



**BRIEFING NOTE ON
REDRESS FOR
HUMAN RIGHTS
ABUSES
IN TURKEY**



1. INTRODUCTION

As a significant aspect of a State's human rights obligations, redress can take various forms, including compensation, restitution, rehabilitation, public apology, rehabilitation, memorials, non-repetition and access to justice.

Accordingly, the right to a remedy and reparation for human rights violations is enshrined in several human rights instruments, including the Universal Declaration of Human Rights (UDHR, Article 8), the International Covenant on Civil and Political Rights (ICCPR, Article 2), the International Convention on the Elimination of All Forms of Racial Discrimination (Article 6), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, Article 11), the Convention on the Rights of the Child (Article 39) and the European Convention on Human Rights (ECHR, Article 13). Turkey is a contracting party to all the above-listed conventions, yet despite this fact it has a poor track record of redressing human rights grievances.

In cases of international human rights violations, a victim is defined as a person who has, individually or collectively, 'suffered harm, including physical or mental injury, emotional suffering, economic loss, or impairment of that person's fundamental legal rights'¹ and also included the dependant or a next of kin of the direct victim. Redress is also crucial for society in general as it is closely related to

THE INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE AND ENDING IMPUNITY IN A COUNTRY.

The State's obligations under international human rights and humanitarian law include taking necessary legal and administrative measures to prevent violations, investigating all allegations of human rights violations, providing victims with access to justice, affording remedies and providing reparations. These obligations are retrospective, in that they aim to eliminate the consequences of past violations, and are also prospective, in that they aim to prevent future violations.

THE BELOW LIST OF CASES AND PRACTICES IN TURKEY SHOWS THE BREADTH OF THE STATE'S SYSTEMATIC FAILURE TO REDRESS HUMAN RIGHTS VIOLATIONS.

1. Final report of the Special Rapporteur, Mr Cherif Bassiouni, submitted in accordance with Commission resolution 1999/33, E/CN.4/2000/62

2. SEEKING THE TRUTH FOR JUSTICE

In its 1998 *Yaşa v. Turkey*² judgement on the killing of an individual, the European Court of Human Rights (ECtHR) used the term ‘impunity’³ for the first time. In this and other reviews to follow, the Court sets forth the various modes of impunity, such as inadequacy of investigations, failure of a national-level court to provide an effective remedy, failure to hand down a sentence proportionate to the crime and non-execution of sentences. According to ECtHR statistics⁴ on applications pending before judicial authorities

AS OF DECEMBER 31, 2021,
there are 15,250 PENDING APPLICATIONS AGAINST TURKEY

(accounting for 21.5% of the total).

The number of pending applications has steadily increased

FROM 6,031 IN 2019 TO 7,877 IN 2021.

The ECtHR judgements include individual and general measures. The individual measures aim at erasing the consequences suffered by the victims to achieve *restitutio in integrum*, whereas the general measures seek to prevent similar violations and put an end to continuing violations.

Restitutio in integrum may sometimes require further action, including reopening unfair criminal proceedings. Yet despite the ECtHR recommendations on retrial, there are few cases of proceedings being reopened in Turkey.⁵ Turkey’s poor performance in complying with the general measures ordered in the Court’s judgements is but one aspect of its high number of violations and the failure to provide remedies.

The payment of just satisfaction is one of the most common remedies found among the individual measures. The Compensation Commission for Human Rights was established under Turkish Law No. 6,384 as a consequence of the pilot judgment procedure applied in *Ümmühan Kaplan v. Turkey* (Case No. 24240/07). Since 2013, this Commission has held the remit for processing applications relating to the excessive length of proceedings and non-execution of judgements for all applications pending and not lodged with the Court prior to 23 September 2012.⁶ The Commission was initially recognised as a domestic remedy by the Constitutional Court and the ECtHR. And, in 2019, the Compensation Commission’s remit was extended to cover the ECtHR decisions on the violation of Article 1 of Protocol No.1 of ECHR.⁷

Unfortunately, the Commission has not proven effective: setting unreasonably short deadlines for applications and failing to take any preventive measures.

It has become another procedural obstacle that applicants must overcome before making an individual application to the Turkish Constitutional Court.⁸

2. Application No. 22495/93

3. Kerem Altıparmak, *Cezasızlıkla Mücadele El Kitabı*, 2016, İHOP Publications. Accessed at [https://insanhaklarizleme.org/vt/yayin_list.php?q=\(yazar--contains~Kerem%20Altıparmak\)&f=all](https://insanhaklarizleme.org/vt/yayin_list.php?q=(yazar--contains~Kerem%20Altıparmak)&f=all)

4. European Court of Human Rights Statistics, accessed at <https://www.echr.coe.int/Pages/home.aspx?p=reports&c>

5. CoE, Committee of Ministers Recommendation No. R (2000) 2 of the Committee of Ministers to Member States on the re-examination or reopening of certain cases at domestic level following judgements of the European Court of Human Rights.

6. <https://ihtk.adalet.gov.tr/SayfaDetay/Komisyonhakkinda>

7. <https://inhak.adalet.gov.tr/Home/SayfaDetay/insan-haklari-tazminat-komisyonu-nun-gorev-alaninin-genisletilmesine-dair-cumhurbaskani-karari-yurur-luge-girdi11122019013445>

8. <https://m.bianet.org/bianet/hukuk/199920-komisyonu-ge/>

THE FAILURE OF TURKISH STATE INSTITUTIONS TO ACT DILIGENTLY IS A SIGNIFICANT CAUSE OF IMPUNITY.

Many human rights defenders, journalists and politicians, among others, have been victims of unresolved murders. The cases of Hrant Dink, Musa Anter, and Tahir Elçi are but a few examples of its failure to conduct effective investigations and prosecutions. Systematic failures in these processes have led to nonsuits, the failure to bring the perpetrators before justice and the protection of State officials.

Impunity for State officials is common, enabling them to continue committing crimes without any fear of repercussions and encouraging others to behave in the same way. The 2012 case against Derik Gendarmerie Commander Brigadier, General Musa Çitil, allegedly a member of Turkish Gendarmerie Intelligence and Counter-Terrorism Unit (JİTEM) is one such example. Despite strong evidence of his involvement in the torture, arbitrary execution and enforced disappearance of 13 individuals between 1992 and 1994, the case was transferred between several different courts at the request of the Turkish Ministry of Justice, while he was promoted to higher positions in the Gendarmerie. Çitil was acquitted in 2014, and the victims' families appealed to the Court of Cassation.⁹ Recently, journalist Ahmet Kanbal was sentenced to one year and three months imprisonment for 'targeting a counterterrorism official'¹⁰ after sharing a news article about Çitil on social media. Other cases against JİTEM have shared a similar fate. Human rights defenders have asked for a comprehensive adjudication of all crimes committed in the 1990s, so that all perpetrators and responsible authorities, including high-level politicians,

can be brought to justice. According to data from the Memory Center, 363 cases were identified of enforced disappearances and extrajudicial killings systematically undertaken in Turkey in the 1990s under the State of Emergency Law.

OF THESE, ONLY A TOTAL OF 15 TRIALS WERE OPENED FOR THE DISAPPEARANCE OF 81 PEOPLE.¹¹

A similar pattern of impunity is seen in cases involving police violence in protests. Either the Turkish Prosecutor's Office drops the investigations, citing an inability to identify the police officers involved or the charges are based on less serious crimes under the Turkish Criminal Code, such as 'exceeding the limit of the use of force', as opposed to 'homicide'.

Fifteen-year-old Berkin Elvan died after 269 days in a coma, after a police officer shot a tear gas canister directly at him at close range during the Gezi Protests in June 2013.

The case was closed in 2021. The police officer responsible - known as 'F.D.'- was eventually sentenced to 16 years and eight months in prison for 'intentional homicide' but had not been arrested at the time of the ruling. Throughout the investigation and prosecution phases, there were numerous attempts to hide evidence, for example misplacing the file among hundreds of other case files, purported unavailability of the list of police officers on duty at the time of the event, unavailability of the CCTV recordings at the crime scene, preventing the prosecutor from fulfilling the requirements of a proper investigation and transferring the prosecutor to another city.

9. <https://www.failibelli.org/en/dava/the-musa-citil-case/>

10. <https://www.failibelli.org/en/dava/the-musa-citil-case/>

11. <https://www.failibelli.org/en/peki-faili-kim/>

**FORTY-TWO OTHER
POLICE OFFICERS, WHO
WERE PREVIOUSLY
INVESTIGATED IN
CONNECTION WITH
THIS CASE WERE NOT
PROSECUTED.**

The police officer who killed Berkin was allowed to remain in office for eight years following his death.¹² Similar issues occurred in the case of 12-year-old Helin Şen, who was shot in the head three times by police fire while out buying bread with her mother in Diyarbakır in 2015. In Helin's case, the prosecution was delayed for three and a half years.

**THE HUMAN RIGHTS
ASSOCIATION REPORTS
THAT A MINIMUM OF
228 CHILDREN LOST
THEIR LIVES IN TURKEY
BETWEEN 2011 AND
2021, DURING ARMED
CLASHES.**

It recommends that Turkish judicial authorities abandon the policy of impunity that protects responsible State officials in such cases, and promptly take all necessary measures to ensure justice in real terms.¹³ Metin Lokumcu had a heart attack and lost his life due to

excessive use of tear gas by the police during a protest against the construction of Hydroelectric Power Plants just before Erdoğan's rally in Hopa in 2011.

**BASED ON REPORTS,
THIS WAS THE FIRST
CASE IN WHICH
CHEMICALS USED TO
DISPERSE PROTESTORS
CAUSED A DEATH.**

The case was initially opened in Hopa after 10 years' delay, and was then transferred to Trabzon for 'security reasons', making it difficult for the interested parties to attend the hearings. The environmental CSOs' requests to be joined as a third party in the trial were refused. As all requests by the Lokumcu family were overturned in previous hearings, lawyers made a judicial disqualification request which was again denied.¹⁴

The next hearing will be on 30 September 2022 in Trabzon. Commemorations and tributes to victims comprise essential aspects of redress for both victims and society, as these provide the State with the opportunity to make an apology and to show that the necessary measures have been taken to prevent repetition of the violation in question.

Saturday Mothers/People have been gathering in peaceful vigils every Saturday at noon for half an hour in Istanbul to protest against the forced disappearances and political murders dating back to the military coup era of the 1980s and 1990s. They are still seeking the truth behind the cases.

12. <https://m.bianet.org/bianet/law/245901-ruling-in-berkin-elvan-case-16-years-8-months-in-prison>

13. HRA Diyarbakır Branch Report of November 2021 on Violations of the Right to Life in cases regarding children, '2011-2021 Tarihleri Arası Silahlı Çatışma Ortamında Çocuklara Yönelik Yaşam Hakkı İhlalleri Raporu.'

14. <https://www.gazeteduvar.com.tr/metin-lokumcunun-davasina-ortak-olmak-haber-1571955>

Most recently, on the 905th week of the vigils in July 2022, Saturday Mothers/People made a statement about the disappeared in Urfa, following the discovery of some human remains. The families of the disappeared applied to the Hilvan Public Prosecutor's Office for a DNA examination using their blood samples and requested an effective investigation and prosecution.¹⁵

THE SATURDAY MOTHERS/PEOPLE HAVE BEEN BANNED FROM GATHERING IN GALATASARAY SQUARE,

the original place of the vigils, since their 700th gathering and have been facing intimidation and reprisals in the form of the use of force by the police and ongoing court cases for violating Law No. 2011 on Meetings and Rallies. The rights of access to remedies, protection of victims from reprisals and commemoration of victims are just a few of the violations seen in the Saturday Mothers/People case. Thirty-four people were killed in a suicide bomb attack which left 134 others injured on July 20, 2015, in Suruç District on the Syrian-Turkish border, where around 300 young people had gathered to help the rebuilding efforts in Kobane. Islamic State (ISIS) claimed responsibility for the attack the following day.

The government and authorities are accused of turning a blind eye to the ISIS operations and of failing to effectively prosecute the perpetrators or the law enforcement forces who effectively neglected their duties.¹⁶

On October 10, 2015, 103 people lost their lives, and some 500 were wounded in a similar bombing attack targeting a Peace Rally near Ankara Train Station. Although the Turkish High Court found that the State had failed to fulfil its obligation to protect the right to life and some perpetrators were sentenced, the survivors, families of the deceased and civil society organisations criticised the ruling for not having prosecuted government authorities, and the public prosecutors for having neglected their duties.¹⁷

In both cases, there has been police repression of subsequent events held to commemorate the deceased over the years.

This non-exhaustive list of cases demonstrates the Turkish State's lack of will or ability to redress human rights violations.

UNLESS A COMPREHENSIVE EFFORT IS UNDERTAKEN TO START A PEACE PROCESS IN THE COUNTRY, WHICH ADDRESSES BOTH THE PAST AND FUTURE IMPLICATIONS OF THESE VIOLATIONS, THEY WILL CONTINUE.

15. <https://sendika.org/2022/07/cumartesi-anneleri-905-haftada-sefik-gecgel-icin-adalet-istedi-bucak-asireti-korucular-ve-devlet-isbirliqiyle-kaybedildi-662545/>

16. https://ankaaber.net/haber/detay/suruc_katliami_anmasina_polisten_ankarada_sert_mudahale_cok_sayida_kisi_gozaltina_alindi_95209

17. <https://m.bianet.org/bianet/insan-haklari/265192-10-ekim-de-aslinda-ne-oldu-sorusu-yanitsiz-kaldi>



3. RECOMMENDATIONS:

The OMCT urges the Government of the Republic of Turkey to :

- respect and enforce international human rights and humanitarian law norms to ensure the right to a remedy and reparation for all victims of human rights violations without applying a statute of limitations.
- take necessary steps to end impunity, including taking concrete action against any claim of impunity in cases involving public officials.
- incorporate the relevant norms into its domestic law.
- investigate human rights violations and bring the perpetrators to justice.
- take appropriate administrative and legal measures to ensure access to justice for victims, including the protection of victims, witnesses of other related parties and retrials.
- acknowledge the facts and accept responsibility in relevant cases.
- make a public apology and provide for the commemoration of the victims.
- provide transparent information on human rights violations.