SECURITY STUDIES
&
RULE OF LAW ASSOCIATION

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UNIVERSAL PERIODIC REVIEW
4th CYCLE - TURKEY

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1. Brief Explanation of the Activities of the Association:

1. Security Studies and Rule of Law Association was founded in 2023 in Geneva, Switzerland, with the following objectives: to promote practices that protect and uphold human rights and the rule of law; to carry out studies, prepare reports, and publicize victimizations related to torture and crimes against humanity; to develop cooperation with local and national governments and similar organizations abroad; and to fulfill all duties to

build a democratic and free world. This application is the first interaction of our association within the scope of the UPR.

2. Executive Summary

2. Turkey has been witnessing both unlawful and outdated practices, especially in the last 10 years, and continues to rapidly deplete the gains it has achieved in the process of harmonization with the European Union. Many international organizations also report this situation. It is observed that human rights are violated through actions such as *marginalization*, *intimidation*, *suppression* and *arbitrary arrests* and that there is an increase in such practices, which have irreparable consequences, day by day.

3. This report consists of **two parts**: an assessment of progress and recommendations on supported and noted by Turkey in the previous periodic review and focuses on **five** issues: independence and impartiality of the judiciary, torture and ill-treatment, prison conditions and the execution system, abduction and discrimination.

3. Follow-up on the Previous Review (2020)

3.1. Recommendations Supported by Turkey:

4. **45.124 Reform the judicial system and ensure independent and impartial investigation, prosecution and trial (Finland)**[1] ; The independence of the judicial system should be assessed not in terms of legislation (written laws) but in terms of practice. In practice, Turkey has not yet ensured the independence and impartiality of its judicial system, nor has it taken any steps towards it.

5. For example, President Erdoğan publicly expressed his discomfort with the reinstatement by the 5th Chamber of the Council of State of 450 judges and prosecutors who had been dismissed on the grounds of FETÖ links, and stated that they would go over the judicial decision.

6. Erdoğan; *"It is not possible for us to remain silent on this decision taken by the Council of State. Just as we, as the People's Alliance, do not remain unresponsive to some strange decisions taken by the Constitutional Court, we cannot remain silent on this. The Council of State does it from time to time, it disturbs us with such decisions, but it seriously disturbs us when the Constitutional Court takes such decisions frequently. For example, the Constitutional Court decided the BTK. Where are you going to go with this? How can such a*

[1] A/HRC/44/14/Add.1

decision be taken? We are and will continue to pursue this matter. We will follow this matter in the Council of State in the same way." [2]

7. Following Erdoğan's statement, Minister of Justice Yılmaz Tunç stated that the Council of State has launched a new review on the decision of the Council of State on judicial members dismissed from the judiciary due to FETÖ, and that the HSK has started a review on 387 names out of 450 judges who have returned to their jobs." [3]

8. The fact that a finalized judicial decision is subject to re-examination by an administrative board and that this review takes place after the President of the Republic has expressed his disapproval of the decision is just one of the examples of the lack of judicial independence in Turkey.

9. **45.141 Ensure the execution of the judgments of the European Court of Human Rights (France)[4]** ; No steps have been taken in the process regarding this recommendation on ensuring the execution of ECtHR judgments.

10. According to the unanimous judgment of the ECtHR on 26/09/2023 **"Yüksel Yalçınkaya v. Turkey"**[5] Turkey has violated Articles 7 and 6 and 11 of the ECHR.

11. According to this decision; Anyone who is under investigation, on trial, or even convicted for peaceful acts such as using the ByLock application, opening an account at Bank Asya, depositing or withdrawing money, "establishing or becoming a member of a trade union", "establishing or becoming a member of an association", "staying in a student house", "participating in chats", "reading or subscribing to newspapers or magazines", "studying at a school or in a classroom", "being a member of the Hizmet Movement/Gülen Community" and "participating in community activities" will benefit.

12. Under Article 46 of the Convention, in the context of the enforcement of judgments, a judgment of the Court finding a violation of the Convention imposes an obligation on the respondent State to put an end to the violation found and to remedy its consequences in such a way as to restore as far as possible the situation as it existed before the violation. [6]

13. Furthermore, under Article 46 of the Convention, in the context of the enforcement of judgments, a judgment of the ECtHR finding a violation of the Convention imposes an obligation on the respondent State, not only in the present case but also in similar cases, to put

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[2] https://www.iletisim.gov.tr/turkce/haberler/detay/cumhurbaskani-erdogan-bae-ve-misir-ziyareti-donusunde-ucakta-gazetecilere-konustu

[3] https://www.aa.com.tr/tr/gundem/adalet-bakani-tunc-mesleklerine-geri-donen-387-isimle-hakim-ve-savci-alakali-hsk-olarak-yeniden-inceleme-baslattik/3140278

[4] A/HRC/44/14/Add.1

[5] ***Yüksel Yalçınkaya v. Turkey,*** application no. 15669/20

[6] (***Yüksel Yalçınkaya v. Turkey,*** application no. 15669/20, **para. 404**

an end to the violation found and to remedy its consequences to restore as far as possible the situation as it existed before the violation. (par. 418) [7]

14. However, the Turkish Government, which should offer a general solution by making a legal regulation or a change in case law after the decision, instead of offering a solution, continues mass arrests for activities clearly stated by the ECHR as non-criminal activities with operations called "Kiskac / Kıskaç".

15. On March 29, 2024, following the operation in which 70 people were detained for allegedly using Bylock, Interior Minister Ali Yerlikaya stated that the same operations will continue with determination.[8]

16. After Yerlikaya's statement, some of the most remarkable victims of the judiciary, which the political power used as a stick, were 48 people, including 16 secondary school girls, who were detained on 7 May 2024. 28 of these detainees were arrested on absurd grounds such as *having a picnic*, *studying together*, *staying in the same house*, etc. on the allegation of being members of a terrorist organization

17. 45.106 Strengthen efforts to ensure the effective investigation and prosecution of, and punishment for, all acts of torture and ill-treatment, and provide access to justice and rehabilitation to victims of torture (Fiji)[9] ;

18. Initiated in 2016 with Decree Laws (KHK), the process has resulted in arbitrary dismissals of public officials and impunity for torture and ill-treatment. Article 121 of the Decree Law No. 696 dated December 24, 2017, exempted civilians who took part in counter-terrorism activities, which are normally the duty of the state's law enforcement forces, from criminal liability, thus preventing the investigation of those who used violence against public officials, especially during the events of July 15.

19. Failure to initiate judicial and administrative investigations into torture and ill-treatment and failure to punish the perpetrators of these acts has led the state to create an environment that encourages torture. The biggest proof of this is the fact that no investigation has been launched against those whose names have been associated with torture after the Decree Law process. Turkey has once again demonstrated its insensitivity on this issue by delegating Police Chief Rüştü Yılmaz, against whom there were allegations of torture, to the Turkish delegation to the UN Committee against Torture. [10]

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[7] (***Yüksel Yalçınkaya v. Turkey,*** application no. 15669/20, **para. 418**

[8] https://twitter.com/AliYerlikaya/status/1716736507128500236
https://www.icisleri.gov.tr/77-ilde-fetoye-yonelik-kiskac-operasyonlari-duzenlendi

[9] A/HRC/44/14/Add.1

[10] https://anfenglish.com/news/a-turkish-torturer-at-the-un-committee-against-torture-sessions-74342

20. The lack of independent and effective investigations leads to violations of victims' right to access to justice. This situation reveals not only the failure of the state to prevent torture and ill-treatment, but also that the legal system has become a structure that encourages torture.

21. Mustafa Kabakçıoğlu, who was subjected to ill-treatment due to prison conditions, died on a chair in prison. No independent investigation was launched after the incident and the matter was covered up by preventing the provision of reliable information. As reflected in open sources, this is just one of the most important examples of the widespread and systematic use of torture and ill-treatment in Turkish prisons.

22. Turkey has failed to adopt a zero-tolerance policy against torture. It has refrained from taking serious steps to establish independent and effective mechanisms to investigate allegations of unlawful detention, torture and inhuman treatment by police and security forces. At this point, it does not seem possible to operate a mechanism in line with international standards.

23. The international community must play an active role in stopping human rights violations in Turkey. International pressure and sanctions must be applied to ensure that the Turkish government effectively combats torture and ill-treatment. More effective and concrete action is needed on international platforms to end human rights violations.

24. These cases and the proposed measures are crucial to ensure that international human rights standards are upheld and that the Turkish justice system effectively combats torture and ill-treatment. It is vital that the international community takes action on this issue and encourages the Turkish government to take steps to stop human rights violations.

25. On the other hand, political prisoners are asked by prison administrations to declare that they regret being a member of a terrorist organization through mobbing-like practices, otherwise, they are not allowed to use their right to probation on arbitrary grounds.

26. 45.135 Promote the investigation of all allegations of extrajudicial executions and enforced disappearances, guaranteeing that all those responsible are brought to justice (Uruguay)[11] ; It has been observed that abductions targeting Erdoğan's opponents, especially Hizmet Movement/Gülen Community living abroad, have continued to increase, especially since July 15, 2016.

[11] A/HRC/44/14/Add.1

27. It is known that these unlawful practices, which are carried out by the personnel of the National Intelligence Organization (MIT) in disregard of international norms and embraced at the ministerial level, are sometimes carried out by bribing bureaucrats in the relevant country and sometimes by making secret agreements in line with mutual interests.[12]

28. Individuals who are abducted in Turkey, after being brought into the country illegally, are detained in unofficial locations and often subjected to torture. After months of detention, they are suddenly handed over to official law enforcement authorities. This practice is carried out with the cooperation of different organs of the state and shows that torture and enforced disappearances have become systematic.

29. Some of the various methods used by Turkey to abduct its citizens living abroad include the revocation of passports, bribery, secret security agreements and cooperation with the bureaucrats of the country concerned.

30. In particular, collusion with the counterpart country or cooperation with its bureaucrats makes both countries responsible in terms of international law. For example, after the Kosovo transfers, a former intelligence chief received a first-instance prison sentence;
the transfers were presented publicly in Turkey as a success story. [13]

31. Abducted on 06.08.2019 in Turkey, Yusuf Bilge Tunç is one of the victims of enforced disappearance and has not been heard from since then. Although it is claimed that an effective investigation has been carried out, the data obtained has not been evaluated properly, and it has been used not to find him, but not to find him.

32. **45.61 Strengthen measures to ensure non-discrimination (Nigeria)[14]** ; Tens of thousands of people were dismissed from their professions, banned from public rights and subjected to various administrative/judicial sanctions during the State of Emergency period that started after July 15, 2016, without any accusation against them and without their defense.

33. As a result and effect of these actions, just being listed in the Emergency Decrees has caused many victimizations. In short, they have been subjected to labeling.

34. People who are not under criminal investigation or who have completed their prison sentences are subject to difficulty in obtaining passports and traveling abroad. The Ministry of

[12]https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/disisleri-bakani-mevlut-cavusoglu-100un-uzerinde-o

[13] Anadolu Agency, 19 July 2023, Kosovo intelligence chief sentencing (court statement).

[14] A/HRC/44/14/Add.1

Interior imposes administrative restrictions on tens of thousands of people, preventing their freedom of movement.

35. On February 6, 2023, a major earthquake struck the southeastern region of Turkey, killing thousands of people and leaving hundreds of thousands homeless and without other necessities.

36. Although many NGOs and public institutions assist, persons listed in an emergency decree are negatively discriminated against and deprived of social assistance. For example, Burcu Aktaş, who is 70% disabled, cannot benefit from the disabled care allowance because her father is listed in a decree.

37. Those dismissed by emergency decree and their families are deprived of general health insurance and disability rights. For example, Zehra Doğramacıoğlu, who has cancer, and her daughter with down syndrome are not entitled to these benefits, limiting their access to health services.

38. Those dismissed by emergency decree are also discriminated against in banking transactions. For example, Suzan Uzpak and Judge R.A. were unable to receive their money by bank transfer because their names were on the list of banned persons.

39. Even though there is no legal obstacle, people with emergency decree cannot find a job and are forced to work for low wages without insurance, far below their education level.

3.2. Recommendations Noted by Turkey:

40. **45.123 Stop the interference of the executive branch in the criminal justice system and in criminal investigations related to corruption charges against senior State officials** (Egypt)[15] ; A corruption operation was carried out by the Turkish police involving President Erdoğan's son, several government ministers, their children, senior bureaucrats and businessmen such as Reza Sarraf. The December 17, 2013 operation was the last corruption charge against state officials. Because Erdoğan used his pressure on the judiciary to send the judges, prosecutors and police officers who carried out this operation to prison, accusing them of staging a coup d'état. As a result of the show trials conducted by the judiciary under Erdoğan's domination, 25 of these police officers were sentenced to aggravated life imprisonment and the other 113 were sentenced to tens of years in prison and have been imprisoned for 10 years.

[15] A/HRC/44/14/Add.1

4. Recommendations

4.1. Forced Abductions

41. When victims are brought before the authorities after their abduction, their statements that they were abducted/tortured are not recorded in official records or are ignored. Therefore, it should be regulated in the legislation that an immediate investigation should be initiated for every allegation that has a basis in this direction.

42. Ensure that those responsible for abductions are thoroughly and effectively investigated and prosecuted.

43. Violations of international instruments on forced abduction should be subject to deterrent sanctions for both the perpetrators and states.

44. The trials of persons forcibly trafficked from abroad to Turkey should be monitored by a special representative appointed by international commissions.

45. A notice should be given to Turkey by the international community to desist from enforced disappearances and abductions. The state has an obligation to protect the right to life of its citizens.

46. Until the fate of the abducted persons is known, Turkey is required to conduct an effective investigation. This is recognized as a continuing violation of state responsibility.

47. Abducted individuals' right to defense, right to a fair trial and right to a lawyer must be protected. Pressure on lawyers must end immediately.

48. The health of abductees should be examined by independent doctors and they should be allowed regular contact with their families.

49. Abducted persons should be brought before a judge as soon as possible and fair trials should be completed quickly. Prolonged detention leads to human rights violations.

4.2. Judicial Independence and Impartiality

50. Judicial appointments should be made by an independent board free from political influence.

51. This duty of the Ministry of Justice, which is a natural member of the Council of Judges and Prosecutors (CJP), should be canceled.

52. Concrete steps should be taken regarding the implementation of the "Judgeship Guarantee", which is a shield for members of the judiciary, and the legislation should be amended to bring it in line with international norms.

53. Implementation of ECtHR and Constitutional Court judgments by the courts must be ensured; investigations must be carried out against officials who fail to implement them.

54. Turkey should be called upon to implement the ECtHR's Yalçınkaya judgment in national courts and to end the systematic threats of arbitrary arrests and detentions.

55. Concrete steps should be taken to ensure the independence of the judiciary, not only through written legal rules but also in practice, and these steps should be periodically reviewed.

4.3. Prison Conditions and Execution System

56. Giving the initiative in the implementation of probation to the committees in penal institutions leads to arbitrary practices. For this reason, probation should be applied equally to all prisoners, good behavior in prison should be the sole criterion, and every prisoner who has not committed a disciplinary offense should be considered to be in good behavior.

57. The Ministry of Justice and the Ministry of Health should bring the protocol on handcuffed medical examinations/treatment in line with international standards and ensure that detainees and convicts are uncuffed during medical examinations.

58. Capacity planning should be carried out in prisons and overcapacity should be prevented and practices that are incompatible with human dignity should be ended.

59. Prisons should be controlled by independent organizations and cases of ill-treatment, especially strip searches, should be prevented.

60. Measures should be taken to prevent delays in access to health units in prisons and to ensure rapid response.

61. Effective arrangements should be made for elderly prisoners, prisoners with chronic health problems and pregnant prisoners.

62. The heating and ventilation systems in the wards should be improved.

63. Prisoners who cannot meet their own needs should not be kept in solitary cells and this practice should be stopped.

64. Prisons should be obliged to organize educational, social, sportive and cultural activities in which prisoners can participate, and political prisoners should also benefit from these opportunities.

4.4. Torture and Ill-Treatment

65. Legal and administrative reforms should be undertaken to align with international norms.

66. Executive Decrees No. 667 and 668, which abolish the criminal, legal, financial and administrative responsibilities of state officials who took action during the state of emergency, and the relevant articles of Executive Decree 696, which grants immunity to civilians who intervened in the protests on and after July 15, 2016, should be annulled.

67. Actions or inactions that fall within the scope of torture should be explicitly mentioned in the law to ensure compliance with the UN Convention against Torture.

4.5. Discrimination

68. Within the framework of the presumption of innocence, all information and data about individuals based on administrative decisions and investigations should be removed from the public domain.

69. Until the results of judicial investigations are finalized in line with national and international mechanisms, individuals should neither be publicly identified nor subjected to de facto administrative sanctions.

70. To effectively implement the prohibition of discrimination, a new legal regulation should be adopted that includes criminal sanctions in addition to the existing legal regulations.

71. Administrative restrictions imposed by the Ministry of Interior on certain individuals during the state of emergency, preventing them from traveling abroad, should be lifted immediately without the need for a lawsuit.