

1) Diyarbakir Bar Association Committee of Ministers, according to Rule 9.2, is an observation of the execution of the decisions of the European Court of Human Rights against Turkey, to harm the weak of the security forces.

2) 1) Prevent the Diyarbakirs from losing their security forces in Turkey, which is home to their 9th.

3) 2) In Turkey, the Bar Association is within the scope of Law No. 1136, and public education consisting of all lawyers is a profession. In addition to the fact that the laws will be used as a profession, they are within the scope of the institutional organizations of lawyers as a requirement of the judicial system and they will accompany our students. Bar associations aim to ensure the honesty and reliability of the lawyer profession in the profile of the lawyer profession, in the programs of some of his friends and business design, to protect the professional order, morality, prestige, superiority, human life and to be a lawyer, in the Law Article 76 of the Law of Law No. 1136. All studies Trainings are given on the principles of education throughout. Article 95 of the same Law is also understood by the Board of Directors of the Bar Association about 'defending the rule of law and people, protecting and making these concepts work'.

5) Diyarbakir Bar Association is a bar that continues its monitoring and reporting activities in the field with the centers it has established for legal support due to the fact that it is in a region where violations of rights are very intense. Diyarbakir Bar Association was established in 1927. The number of lawyers registered with the Bar Association is 2100, and it is in the 12th rank in terms of the number of lawyers registered in Turkey.

6) Diyarbakir Bar Association conducts research on legal problems and rights violations faced by individuals and groups of individuals due to national or international authorities, aims to develop "human rights and freedoms", uses all national and international legal remedies in the most effective way, and does not prevent discrimination and rights. It is an independent non-governmental non-governmental organization that fights against the violation of rights, documents and reports the rights violations and advocates in national and international mechanisms.

7) Declaration of Diyarbakır Bar Association; It focuses on Turkey's inability to effectively investigate enforced disappearances, a grave violation of human rights, in solving structural problems. In this context, enforced disappearances within the scope of the European Convention on Human Rights (hereinafter ECHR), in particular, despite the violation of one or more of Articles 2, 3, 5 and 13, an effective judicial process is not implemented and the perpetrators are identified, prosecuted and punished. It is observed that he violates the obligation to prevent impunity for human rights violations, and that the investigation and case files that are prosecuted are under the threat of statute of limitations.

LOGIN

With life in 1984 and life to be lived in the 1990s, to teach about all human rights related to training, excessive use, life and the erosion of burden. The enforced disappearances in the

crashes of the 1990s will be resolved in a way that they can be read against the Kurdish population.

Some of the criminal investigations committed by a management plan of the 1990s, in general, committed by the possibility that investigations into enforced disappearances may be materially likely either occurred due to statute of limitations, or could result in such a risk.

In the document on the “Guiding Principles of the Committee of Ministers of the Council of Europe on the Elimination of Impunity for Human Rights Violations”, what is necessary for human rights deficiencies will not be shown in all general plans of states.

The Statement on the Protection of Everyone from Enforced Disappearance and the general principles regarding enforced disappearances apply. a crime against humanity used as coerced by Article 1; that he will never be able to pass, allow, or abhor any chance under Article 2; Effective, legal, forensic, and redeemable for circumvention under Article 3; With Article 4, the punishment for the failure of the missing particles is discussed. Zorla kaybetme hususunda Taraf Devletlerin AİHM kararlarına uyması, cezasızlıkla etkin bir şekilde mücadele etmesi gerekir.

✓ **Ineffective Investigation**

The main findings of the ECHR in cases of enforced disappearance have been shown as the failure to investigate disappearances effectively under Article 2 of the Convention. . In this context, the ECHR has noted the reluctance to conduct investigations into disappearances or significant delays in taking statements from witnesses; failing to examine the crime scene for tangible evidence; lack of detailed information in autopsy reports; significant delays or unwillingness to seek submissions from complainants; making a decision of non-prosecution or lack of jurisdiction without collecting the necessary evidence; It observed that investigations were conducted in an ineffective manner, such as the permanent search warrant and subsequent correspondence stating that no information was obtained.

The ECHR found that in many cases of enforced disappearance, defects that undermined the effectiveness of criminal law protection paved the way for members of the security forces not to be held accountable for their actions, and stated that this situation constituted a violation of the fundamental rights and freedoms guaranteed by the Convention. Concluding that the investigations are not capable of enabling the perpetrators to be identified and punished, the ECHR has therefore decided that there has been a procedural violation of Article 2 many times. Despite the seriousness of the allegations, it seems that the ECHR did not follow the complaints of the relatives of the disappeared who claimed that the security forces were involved in illegal acts and did not take steps to conduct the investigations effectively.

The ECHR has found that, pursuant to Law no. 4483, preliminary investigations carried out by the Governor's Provincial Administrative Board to determine whether criminal investigations of members of the security forces could not be considered independent, as the governor or district governor presided.

It is observed that there is a reluctance in the judicial system in Turkey to conduct an effective investigation into the crimes of enforced disappearance committed against the Kurdish civilian population by the security forces in the 1990s. The ECHR found that Turkey did not stay within the framework of the rule of law while fighting the PKK, did not protect the right to life of the civilian population, did not investigate widespread and systematic violations committed by

state officials in the fight against terrorism, did not provide effective legal mechanisms for victims, did not punish the perpetrators, and did not provide reparations to the victims.

✓ **Status of Enforced Disappearance Cases in Turkey**

Impunity, which is one of the difficulties in ensuring respect for human rights in Turkey, continues to be a chronic and current problem. Turkey's recent history is known for its impunity for gross human rights violations, its failure to provide accountability for violations and its inability to confront the past.

By examining the findings of the ECHR's decisions on enforced disappearances and the legal provisions applied under the state of emergency until 2002, it is possible to conclude that the investigative authorities and the judiciary in general could not have been independent and impartial at that time. When it comes to the counter-terrorism practices of state officials, regional conditions are oppressive and threatening to any opposition that is considered a threat to national security. It is seen that the negligence and carelessness of the judicial authorities in investigating gross human rights violations committed by state officials stems from this oppressive state of emergency regime.

Considering the decisions of the ECHR and the investigations on human rights violations, it is seen that there has been no significant change in the effectiveness of the investigations after the lifting of the state of emergency. It is observed that ineffective and inconsistent judicial processes continue to be operated by the judicial authorities, and the threat of statute of limitations within the scope of domestic law is applied.

✓ **PROCEEDINGS OF SOME PROCEEDINGS**

• **Ankara Jitem Case**

The first investigation was launched in 2011 into 19 people who were forcibly disappeared or illegally executed arbitrarily, including Altındağ Population Director Abdülmecit Baskin, in Ankara between 1993-96. While an indictment for the murder of Abdülmecit Baskin was drawn up on September 20, 2013 due to the risk of statute of limitations, with the new indictment issued on December 19, 2013, Namık Erdoğan, Metin Vural, Recep Kuzucu, Behçet Cantürk, Savaş Buldan, Hacı Karay, Adnan Yıldırım, İsmail Karaalioğlu, Yusuf Ekinci, Ömer Lutfi The murders of Topal, Hikmet Babataş, Medet Serhat, Feyzi Aslan, Lazem Esmaeli, Asker Smitko, Tarık Ümit, Salih Aslan and Faik Candan were also included in the trial. Defendants Mehmet Agar, İbrahim Şahin, Korkut Eken, Ayhan Çarkın, Ayhan Akça, Ziya Bandırmalıoğlu, Ercan Ersoy, Ahmet Demirel, Ayhan Özkan, Seyfettin Lap, Enver Ulu, Uğur Şahin, Alper Tekdemir, Yusuf Yüksel, Abbas Semih Sueri, Lokman Külünk, The case where Mahmut Yıldırım, Nurettin Güven, Muhsin Korman were tried for the crimes of “killing people within the scope of the activity of an armed organization created to commit a crime” is pending at the Ankara 1st High Criminal Court.

• **Jitem Main Case, Murder of Musa Anter**

With the merger in 2010 of the cases with 11 defendants tried under the indictments issued in 1999 and 5 defendants tried with the indictment dated 2005, the ongoing case began to be known as the JİTEM Main Case. Hamit Yıldırım, whom former JİTEM hitman Abdülkadir Aygan pointed to as the perpetrator, was detained on 29 June 2012 regarding the murder of journalist writer Musa Anter on September 20, 1992. With Yıldırım's arrest on July 2, 2012, the case was freed from the statute of limitations. The trial is continuing by the local court.

• **Case of Kulp**

Between October 8 and October 25, 1993, around the Alaca village of Kulp district of Diyarbakır, consisting of scattered hamlets (Gurnik, Mezire, Pireş, Kepir and Şuşan) and Kayalısü village (Licik hamlet) in Muş, the military operation carried out by the Bolu Brigade under the command of General Yavuz Ertürk. 11 people taken into custody during the operations were never heard from again. Mass graves of 11 people who were forcibly disappeared on November 5, 2004 were found. In the indictment issued on 11 October 2013, it was demanded that Bolu 2nd Commando Brigade Commander retired Brigadier General Yavuz Ertürk be tried for the crimes of "killing more than one person for the same reason, inciting the people to revolt and killing each other, and forming an organization to commit crimes". By the local court, the civil case against the accused Yavuz Ertürk for the crime of "forming an organization to commit a crime" was dropped due to the statute of limitations; Ertürk was acquitted separately for the crimes of inciting the willful murder of 11 people and inciting the people to rebellion.

Kızıltepe Jitem Case

Retired Colonel Hasan Atilla Uğur, then Diyarbakır Provincial Gendarmerie Commander Colonel Eşref Hatipoğlu, Gendarmerie Commando Company Commander Ahmet Boncuk, Chief Sergeant Ünal Alkan and village guards Abdurrahman regarding the illegal arbitrary executions or enforced disappearances* of 22 people in the Kızıltepe district of Mardin between 1992-1996. In 2014, a lawsuit was filed against Kurğa, Mehmet Emin Kurğa, Ramazan Çetin, Mehmet Salih Kılınçaslan and İsmet Kandemir on charges of "establishing or leading an armed organization, being a member of an armed organization and murdering by design". By the local court, about the Defendants Abdurrahman Kurğa Mehmet Emin Kurğa, Ahmet Boncuk, Ünal Alkan, İsmet Kandemir, Mehmet Salih Kılınçaslan, Ramazan Çetin and Hasan Atilla Uğur; Nurettin Yalçinkaya and Abdulvahap Ateş were acquitted of the crime of premeditated murder, since the elements of the crime did not occur.

Dargeçit Jitem Case

The first indictment was prepared on October 30, 2014, in the investigation into the enforced disappearance of eight people*, including three children, one expert sergeant, between 29 October 1995 and 08 March 1996 in the Dargeçit district of Mardin. In the indictment, the then Mardin Gendarmerie Commando Battalion Commander Hurşit İmren, Dargeçit District Gendarmerie Commander Mehmet Tire, Dargeçit Central Gendarmerie Station Commander Mahmut Yılmaz, Deputy Police Station Commander Haydar Topçam and Specialist Sergeant Kerim Şahin were asked to be tried for the crime of "premeditated killing". However, it was decided not to prosecute 16 people, mostly village guards, who were named suspects in the investigation file, and the enforced disappearance of Hikmet Kaya was not included in the file. The Midyat Criminal Court of Peace, partially accepting the objection of the İHD Mardin Branch to this decision, rejected the application made on behalf of the missing Hikmet Kaya due to lack of evidence, but accepted the request for an additional indictment to be prepared for the suspects for whom a decision of non-prosecution was given. With a second indictment, Faruk Çatak, Mahmut Ayaz, Naif Çelik, Ramazan Savcı, Kemal Kaya, Mehmet Acar, Faik Acar, Hüseyin Altunışık, Mehmet Emin Çelik, Sadık Çelik, Fethullah Çelik, Osman Demir, Bahattin Ergel were included in the case. The case was transferred to Adıyaman Heavy Penal Court "for security reasons" before it even started. The trial at the Adıyaman High Criminal Court is pending.

SYSTEMIC PROBLEMS FACED IN THE EXECUTION OF THE ECHR'S DECISIONS ON ENFORCED DISCLAIMERS

It appears that the prosecution authorities were unwilling and inactive to initiate investigations and carried out the proceedings in an unreasonable manner, leading to the expiry of the statute of limitations.

In the judicial practice in Turkey, the crime of killing regulated within the scope of Articles 448 and 450 of the repealed Turkish Penal Code No. 765, in cases involving enforced disappearances by the security forces in the 90s, is the subject of the lawsuits. Enforced disappearances are regarded as individual and independent killings, regardless of their connection, their systematic and/or widespread nature, and the involvement of state officials, and the case applied to these crimes is subject to a 20-year statute of limitations. Therefore, investigations into gross human rights violations committed in the 90s are either time-barred or at risk of being overturned. In accordance with Article 90 of the Constitution, in case of a conflict between international and national law, this situation also constitutes a violation of national and international law, since the provisions of international agreements that have duly entered into force are deemed superior.

There is no effective domestic remedy against the decisions of non-prosecution given in the investigation files. Article 173 of the Criminal Procedure Code, which regulates the appeal procedure against decisions of non-prosecution, cannot provide an effective domestic remedy. Because, the objections of the applicants against the decisions of non-prosecution given by the prosecutor's office based on the statute of limitations, are immediately rejected procedural, without going into the substance of the objection.

The Government of Turkey does not have a comprehensive and effective approach to the statute of limitations in judicial proceedings regarding enforced disappearances. The ECHR has stated that "human rights law allows states to introduce new jurisdiction into their national laws for the prosecution of past international crimes, and therefore it is acceptable under human rights law and the ECHR to include the repeal of national statutes of limitations applicable to past international crimes."

CASE TRANSFER

The cases filed so far regarding enforced disappearances have been transferred to cities other than the place where the crime was committed, for "security reasons" by the decision of the Ministry of Justice. While these transfers make it difficult for the victims and their legal representatives to participate in the case, they also create great financial difficulties. The transfer of cases, especially to cities where nationalist tendencies are felt at a high level, causes the political motivation and intention behind these decisions to be questioned.

There are almost no current prosecutions of gross human rights violations committed by security forces in the past that have not been transferred to another city from the place where the crime was committed. What is surprising is that while all of the transfer decisions were based on security reasons, none of the hearings held in the cities where the crime was committed did not experience any situation that would impair public safety. The transfer decisions and practices in question show the tendency and strategy of the state to complicate the proceedings of its own officials. Because, case transfers make processes such as collecting evidence, hearing witnesses, discovery and showing places almost impossible. In addition, the relatives of the victims, who are often unable to cover the transportation costs to the transferred city and whose expenses are not covered by the state, are also deprived of the opportunity to question the witnesses and/or defendants while taking their statements due to the transfer.

State officials, who are accused of serious human rights violations, continue to hold their official duties while the case continues; By not showing the prejudiced and even indifferent attitudes they show to the judges, the defendants or their legal representatives, the relatives and legal representatives of the victims, the members of the court who carry out the trials maintain

the dominant position of the accused state officials and make it more difficult for the victims to participate in these processes. All these are indicators that cast a shadow over the impartiality and independence of the judiciary. The fact that the promotion, appointment and disciplinary proceedings of judges and prosecutors are regulated by the High Council of Judges and Prosecutors, of which the Minister of Justice and the secretary general are permanent members, increases the conflict of interest and puts judges and prosecutors under political pressure from the executive power. In these lawsuits, the hearing dates are given at long intervals, not less than three months, and the information and documents requested by the courts from the state institutions are not sent at all or on time, leading to excessive prolongation of the prosecution periods.

In these trials, witness statements are of great importance, since material evidence is almost never reached. However, witness protection provisions are very inadequate in pending cases regarding crimes committed by state officials in Turkey.

CONCLUSION

Due to the ineffectiveness of the investigations, the length of the legal processes and the threat of statute of limitations, serious human rights violations are rendered unpunished.

Turkey should ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Rome Statute.

The judicial processes mentioned in this report make it clear that the deficiencies regarding the investigations identified by the ECHR judgments continue throughout the judicial process and remain as general and systemic problems of the judiciary in Turkey, making it impossible for the victims and the public to know the truth. In Turkey, unfortunately, neither the judiciary nor the executive organs have experienced any concrete development in terms of revealing and confessing the truth, clarifying the conditions under which severe human rights violations in the past occurred, and acknowledging the responsibility of state officials for these gross human rights violations against civilians.

Recommendations for Ineffective Investigation

- Considering that the ECHR has found a procedural violation of Article 2 of the Convention due to the lack of effective investigation and accountability in almost all its relevant decisions, particularly in cases concerning cases where the suspects could not be identified despite all the investigations, or cases where dismissal was ordered because the statute of limitations had expired In the process of monitoring the execution of ECHR decisions, Turkey should be provided with clear answers to the following issues:
- - Prosecution of state officials who are suspected of crimes in investigations and conducting investigations effectively and completely;
- - What actions were taken by the authorities conducting the investigation to identify possible suspects,
- - Requesting archival records obtained from the operating unit associated with the alleged violation by the investigating authorities and whether they are used to identify potential suspects;
- - What actions are taken by the authorities conducting the investigation when the requested information and documents are not delivered to them,
- - Whether expert research has been consulted, such as autopsy reports, ballistics and crime scene investigations, and if these expert opinions have been consulted, whether this information has been used to identify potential suspects;

- If any legal instruction regarding the statute of limitations has been given to the authorities carrying out the investigation, necessary actions should be taken to determine what kind of guidance this is.

Recommendations Regarding the Lack of an Effective Domestic Remedy

Considering that the ECHR has found a violation of Article 13 of the Convention due to the lack of an effective domestic remedy in almost all its relevant decisions, it should be ensured that Turkey gives clear answers to the following issues during the monitoring process of the execution of the ECHR judgments:

- the number of ongoing investigations into the events referred to in the decisions under Aksoy, Batı et al., Erdogan and others, and Kasa groups;
- How many state officials were accused and punished for violations determined by the ECHR in the decisions in these four groups of cases, and how many were punished for the right to life;
- Whether the Turkish authorities have prepared a comprehensive plan to provide reparation and reparation to victims of past gross human rights violations.

Advice on Enforced Disappearance Crime

In order to prevent the crime of enforced disappearance and impunity, the Turkish state should consider the following recommendations in the light of cases regarding enforced disappearance:

1. Ensure that this crime is considered a crime against humanity resulting from the systematic and/or widespread commission of this crime in penal legislation;
2. Effectively ensure criminal responsibility of persons who commit and/or contribute to the act of torture, extrajudicial killings and excessive use of lethal force, who are hierarchically responsible for committing this crime and/or who do not take the necessary measures to prevent it despite being found;
3. abolishing the statute of limitations for the types of crimes resulting from torture, extrajudicial killings and the excessive use of lethal force;
4. Providing victims with justice, reparation, effective conduct of the investigation, and the right to know the fate of the person;
5. Ensure that the system of administrative authorization for perpetrators to be tried regardless of their status and rank is completely abolished for the crime of enforced disappearance;
6. Ensuring that the Ministry of Justice provides detailed, accessible and accurate data on violations of the right to life, including enforced disappearances, arbitrary, extra-judicial and short-course executions, and legal proceedings regarding these violations;

Concerning the binding nature of the final decisions of the ECHR, it violates Article 46 of the Convention and that this violates Article 46/4 of the Convention against Turkey. It should be noted that the article is applicable.

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