itself. The aim is to ensure the security of the penal institutions and to prevent the entrance of drugs and sharp objects which may cause harm by the convicts/detainees to themselves, other convicts/detainees and prison wardens. ECtHR accepted the necessity of naked searching in order to ensure the security of the prison, to avoid crimes or disruption of order (*Van Der Ven v. the Netherlands*, A. No: 50901/99, 04/02/2003, § 60).

159. The number of complaints regarding the naked searches in the penal institutions is 8 in 2016, 20 in 2017, 28 in 2018 and 8 in 2019. The relevant complaints have been processed by the Chief Public Prosecutor's Offices.

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160. Article 47 of the TPC titled "*Aggravated life imprisonment*" is still in force. Execution of imprisonment for life is regulated in Article 25 of the Law on Execution of the Penalties and Security Measures no. 5275. It is not currently envisaged to amend the mentioned legislation.

161. Article 47 of the TPC should be read in conjunction with Article 107 of the Law no. 5275. Paragraph 1 of the said article sets the principle condition to benefit from release on probation as convict's spending prison term in good behaviour. The second paragraph stipulates that, as a rule, one convicted of aggravated imprisonment for life may be entitled to release on probation after spending 30 years in the penal institution. Thus, the wording of Article 47 of the TPC does not exclude the possibility of early releases under probation with a few exceptions set out by the law.

162. As for Article 25 of the Law no. 5275, developing special prison regimes based on the severity of the crime committed and creating different security categories with regard to penitentiary institutions based on the dangerousness of the convict do not contradict with the principles of human rights law, as also confirmed by the ECtHR. The Court has held in its case-law that public-order considerations may lead the State to introduce high security prison regimes for particular categories of detainees and, indeed, in many State Parties to the ECHR more stringent security rules apply to dangerous detainees. The Court concludes that it cannot be said that detention in a high-security prison facility, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the ECHR. (*Piechowicz v. Poland*, A. no: 20071/07, 17/04/2012, par. 161).

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Supervision of places of detention

163. Within the scope of the supervision of the penal institutions by independent organisations, the Law on the Penal Institutions and Detention House Monitoring Boards no. 4681 and By-Law on Penal Institutions and Detention Houses Monitoring Boards was adopted. According to these regulations; civil monitoring boards can pay a visit anytime when they deemed it necessary to the penal institution or detention house for at least once in two months. The civil monitoring boards prepare a report at least every four months after evaluating its observations and information received. The boards send one copy of the prepared report to the Ministry of Justice, Human Rights Inquiry Commission of the Parliament, the Chief Public Prosecutor's Office in judicial locality and to the office of judge of execution if there is any complaint within the scope of its responsibility.

164. Penal institutions and detention houses monitoring boards are independent. The Law no. 4681 regulates the principles and procedures regarding the establishment, tasks and mandate of the boards in order to see the management, operation and practices of the penal institutions and detention houses on the spot, to examine, receive information and to present its observations to the relevant institutions.

⁴ *Elif Kaya*, App. no: 2014/266, 06.04.2017, paragraph 40.

165. In 2018, 146 monitoring boards paid visits to 396 penal institution for 2056 times and 1330 reports were prepared containing 2001 recommendations.

166. Provincial and district human right bodies established by the representatives of the provincial and district non-governmental organisations can also visit and supervise the penal institutions. The Ombudsman and HREIT can monitor on the spot in order to evaluate the complaints received from the penal institutions without prior permission. The Human Rights Inquiry Commission of the Parliament or other parliamentary investigation committees can visit the penal institutions to take investigating and supervising actions.

167. Article 3 of the Decree Law no. 673 is as follows: “The membership of the heads and members of the penal institutions and detention houses monitoring boards shall terminate on the date of the entry into force of this article and re-election shall be made in ten days according to the procedure determined in the Law on Penal Institutions and Detention Houses Monitoring Boards dated 14/6/2001 and no. 4681.”. Activities of prison monitoring boards are not halted with this regulation.

Removal Centres

168. Removal centres are inspected every three years by the Ministry of Interior, every year by the General Directorate of Migration Management and anytime when deemed necessary by the relevant provincial governorates. In this context, 46 visits were made in 2019 by the Ministry and the General Directorate. The inspection delegation formed by the relevant provincial governorate also carries out monthly or bimonthly inspections. Under the chairmanship of the governor or deputy governor, the inspection delegation consists of representatives of provincial health directorate, provincial directorate of family, labour and social services, provincial directorate of national education, municipal directorates of science, health, social affairs, Turkish Red Crescent, academics and NGOs. In this context, 73 inspection visits by the provincial governorate inspection delegation and 5 inspection visits by the Provincial and District Human Rights Board of the Governorate were made to the removal centres in 2019. Besides this, the national and international institutions and organisations can visit removal centres for inspection. Within this scope, HREIT paid 3 inspection visits.

Articles 12 and 13

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169. Detailed information regarding the measures taken both in the legislation and in practice against torture and ill treatment as well as complaint procedures, legal means, supervision of the places of detention and penal institutions by both public and civil national and international independent organisations and the training delivered to the officials have been provided in this and previous reports. It is clear that the mentioned measures offer sufficient safeguards against torture and ill treatment. A person who claims that torture or ill treatment inflicted on him/her or a person who claims that his/her complaint is not examined can plead to the relevant authorities freely and without fear of threat.

Reply to paragraph 35 of the list of issues Between 2014 and 2016, in the scope of individual complaints review, the Constitutional Court has rendered around forty judgments finding at least one violation of the prohibition of torture or ill-treatment safeguarded in Article 17/3 of the Constitution. In those judgments, the Court found a violation of either substantive or procedural aspect of that article, and in some instances both aspects.

171. In that period, the Court also found some allegations of torture and ill-treatment inadmissible due to lack of temporal jurisdiction (*Nejla Özer and Müslim Özer*, App. no. 2013/3782, 21.04.2016; *Suna Ökmen and Dursun Bütünver*, App. no. 2013/717, 20.04.2016; *Metin Sarıgül*, App. no: 2013/3287, 20.04.2016; *Emre Çalikoğlu*, App. no: 2013/4686, 04.11.2015), that the ordinary legal remedies for such allegations had not been exhausted (*Ömer Aktaş*, App. no: 2014/14915, 21.09.2016; *Zeki Güngör*, App. no: 2013/8491, 31.03.2016; *Didem Tütenk*, App. no: 2013/7525, 10.06.2015) or that they were manifestly ill-founded (*İsmail Budakbeyoğlu*, App. no: 2014/18834, 27.10.2016; *N.A.*, App. no: 2013/8130, 21.04.2016; *Mustafa Kamil Uzunur and Mustafa Kadir Gül*, App. no: 2013/3371,

09.03.2016; *Şehmus Özsubaşı*, App. no: 2013/2582, 03.03.2016; *A.C. and Others*, App. no: 2013/1827, 25.02.2016).

172. It must be noted that there is no violation judgment based on torture, either on substantive or procedural grounds. In those applications the Court examined on the merit, no allegations reached the threshold of torture. Therefore, the Court found violations based on ill-treatment. Those judgments are examined below in two categories: substantive and procedural aspects of the prohibition of torture and ill-treatment.

Substantive Aspect of Article 17/3 of the Constitution

173. The Constitutional Court referred to the case law of the ECtHR on Article 3 of the ECHR safeguarding the prohibition of torture or inhuman or degrading treatment or punishment and also to paragraph 1 of Article 1 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

174. As elaborated in the judgments of the Court, the liability of the state to respect the right of the individual to protect and develop his/her material and spiritual existence requires that, firstly, public authorities must not intervene in this right, in other words, not cause any physical and mental injury to persons as stated in paragraph 3 of Article 17. This is a negative obligation of the state, arising from the liability thereof to respect the bodily and mental integrity of the individual. Furthermore, Article 17 of the Constitution also assigns the State the obligation to take measures to prevent the said persons from being subjected to torture and torment or a penalty or treatment which is incompatible with human dignity even if such treatment is perpetrated by third persons. Therefore, in the event that officials do not take reasonable measures to prevent the occurrence of a danger of maltreatment which they know or need to know, the State may end up with a responsibility within the meaning of paragraph 3 of Article 17 (for a similar judgment by the ECtHR, see *Mahmut Kaya v. Turkey*, App. no: 22535/93, 28.3.2000, § 115). Resorting to coercion towards a person who is deprived of his liberty as long as his actions and attitudes do not require the absolute use of force may bear the consequence of the staining of human dignity and the violation of the prohibition set forth in paragraph 3 of Article 17 of the Constitution as a principle (*Cezmi Demir and Others*, App. no: 2013/293, 17.07.2014, § 92).

175. Within this scope, between 2014 and 2016, the Constitutional Court rendered judgments finding a violation of prohibition of ill-treatment by the law enforcement officers notably in stop and search operations (*Mehmet Şah Araş and Others*, App. no: 2014/798, 28.09.2016), during arrests (*Tahir Gökatalay (3)*, App. no: 2013/5605, 30.03.2016) or questioning in police custody (*Zeki Bingöl (2)*, App. no: 2013/6576, 18.11.2015; *Hamdiye Aslan*, App. no: 2013/2015, 04.11.2015; *Arif Haldun Soygür*, App. no: 2013/2659, 15.10.2015; *Şenol Gürkan*, App. no: 2013/2438, 09.09.2015; *Deniz Yazıcı*, App. no: 2013/6359, 10.12.2014; *Cezmi Demir and Others*, cited above).

176. In the same vein, the Constitutional Court had also rendered judgments finding a violation of prohibition of ill-treatment in terms of excessive use of force amounting to an ill-treatment within the scope of Article 17/3 of the Constitution either by the police officers during demonstration events, especially the use of tear gas (*Özlem Kır*, App. no: 2014/5097, 28.09.2016; *Ali Rıza Özer and Others*, App. no: 2013/3924, 06.01.2015, §§ 92-93), or by other public authorities, such as the security guards of the mayor (*Nebiye Merttürk and Neslihan Uyanık*, App. no: 2013/6071, 14.04.2016).

177. In the same period, the Constitutional Court further rendered a set of violation judgments concerning *ill-treatment allegations* in different penitentiary institutions or in foreigners' removal centers in Turkey. As regards these judgments, they can be divided into two categories. The first set of judgments mainly consists of ill-treatment allegations committed by the prison guards on detainees and convicts in prisons (*Cengiz Kahraman and Kenan Özyürek*, App. no: 2013/8137, 20.04.2016; *Yunus Kalkan*, App. no: 2013/4383, 18.02.2016; *Süleyman Deveci*, App. no: 2013/3017, 16.12.2015). The second set of judgments concerns the conditions of detention either in penitentiary institutions, especially with regards to sick prisoners (*Murat Karabulut*, App. no: 2013/2754, 18.02.2016; *Mete Dursun*, App. no: 2012/1195, 18.11.2015), or in removal centers (*F.K. and others*, App. no: 2013/8735; *T.T.*, App. no: 2013/7907; *A.S.*, App. no: 2014/2841; *A.V. and others*, App. no:

2013/1649; *I.S. and Others*, App. no: 2014/15824, 22.09.2016; *K.A. [PA]*, App. no: 2014/13044, 11.11.2015).

Procedural Aspect of Article 17/3 of the Constitution

178. As regards the procedural aspect of Article 17/3 of the Constitution, the Constitutional Court found a violation in this respect in cases where the investigative authorities or the first instance courts did not conduct an *adequate, effective and sufficient* investigation capable of *leading to the identification and punishment of those responsible for the infliction of treatment contrary to the said article*, which has led to the impunity of the authors of the acts of torture or ill-treatment (for insufficient investigations carried out into the alleged ill-treatments committed by the police officers during police custody *see Hüseyin Kaya*, App. no: 2014/5788, 12.07.2016; *Mustafa Avcioğlu*, App. no: 2013/6831, 13.03.2016 and *Muzaffer Özer and Others*, App. no: 2013/1146, 04.02.2016; by the prison guards in the penitentiary institutions, *see Hakan Olğun*, App. no: 2013/7588, 17.02.2016 and *Turan Günana (5)*, App. no: 2013/5545, 15.12.2015; for an ineffective investigation into the injuries and the consequent death of the applicant's relative following a police operation, *see Cemil Danışman*, App. no: 2013/3619, 16.07.2014, § 133-135; for an insufficient investigation into an allegedly forced disappearance case, *see Hıdır Öztürk and Dilif Öztürk*, App. no: 2013/7832, 21.04.2016; for ineffective investigation regarding allegations of unlawful naked search during admission to the removal center and denial of permission for investigation on the responsible, *see Albina Kiyamova (Alibaeva)*, App. no: 2013/3187, 14.04.2016; for an ineffective investigation into the alleged ill-treatment during the compulsory military service *see Sinan Işık*, App. no: 2013/2482, 13.04.2016; for an ineffective investigation conducted into the ill-treatment allegations of the applicants due to the fact that there has been no effective investigation carried out into the alleged harm on the dead body of their relatives by the military security forces during an operation against terrorists, *see Gülli Dağhan and Mehmet Nesih Dağhan*, App. no: 2013/1951, 24.03.2016; for an ineffective investigation conducted into a serious eye injury due to a tear gas canister used by the police officers to disperse the demonstrators during a demonstration event, a case in which identifying the perpetrators had been ordered but no significant procedural steps had since been taken, *see Hüseyin Caruş*, App. no: 2013/7812, 06.10.2015).

179. In this respect, in the aforementioned judgments of *Ali Rıza Özer* and *Özlem Kır*, the Constitutional Court considered, in particular, that the first instance courts did not sufficiently examine the facts and the circumstances surrounding the relevant cases on the use of force by the police officers during demonstration events, notably by not having appropriately taken the victims' statements (*Ali Rıza Özer*, § 103-104) or those of the accused police officers and by not having properly considered whether the use of force was absolutely necessary and proportionate in the context of each case. On the other hand, in its judgment of *Yavuz Durmuş and Others*, (App. no: 2013/6574, 16.12.2015, § 61-62), it further considered the fact that, in the investigations carried out in accordance with Article 17 of the Constitution, the total absence of witness statements, which could clarify the facts surrounding the case, constituted a breach of the third paragraph of that article.

180. In some other judgments, the Constitutional Court held that the criminal investigations had lasted too long, leading the cases to be time-barred, which did not meet the requirements of speediness of the investigations into torture and ill-treatment allegations within the scope of Article 17/3 of the Constitution (*Bilal Çiçek*, App. no: 2014/29, 13.07.2016; *Z.C. [PA]*, App. no: 2013/3262, 11.05.2016, § 100; *Birsen Güllünay*, App. no: 2013/2640, 21.04.2016; *Feride Kaya*, App. no: 2013/2365, 20.01.2016; *Tuncay Alemdaroğlu*, App. no: 2012/827, 15.10.2014, §50-51; *Cezmi Demir and Others*, cited above, § 117).

181. In some other judgments, the Constitutional Court also considered that, in cases of ill-treatment allegations, the sentences and the penalties given to those responsible were not sufficiently dissuasive, effective and proportionate to the gravity of the infringements, therefore, it decided that there had been a violation on the procedural aspects of Article 17/3 of the Constitution (in some cases, the sentences were suspended pursuant to the law in force at the material time *see, Hamdiye Aslan*, cited above, § 160).

182. Within this scope, the Constitutional Court also examined the positive obligations of the State to protect the individuals against the acts of torture and ill-treatment by third

persons. In the judgment of *İrfan Yücesoy*, (App. no: 2013/7625, 09.03.2016), the Constitutional Court held that an investigation conducted into alleged ill-treatment committed by third persons resulting in non-prosecution is not an effective investigation due to lack of adequate assessment on the alleged incidents and those who are potentially responsible. Accordingly, pursuant to paragraph 2 of Article 50 of the Law No. 6216, the Constitutional Court decided to send the case file to the relevant Public Prosecutor Office for carrying out a new investigation in order for the violation and the consequences thereof to be removed.

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183. The decision taken by the Chief Public Prosecutor's Office of Trabzon on 5 January 2017 is a decision of non-prosecution, taken as a result of the investigation opened upon the claim of the suspect asserting that his statement was taken by the law enforcement by force, he was insulted and was exposed to injury and threat. Afterwards, the decision of non-prosecution was asked to be lifted on 19 January 2017 to allow the Office of the Chief Public Prosecutor to make an evidence examination and to take a decision. On the same day the relevant decision was lifted by Trabzon Criminal Magistrate's Office. As a result of the examination made within the scope of the investigation initiated with this decision, the Office of Chief Public Prosecutor again gave a decision of non-prosecution on 15 March 2017. The attorney of the suspect objected to this decision and the objection was examined by the Magistrate's Office and was rejected on 29 May 2017 and the decision of non-prosecution became final.

184. The decision of non-prosecution mentioned above was lifted by the court upon objection and due investigation was made with regard to the alleged claims. The provision regulated in Article 9 of the Decree Law no. 667 regarding the non-occurrence of legal, administrative, financial and criminal responsibility of the public officers is limited only with the decisions taken within the scope of the Decree Law and the fulfilled tasks and does in no way aim for impunity on the public officer inflicting torture and ill-treatment to the suspect or defendant. See also paragraph 39 on the subject.

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185. Regarding allegations on torture and ill-treatment in Cizre between December 2015 and March 2016, 15 investigations had been conducted. The Cizre Chief Prosecutor's Office found that none of the complainants, either in their statements taken in the presence of their lawyer or before the prosecution and the court, (regarding the legal proceedings pertaining to the alleged crimes committed by individuals concerned) claim that they were subjected to torture and ill-treatment. Furthermore, no concrete evidence was found in the health reports of the complainants which were taken during their custody, to suggest violence or psychological pressure inflicted upon them. Moreover, it appeared that all of the complainants put forward the same claims through template petitions via an NGO without showing evidence. Due to these reasons, the Cizre Chief Prosecutor's Office decided for non-prosecution on each of the investigations.

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Maşallah Edin and Zeynep Taşkın

186. The mentioned persons were referred to Cizre State Hospital due to injury of gun fired by an unknown person during the operations conducted between 4 September 2015 and 12 September 2015 in Cizre district of Şırnak province against the PKK/KCK terrorist organisation members in order to ensure the safety of life and property of the public and to ensure the public order. In the investigation conducted by the Office of the Chief Public Prosecutor of Cizre on the issue, there is no record related to the incident on the wireless communications of the security forces in the regions and no image related to the incident has been detected in the examination of the Unmanned Aerial Vehicle images. In the investigation conducted by Diyarbakır Criminal Police Laboratory on the bullet, it was understood that the bullet belongs to the cartridge having the features of a prohibited cartridge

specified in the Law on Firearms and Knives and Other Tools no. 6136. The efforts for identifying the perpetrator/s are ongoing.

Ahmet Kaymaz and Uğur Kaymaz

187. On 18 April 2007, Eskişehir Assize Court decided on acquittal for the suspects. The decision then had been appealed and upon re-examination, the acquittal decision was approved by the 1st Criminal Chamber of the Court of Cassation on 11 June 2009, which became final on 7 July 2009.

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188. The Government refers to the responses given in the document A/HRC/37/50/Add.2 titled “*Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey: comments by the State*” submitted to the Human Rights Council on 21 December 2017.

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189. Regarding this issue, the communications by the Working Group on Enforced or Involuntary Disappearances have been regularly responded. The mentioned group paid a visit to Turkey on 14-18 March 2016 and the necessary information was provided in the follow-up of the visit.

Reply to paragraph 41 of the list of issues

190. Interventions by the security forces in demonstrations that are illegal or later became illegal are made in line with the principle of use of proportional force in order to disperse the demonstrators who despite the warning did not disperse; to prevent the dispersed from gathering again; to catch those resisting the security forces by breaking their resistance; to prevent possible attacks against the people in vicinity and the people participating in the meeting or demonstration march and to restore public order.

Reply to paragraph 42 of the list of issuesIn paragraphs 52 to 55, information on the Law no. 6713 and the establishment and working principles of the Law Enforcement Monitoring Commission is submitted. The Commission held its first meeting on 20 September 2019 as per the provisional Article 1 of the Law following the election of the members. In order to ensure the implementation of the law, the preparations for creating complaint units and offices have been made.

192. Since the date of the entry into force of the Law no. 6713, regarding complaints against the law enforcement officers’ violations of human rights, the civil inspectors carried out investigations for 14 personnel in 2016, 45 in 2017, 14 in 2018, 10 in 2019 and 24 in 2020. The investigation reports were referred to the relevant institutions.

Reply to paragraph 43 of the list of issuesFollowing the killing of Mr. Jamal Khashoggi on 2 October 2018 inside the Consulate General of the Kingdom of Saudi Arabia in Istanbul, an investigation was launched by the Office of the Chief Public Prosecutor of Istanbul. The indictment was issued on 24 March 2020 and the investigation dossier was sent to the Assize Court of Istanbul, where a criminal case against 20 Saudi nationals was filed. Another investigation was also filed in order to detect potential suspects that might have either eliminated the evidence pertaining to the murder of Mr. Khashoggi or directly participated in the act of deliberate killing or instigated this murder.

194. The Government would like to point out that, full cooperation has been extended to the relevant international bodies, in particular to the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, as also stated by the Rapporteur itself in her report A/HRC/41/CRP.1 dated 19 June 2019.

Article 14

Reply to paragraph 44 of the list of issuesThe Law on Reimbursement of the Damages Arising from Terrorism and Fight Against Terrorism no. 5233 introduced reimbursement of the damages of the natural persons and private law legal persons due to the activities carried out for terrorism and fight against terrorism without referring to the national and international judicial authorities in a rapid, effective and fair way. Its Implementation By-Law entered into force on 20 October 2004.

196. In order to reimburse the damages within the scope of the law, Damage Identification Commissions were created in the provinces under the chairmanship of the deputy governors. In provinces of Hakkari and Mardin where the applications are numerous, more than one commissions were created. 48 Commissions continue their work actively throughout the country.

197. From the date of entry into force of the law until March 2020, 475.642 applications in total were made to the Damage Determination Commissions. 447.103 applications out of the total number were concluded. It was decided to pay compensation for 259.793 applications and 187,310 applications were rejected.

198. As of 2 March 2020, within the scope of the Law no. 5233, 4.820.799,261- TRY have been paid in total to the parties.

Reply to paragraph 45 of the list of issuesIn Article 17 of the Constitution, prohibition of torture and ill treatment is regulated. According to Article 148 of the Constitution, a lawsuit cannot be filed before the Constitutional Court with the claim of contradiction of the Presidential Decrees⁵ during the SoE with the Constitution in terms of form and substance. The decisions⁶ given by the Constitutional Court on 12 October 2016 is in relation to the norm supervision of the Decree Laws introduced during the SoE. Accordingly, individual application possibility to the Constitutional Court remains available regarding the claims of violation of rights and freedoms guaranteed in the Constitution related to the procedures established with the decree laws introduced in SoE. Moreover, as all the decree laws introduced during the SoE became laws, the Constitutional Court is now able to perform norm supervision over these laws.

200. For requests of compensation regarding violations of prohibition of torture and ill treatment, full remedy action can be filed before the Administrative Courts against the administration within the framework of the principle of legal responsibility of the administration.

⁵ Following the transition to the Presidential System, with the law dated 21/01/2017 and no. 6771, the statement of “*decree laws*” in the article has been replaced with “*presidential decrees*”.

⁶ Case no. 2016/167, Decision no. 2016/160 and Case no. 2016/166, Decision no. 2016/159 dated 12.10.2016.

Article 15

Reply to paragraph 46 of the list of issues According to Article 38/5 of the Constitution, “No one shall be compelled to make a statement that would incriminate himself/herself or his legal next of kin, or to present such incriminating evidence.”. Paragraph 6 of the same article states: “Findings obtained through illegal methods shall not be considered evidence.”. Article 148 of the CCP provides: “The submissions of the suspect or accused shall be stemming from his own free will. Any bodily or mental intervention that would impair the free will, such as misconduct, torture, administering medicines or drugs, exhausting, falsification, physical coercion or threatening, using certain equipment, is forbidden. (2) Any advantage that would be against the law shall not be promised. (3) Submissions obtained through the forbidden procedures shall not be used as evidence, even if the individual had consented. (4) Submissions obtained by the police, without the defense counsel being present, shall not be used as a basis for the judgment, unless this submission had been verified by the suspect or the accused in front of the judge or the court.”.

202. The claims in this paragraph of the list of issues are not substantiated by concrete evidence and data. All the procedures are carried out in accordance with the legislation.

Reply to paragraph 47 of the list of issues According to Article 206/2-a of the CCP, if the evidence is obtained illegally it is rejected. Article 217/2 of the CCP states: “The attributed crime can be proved with any evidence obtained legally”. Please also refer to the explanations under paragraph 201.

204. In its judgment dated 18 November 2015, the Constitutional Court decided that imprisonment sentence given based on unlawful evidences violates the right to a fair trial: “The authority to evaluate the evidences belongs to the court which carries out the adjudication. However, regarding the present case, it is concluded that; the unlawful nature of the evidences which are taken as basis for conviction damages the equity of the trial as a whole, the conditions regarding obtaining of the evidences create suspicion regarding the authenticity and reliability of the evidences and the “unlawfulnesses” regarding the unconfirmed statements of the defendants before the court is in the nature of violating the right to a fair trial in terms of the whole of the trial.” (*Müslüm Turfan*, App. no: 2013/2516, dated 18.11.2015, § 44).

Article 16

Reply to paragraph 48 of the list of issues

Physical conditions at detention centres

205. See paragraphs 151-155.

Separation of detainees, convicts and juveniles

206. Article 23/1-a of Law no. 5275 on the Execution of Penalties and Security Measures provides; “The personal characteristics of convicts, their physical, mental and health conditions, their lives before committing a crime, their social environments and relations, their occupational activities, their moral tendencies, their views on crime, the durations of their sentences, and the types of their offences, shall be determined and they shall be assigned to penal institutions suitable for them, and the penal and rehabilitation regimes applicable to them shall be identified accordingly, in the observation and classification centres operating by the method of observation, examination and evaluation or in those parts of closed penal institutions which are allocated for this service. Convicts shall be sent to high-security or medium-security penal institutions or open penal institutions according to the types of their offences, to the tendencies they display, and to whether they must be kept under close supervision and control due to their attitudes and behaviour”.

207. Article 24/1 of the Law no. 5275 states: “Convicts shall be divided into groups such as: (a) First offenders, recidivists, repeat offenders or those who have made crime a profession; (b) Those who must be subjected to a special penal regime due to their mental or physical condition or their age; (c) Dangerous convicts; (d) Terrorism offenders; and (e)

Members of criminal organisations or interest-seeking criminal organisations.” The following provision of the Article is as follows: “Convicts shall also be grouped according to their age, the length of their sentences and the types of their offences.” Article 63/3 of the Law states: “Women and men, detainees and convicts, juveniles and adults, organisation or interest-seeking organisation criminals and terrorism criminals shall not be allowed to come together or to establish contact with each other except in the cases specified in this Law”.

208. Along with the provisions mentioned above, rooms to be occupied by the convicts and detainees are determined with the Management and Observation Board’s decision, based on the principles specified in By-Law on Observation and Classification Centres.

209. For the detainment of juveniles, different provisions than of adults’ apply. Article 16 of the Child Protection Law no. 5395 states: “Detained juveniles shall be kept at the juvenile unit of the law enforcement. (2) In cases where the law enforcement does not have a juvenile unit, the juveniles shall be kept separate from detained adults”.

Educational, occupational and social activities

210. Regarding the courses for training and improvement and activities as well as the use of workshops in penal institutions; physical structure of the institution, its capacity, the number of visitors and the crime profile of convicts/detainees are taken into consideration, and actions are taken in line with the decisions taken by the penal institution, in a manner that does not pose a security hazard. In this context, 79.220 convicts and detainees attended the occupational and professional courses as of the end of 2018.

211. Educational status of the juveniles is evaluated by the teachers at the institution. Juveniles who cannot read and write are directed to literacy courses, others are directed to distance-learning secondary schools or high schools of the Ministry of National Education. If the juvenile is detained while continuing his/her formal education, the school is notified, and it is ensured that his/her studies are suspended, and he/she has the right to take the exams. In addition, juveniles are directed to various occupational courses upon evaluations by the educational service officers on the juvenile’s interests, abilities, and aspirations.

212. Also, various social and cultural activities are carried out in accordance with the institutions’ weekly and monthly schedules. Activities like conferences, concerts, movies, trips, sports are carried out on specific days of the week and sports tournaments are organized from time to time in various branches. Management and Observation Boards of the Institutions take decisions in this regard.

Health Measures at Detention Centres and Penal Institutions

213. Medical examinations of persons in custody are conducted in accordance with Article 9 of the By-Law on Apprehension, Detention and Statement-Taking. In addition to the doctor’s report for entry-exit, the violence-assault report is taken every day throughout the detention period of the detained persons. If, in the meantime, the suspect makes a statement about his/her illness, the physician proposes a consultation to the relevant unit. Due process of the proposed consultation is closely monitored, and treatment of the suspect continue till his/her release. Procedures are recorded in the relevant hospitals’ registry. Procedures related to suspects with a chronic condition or a condition that their physician should monitor are followed up, after the suspect submits the relevant official document declaring his/her condition. People in need of treatment are transferred to a medical facility without waiting for the emergence of another group of people who need the same treatment.

214. Physicians at the institutions supervise the health conditions of the institutions. For protection of physical and mental health of convicts and detainees and for diagnosis of their diseases, initial examination and treatment services are provided at the institutions. People who need further examination, treatment and rehabilitation are referred to state hospitals, and those who need further health care are referred to University Hospitals. All examination and treatment results are recorded in the person’s health file.

215. All kinds of examination and treatment required by law is free of charge and under the guarantee of the State.

216. When the physician of the institution, family physician or dentist deems appropriate, necessary health care is provided to convicts/detainees by referral to hospitals. Diagnosis and treatment services for HIV/AIDS are offered throughout the country. As in other infectious diseases, health services to be provided to those diagnosed with HIV are provided by relevant units of all health organizations. The general health insurance in Turkey covers access of all diagnosed patients to treatment and care services. There is also no shortage of access to antiretroviral drugs in Turkey.

217. For accommodating, rehabilitation and treatment of sick convicts and detainees, who are waiting for a report from the Medical Examiner's Office due to their illness or are unable to perform self-care skills alone and need care, Metris Type-R Closed Penal Institution and Menemen Type-R Closed and Open Penal Institution have started its operations.

218. Metris Type-R Closed Penal Institution has a capacity of 150 people. A capacity of 90 people is reserved for convicts and detainees who are in serious health condition and need care due to their constant illness. A capacity of 50 people is reserved for convicts and detainees under Article 18 of the Law no. 5275. The remaining capacity is reserved for convicts and detainees to work in services within the institution. Since its establishment, activities for rehabilitation and recovery of convicts and detainees are carried out with the Rehabilitation Institution's hobby rooms and outdoor therapy garden.

219. Menemen Type-R Closed and Open Penal Institution has a capacity of 150 people and only the convicts and detainees who have severe health problems and need care are accommodated there.

220. In line with the provision "The execution of the penalty of a convict who cannot continue his life in penal institution conditions due to a severe illness or disability or who are evaluated to constitute no severe or substantial danger to public security may be deferred until his recovery according to the procedures determined in the third paragraph" of Article 16/6 of the Law no. 5275, it is not required to wait for the convicts and detainees, who are considered unable to continue his/her life in penal institution's conditions, to request for the relevant process to be initiated. The process is initiated ex officio where necessary. If the relevant process for a person is already completed but delay of his/her sentence is not found appropriate, his/her condition is continuously observed. If his/her disease progresses and his/her health deteriorates, an ex officio action is taken and the processes for delay is initiated.

221. In carrying out health services, all kinds of health services are given in full to all convicts and detainees, notwithstanding whether or not he/she is a convict, detainee or convict on remand, his/her type of crime, age, gender, sexual orientation and what kind of the penal institution he/she is in, in line with medical requirements and the legislation.

Reply to paragraph 49 of the list of issues See paragraphs 144-150 and 213-221 regarding physical conditions and health measures in penal institutions.

223. According to Article 72 of the Law on Execution of the Penalties and Security Measures no. 5275, detainees and convicts are provided with nutritious and multifarious food with drinking water to keep them strong and healthy; taking into account their age, health, work and religious or cultural preferences. In this sense, dietary choices such as veganism and vegetarianism are respected. Kitchens in the penal institutions are inspected regularly in terms of quality and hygiene. Penal institution personnel and convicts and detainees are sharing the same food and water according to the law. In 2019, ration allowances specified in By-Law on Catering Convicts, Detainees and Penal Institution Personnel are increased.

Reply to paragraph 50 of the list of issues

Investigation Regarding Uğur Kantar

224. Regarding Kantar's death, a case was filed against the accused before the relevant Military Court. Following the abolishment of military courts in Turkey, the file was first transferred to the Office of Chief Public Prosecutor, then to Ankara 1st Assize Court. The person's relatives pressed charges against the Ministry of Defence before Mersin 1st Administrative Court. Consequently, the Mersin Court decided for pecuniary and non-

pecuniary compensation on 3 October 2019. The compensation was paid to the complainant's relatives.

Reply to paragraph 51 of the list of issues

225. There has been no fatal incident other than the incident mentioned in paragraph 44.

Reply to paragraph 52 of the list of issues

226. In Article 6 of the Patient Rights By-Law, issued by Ministry of Health based on Law no. 3359, it is stated that: "The patient has the right to benefit from health services in accordance with his needs, including the activities for promoting healthy living and preventive health services within the framework of the principles of justice and equity. This right includes all institutions and organizations providing health services and the responsibilities of the personnel involved in health care services in accordance with the principles of justice and equity."

227. Article 8 of the By-Law reads as: "Provided that the procedures and conditions required by the legislation are complied with, the patient has the right to choose the health institution and benefit from the health service provided in the health institution he chooses. The patient may change the healthcare institution provided that it is in accordance with the referral system set by the legislation. However, it is essential for the physician to inform the patient if changing the establishment will cause a life-threatening condition or the disease will become more severe if the institution is changed, and to ensure that changing the medical institution is not deemed medically risky in terms of the patient's life".

228. Article 22 of the By-Law states: "Aside from the exceptions stated in the law, no one shall be subjected to medical surgery without his consent or that is not in accordance with his consent. If it is considered that there is a possible evidence of an offence committed by a person suspected of having committed or participated in a crime in the body of the defendant or the victim; it is up to the judge's decision to subject the defendant or the victim to medical surgery in order to reveal the evidence. If delaying the surgery is considered risky, the surgery can be done at the request of the public prosecutor".

229. Paragraph 1 of the Article 24 of the By-Law provides: "The patient's consent is required for medical attention. If the patient is a minor or a ward, permission is obtained from his/her parent or guardian. This condition is not required in cases where the patient's parent or guardian is absent or unable to be present or the patient has no ability of expression".

230. Article 25 of the By-Law provides: "The patient has the right to refuse treatment that is provided to him or request the treatment to be stopped, except for cases required by law and on the condition that the responsibility of the negative consequences that may arise is on the patient. In this case, the results of not receiving the treatment must be explained to the patient or his legal representatives or relatives, and a written document indicating this should be obtained. The exercise of this right cannot be used against the patient if patient applies to the health institution again".

231. Within the framework of the above-mentioned provisions, legal infrastructure for the patient to be admitted to a medical institution and to be protected from unwanted admissions have been established, and protection have been ensured.
