

BRIEFING PAPER: ENFORCED DISAPPEARANCES IN TÜRKİYE



Credits

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LIST OF ABBREVIATIONS

| | |
|--------------|---|
| AKP | Justice and Development Party (<i>Adalet ve Kalkınma Partisi</i> in Turkish) |
| CC | Constitutional Court |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| HRA | Human Rights Association (<i>İnsan Hakları Derneği</i> in Turkish) |
| JITEM | Gendarmerie Intelligence in Combatting Terrorism (<i>Jandarma İstihbarat ve Terörle Mücadele</i> in Turkish) |
| FETÖ | Fethullahist Terrorist Organisation (<i>Fethullahçı Terör Örgütü</i> in Turkish) |
| NGO | Non-Governmental Organisation |
| TJMC | Truth Justice Memory Centre |
| TAF | Turkish Armed Forces |
| PKK | Kurdistan Workers' Party (<i>Partiya Karkerên Kurdistanê</i> in Kurdish) |
| SoE | State of Emergency |
| HRW | Human Rights Watch |
| HRA | Human Rights Association |
| HRFT | Human Rights Foundation of Türkiye |
| UN | United Nations |

INTRODUCTION

Enforced disappearances have been a critical human rights issue in Türkiye, particularly highlighted during periods of intense political turmoil. They were notably prevalent following the military coup of September 1980 and in the turbulent aftermath of the attempted coup of July 2016. These periods have seen a heightened incidence of disappearances, often involving individuals opposed to or critical of the prevailing political regime, and have been characterised by a troubling lack of accountability from State authorities.

This briefing paper aims not only to delineate the context within which these disappearances have occurred but also to analyse the patterns and methodologies employed in such incidents. Furthermore, it seeks to propose actionable reforms and strategies to address the root causes of enforced disappearances in Türkiye, outline necessary steps towards the prevention of future violations, and ensure compliance with international human rights standards.

The first international regulation on the issue was the Declaration on the Protection of All Persons from Enforced Disappearance (the 1992 Declaration), proclaimed by the UN General Assembly in Resolution 47/133 on December 18, 1992. This Declaration remains a valid reference as a body of principles for all States, with some of its provisions reflecting customary international law on the subject. It serves as the fundamental standard for preventing and eradicating enforced disappearances by enshrining a *jus cogens* rule—namely, the prohibition of enforced disappearance and the corresponding obligation to investigate and punish perpetrators—and largely reflects, codifies and consolidates the customary international law that is legally binding on all States. As such, it remains a crucial reference¹. This document underlines that the systematic practice of enforced disappearances constitutes a crime against humanity and a violation of multiple human rights, thereby imposing on the State the responsibility to address this issue. Enforced disappearance is a continuous crime, as it extends until the fate and whereabouts of the victim are established with certainty². Adopted on December 20, 2006 and entered into force on December 23, 2010, the International Convention for the Protection of All Persons from Enforced Disappearances defines the crime of enforced disappearance in its Article 2 as follows:

“(...) the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”

Türkiye has not yet become a party to this Convention, despite being a country where numerous cases falling within its scope have been recorded.

Cases of enforced disappearances were first recorded and gained attention in Türkiye during the 1980s. The period following the military coup on September 12, 1980, was marked by a series of

¹ A/HRC/51/31/Add.3 , 31 August 2022, Thirtieth anniversary of the Declaration on the Protection of All Persons from Enforced Disappearance Report of the Working Group on Enforced or Involuntary Disappearances, para.74 (<https://documents.un.org/doc/un-doc/gen/g22/474/66/pdf/g2247466.pdf>).

² Inter-American Court of Human Rights (IACtHR), *La Cantuta v. Peru*, judgment of 29 November 2006, para. 114.

atrocities against civilians, including killings, torture, and persecution, with enforced disappearances being among these abuses.

Although accurate and detailed data on enforced disappearances in Türkiye is currently unavailable, provisional data based on lists compiled by various organisations working on this issue indicate that the total number of disappeared individuals since the coup d'état of 12 September 1980 was 1352 as of 2018³. However, this number does not fully reflect the situation regarding cases of enforced disappearances that occurred after the 2016 coup attempt.

Despite the gravity of human rights violations that occurred after the proclamation of a military regime following the coup on September 12, 1980, documented cases of enforced disappearances within the following decade were limited to 22, as reported by the Truth, Justice, Memory Centre (TJMC, Hakikat Adalet Hafıza Merkezi), a non-governmental organisation primarily focused on memory and peace studies, impunity and enforced disappearances⁴.

Commencing in 1991 and continuing thereafter, there was a notable surge in enforced disappearances, particularly in Southeast Anatolia—a region where the Kurdish population has been concentrated. Between 1991 and 2002, the number of enforced disappearances was reported as 1,316⁵. As elaborated further in the following chapter, this period saw the rise of armed conflicts between the Turkish Armed Forces (TAF) and the Kurdistan Workers' Party (PKK). Another notable aspect of this period was the imposition of a state of emergency (SoE) in numerous cities across the Southeast Anatolia region, which was extended 46 times until its eventual lifting in 2002.

Following a period of decline, enforced disappearances resurfaced significantly after the 2016 state of emergency declaration, which followed a coup attempt. This resurgence, documented by various human rights NGOs and detailed in the latest report from the UN Working Group on Enforced or Involuntary Disappearances (A/HRC/54/22), highlights a troubling pattern of such incidents recurring during political crises⁶.

This briefing paper examines the recurring pattern of enforced disappearances in Turkey, focusing on their connection to the "SoE regime" across different periods. It delves into the political and historical context, starting with the 1980 military coup, which is crucial for understanding the escalation of disappearances in the 1990s. The second chapter details that period, while the third chapter discusses post-2016 instances, highlighting both unique circumstances and similarities. Additionally, the paper reviews European Court of Human Rights rulings on Türkiye's enforced disappearance cases in the fourth section, offering legal insights.

³ Türkiye'nin Zorla Kaybetme Gerçeği, 18.09.2018, <https://hakikatadalethafiza.org/turkiyenin-zorla-kaybetme-gercegi/> (accessed on 26.10.2023).

⁴ Founded in 2011 in Istanbul, Türkiye, TJMC is an NGO producing information to uncover the truth about systemic and widespread grave human rights violations of the past and present. Their main work has been based on enforced disappearances and impunity. For more information please see: <https://hakikatadalethafiza.org/en>.

⁵ Türkiye'nin Zorla Kaybetme Gerçeği.

⁶ Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/54/22, published on 08.08.2023, <https://www.ohchr.org/en/documents/reports/ahrc5422-enforced-or-involuntary-disappearance-report-working-group-enforced-or> (Accessed on 19.12.2023).

I. Background of enforced disappearances in Türkiye

Türkiye’s political landscape has been significantly shaped by a series of military coups, with pivotal interventions occurring in 1960, 1971, and, notably, in 1980 when martial law was imposed nationwide. Each of these coups, presented as efforts to restore civilian governance, is rooted in Türkiye’s complex political history and has been connected to various political crises. This context of recurring military control has had profound and lasting impacts on Türkiye’s political and legal environments.

Following the coup in September 1980, the military dissolved Parliament, banned political and union activities, abrogated the existing constitution, and the National Security Council assumed control, enforcing nationwide martial law. This move, while aimed at restoring order, underscored the military’s central role in governing and further entrenched authoritarian measures.⁷

The martial law regime, implemented during periods of severe threats to the State and society when regular legal processes were deemed inadequate, often led to a reduction or full suspension of basic rights and freedoms⁸. However, as in the case of SoE, even in a martial law state, the fundamental principle of the rule of law must prevail in accordance with the international standards required in a democratic society⁹. The martial law regime remained in the 1982 Constitution until it was abrogated in 2017, along with Martial Law Act no. 1402.

After the coup, the military took control of justice and public order, imposing nationwide martial law until 1987 despite the return of civilian government in 1983. This period saw a complete re-design of the political system, with all fundamental laws revised, thereby shaping the constitutional order. The 1982 Constitution introduced the “state of emergency” concept, which continued after martial law ended in 1987, particularly in Kurdish-inhabited southeastern cities from March 1, 1984, to November 30, 2002.¹⁰

Enforced disappearances as a phenomenon emerged under the authoritarian regime following the 1980 coup d’état and escalated in the early 1990s, particularly within the context of the conflict between the TAF and the PKK, as elaborated in the subsequent chapter. The restructuring of the political and legal framework after the 1980 coup, transitioning from nationwide martial law to a prolonged SoE under a militarised approach to “counter-terrorism,” is a key root cause that makes enforced disappearances possible.

Firstly, the underlying “philosophy” entrenched within the existing political and legal framework often hinders the effective operation of the rule of law mechanisms. This “philosophy” skews the balance between limitations on fundamental rights and freedoms and the State’s exercise of

7 The impact of the 12 September 1980 coup can be recalled in terms of numbers and some important events: Parliament was dissolved, the constitution was abolished, the doors of political parties were locked and their properties were confiscated, 650 thousand people were detained, 1 million 683 thousand people were labelled, 230 thousand people were put on trial, the death penalty was demanded for 7 thousand people, 517 people were sentenced to death, 50 people who were sentenced to death were hanged, 14 thousand people were deprived of citizenship, 171 people were documented to have died as a result of torture, a total of 299 people died in prisons and the activities of 23 thousand 677 associations were stopped (Özgür Sevgi Göral, Özlem Kaya, Ayhan Işık, Konuşulmayan Gerçek: Zorla Kaybetmeler, Hakikat Adalet Hafıza Merkezi, Rapor, 2013, p. 18).

8 Geçmişten Günümüze Türkiye’de Olağanüstü Yönetim Usulleri ve Kamu Yönetimine Yansımaları, Servet Yigit, Anlambilim MTU Sosyal ve Beseri Bilimler Dergisi, Yil: 2021, Sayı 1, p. 18.

9 According to the Constitution of 1961 a state of emergency could only be declared in the following cases: Insurrection, a state of war, the emergence of a situation requiring war, the emergence of clear indications of a strong and active uprising against the homeland and the republic (Yigit, p. 18-19).

10 Egemen B. Bezci, Guven Gurkan Oztan, Türkiye’de Olaganustu Hal: Devlet Akli, Askerler ve Siviller, Mulkiye Dergisi, 39(1), p. 161.

authority in alignment with legal principles, often favouring the State. Transparency in law-making and law enforcement is diminishing, leading to instances of violations.

Additionally, the restructuring and militaristic atmosphere following the coup enabled secret paramilitary organisations within the State structure to operate within a context of complexity and competition. These entities held the belief that resolving the “Kurdish issue” required bold methods. Operating without legal oversight, they deemed all means justifiable to undermine the guerrilla’s mass support.¹¹

The subsequent chapters aim to illustrate how this transformation occurred and how regulations specific to the SoE regime were integrated into the regular legal system. Furthermore, they explore how extraordinary measures became normalised within the ordinary legal framework.

II. Enforced disappearances in the 90s

1. Emergence of “the Kurdish issue” and the declaration of State of Emergency

Since the 1980s, “the Kurdish issue” has become prominent in Türkiye’s political landscape. Initially, the PKK’s military presence in the predominantly Kurdish southeastern region received minimal attention from the government, dismissing it as actions by “a few marauders.”¹² However, as guerrilla support grew and Kurdish demands entered the political arena, the situation evolved. The armed conflict intensified, prompting successive governments to devise new strategies to address the escalating crisis.¹³ These strategies adopted included declaring a SoE and implementing a comprehensive military, political, and administrative transformation to combat the PKK insurgency.

When the military seized power on September 12, 1980, martial law was declared in 48 additional provinces, alongside the 19 provinces where it was already in effect before the coup. Martial law was gradually lifted in the western provinces over a three-year period, from 1984 until it was fully abolished in 1987. Meanwhile, in the southeast region, a state of emergency was declared in eight Kurdish cities in 1987, a number that increased to 13 by 1994¹⁴ (see Table 1). The State of Emergency Regional Governorship was established and granted extensive powers¹⁵ until the state of emergency ended on November 30, 2002. The SoE and martial law governed certain cities for 23 years, extending 46 times every 4 months until 2002.

11 Konuşulmayan Gerçek, p. 24.

12 Konuşulmayan Gerçek, p. 19.

13 Konuşulmayan Gerçek, p. 19.

14 These 14 cities were: Bingöl, Diyarbakır, Elazığ, Hakkari, Mardin, Mardin, Siirt, Tunceli, Van, Adıyaman, Bitlis, Muş, Batman, Şırnak and Bitlis.

15 These included evacuating or banning certain settlements and restricting entry and exit, suspending education at all levels of educational institutions, restricting or stopping the flow of foodstuffs, animal feed and products into and out of the region, making use of all means of communication within the borders of the region and confiscating them if necessary (Konuşulmayan gerçek, p. 19).



Table 1: The provinces highlighted in red refer to the regions where the Regional Governorship of State of Emergency operated until 2002.

By the 1990s, the TAF recognised that traditional warfare against guerrilla forces was ineffective against the PKK’s guerrilla tactics, and they adapted to “low-intensity warfare.”¹⁶ A significant development was the 1985 village guard system, which required locals to arm themselves and support military efforts against the PKK. Villagers were forced to choose between becoming guards—risking PKK reprisals—or abandoning their homes and lands.¹⁷ The number of village guards grew throughout the 1990s, and their roles expanded as the PKK gained momentum. The system was utilised to “distinguish loyal” citizens from “traitors,” as every resident was seen as a potential PKK supporter. Enforced disappearances often involved both Kurdish residents and village guards from the same area. In 1993, the “Area Dominance and the Non-Existence of the PKK” strategy aimed to regain territorial control and cut off civilian support to the PKK¹⁸.

The implementation of these policies in the region led to an increase in forced evacuations, killings, and enforced disappearances, thereby creating a climate of fear. For instance, based on tentative data, the number of enforced disappearances rose from 103 in 1993 to 518 in 1994. Notably, between 1993 and 1995, a systematic, diverse, and comprehensive record of human rights violations against civilians was documented in line with the overarching principle of “Area Dominance and Non-PKK Accommodation.”¹⁹

Hence, during the 1990s, both TAF and the PKK engaged in actions that violated human rights²⁰. The use of conventional counter-insurgency methods²¹ and paramilitary groups²² created an unstable environment. Some mixed groups, acting as counter-guerrilla, operated with impunity, notably in the repression of those “suspected of supporting the PKK organisation.”²³ Many soldiers,

16 Konusulmayan gercek, p. 19.

17 The Kurds of Turkey: Killings, Disappearances and Torture, Helsinki Watch, March 1993, p.2

18 Konusulmayan gercek, p. 21.

19 The Truth Justice Memory Center (TJMC) has compiled lists with the number of enforced disappearances based on the publications of human rights organizations and independent researchers. However, since not all the names on these lists have yet been confirmed, they prefer the term “tentative data” when referring to this data (Ibid).

20 The Kurds of Turkey, p. 6.

21 Konusulmayan gercek, p. 23.

22 The Kurds of Turkey, p. 16 and onwards.

23 In this context, the structure that gains particular emphasis is the counter-guerrilla organisation known by the acronym JITEM (Gendarmerie Intelligence in Combatting Terrorism, *Jandarma İstihbarat ve Terörle Mücadele* in Turkish). Although its existence was almost never acknowledged by the State, JITEM was first mentioned in the Report issued by the Commission for the Investigation of Political Assassinations and Unsolved Murders established by the Turkish Parliament in 1993. There remains no publicly available record of the unit’s existence, despite unofficial acknowledgement of its existence on various occasions over the years by some senior members of the security and intelligence services (Human Rights Watch, Time for Justice: Ending Impunity for Killing and Disappearances in 1990s Turkey, (September 3, 2012), https://www.hrw.org/report/2012/09/03/time-justice/ending-impunity-killings-and-disappearances-1990s-turkey#_ftnref1). In the overall criminal proceedings related to enforced disappearances, evidence presented in indictments and reports, together with statements from witnesses and complainants and confessions

confessors and village guards, often associated with the Gendarmerie Intelligence Command, have been accused of being involved in, organising or condoning such activities. These counter-guerilla structures, operating in accordance with the “low-intensity war” strategy, were equipped with unlimited powers and were protected by the armour of impunity—even if their members commit crimes—and were not accountable to any other institution within the State²⁴.

2. Cases of enforced disappearances

The study of enforced disappearances in the 1990s reveals consistent patterns like those described above, especially in the locations and yearly fluctuations in case numbers, offering key insights:

| Enforced disappearances by year | | Enforced disappearances by region/city ²⁵ | | |
|---------------------------------|---|--|-----------|-----------|
| Year | Number of enforced disappearances by year | SoE Region | İstanbul | Adana |
| 1991 | 18 | 14 | 2 | 1 |
| 1992 | 22 | 14 | 4 | 0 |
| 1993 | 103 | 94 | 5 | 0 |
| 1994 | 518 | 406 | 15 | 21 |
| 1995 | 232 | 177 | 14 | 1 |
| 1996 | 170 | 118 | 22 | 4 |
| 1997 | 94 | 69 | 4 | 1 |
| 1998 | 50 | 28 | 5 | 0 |
| 1999 | 76 | 59 | 6 | 0 |
| After 2000 | 33 | 27 | 1 | 0 |
| Date unknown | 4 | 3 | 0 | 0 |
| TOTAL | 1320 | 1009 | 78 | 28 |

from "informant" perpetrators, collectively indicate that a significant portion of enforced disappearance incidents in the 1990s were committed by members of JİTEM (Sevdiren, Öznur, Türkiye'nin Cezasizlik Mevzuati, Rapor, Hakikat Adalet Hafıza Merkezi, p. 44).

24 Konusulmayan Gerçek, p. 22-24.

25 The data used in this table is based mainly on the report focusing on enforced disappearances published by TJMC. For further details, please see, "Konusulmayan Gerçek: Zorla Kaybetmeler" p. 26-27.

Table 2: The table combines two main data: the number of enforced disappearances by year and yearly figures by regions.

The TJMC report, focusing on enforced disappearances in the 1990s, identifies two key trends: systematic use of enforced disappearances, particularly between 1993-1999, peaking between 1993-1996; and the concentration of incidents mainly in the SoE region, with Istanbul and Adana being also notable. TJMC's report indicates that victims in Istanbul and Adana often include Kurdish community leaders, politicians, and prominent figures. Additionally, individuals from various non-Kurdish backgrounds, such as university students associated with leftist politics and different local democratic groups, were also targeted²⁶.

3. Characteristics of enforced disappearances in the 90s:

Enforced disappearances reveal a clear pattern in terms of victims, perpetrators, and methods. The majority of victims were Kurds from the SoE region, often accused of association with the PKK. Additionally, prominent Kurds in urban areas, such as party leaders, journalists, and Human Rights Association (HRA) members, were specifically targeted for their opposition. Outside the SoE region, a notable proportion of victims were leaders and members of illegal leftist organisations engaged in armed struggle.²⁷

Methods:

Victims of enforced disappearances were typically taken from their homes, workplaces, or public places, notably in Toros-brand white cars, after which there was no further contact, and they were often later found dead.²⁸ This method of arrest is most often referred to by witnesses as “custody”; in a small number of cases, the term “abducted by unknown persons” is used²⁹.

Perpetrators:

Witness accounts describe the perpetrators as police, military/gendarmerie, village guards, and unidentified persons. It is noteworthy that these individuals are often not in uniform, yet witnesses describe them as if they were³⁰. In almost all cases of enforced disappearance, the victim was publicly arrested or detained by persons previously known to the local population³¹.

Regarding the proceedings in response to claims of enforced disappearances:

In most cases, no information was provided about the victim's fate or false information was given. Relatives typically reported disappearances to the police or gendarmerie, but these units often responded with “we do not have the person” and did not investigate. If relatives approached the Public Prosecutor's Office, prosecutors usually enquired with law enforcement about the

26 Konusulmayan Gerçek, p. 26-27.

27 Gökçen Alpkaya, “Kayıplar Sorunu ve Türkiye”, Ankara Üniversitesi SBF Dergisi, c. 50, sy. 03, 1995, p. 45, doi:10.1501/SBF-der_0000001842.

28 Gökçen Alpkaya, İlkem Altıntaş, Öznur Sevdiren, Emel Ataktürk Sevimli, Zorla Kaybetmeler ve Yargının Tutumu, Rapor, Hakikat Adalet Hafıza Merkezi, p. 20.

29 Alpkaya, “Kayıplar Sorunu ve Türkiye”, p. 47.

30 Alpkaya, “Kayıplar Sorunu ve Türkiye”, p. 48.

31 Öznur Sevdiren, Türkiye'nin Cezasızlık Mevzuatı, Rapor, Hakikat Adalet Hafıza Merkezi, p.43.

“missing” person’s custody status. If they received a negative response, they often did not pursue further investigation.³²

Regarding the reprisals against relatives of the disappeared:

Human rights organisations have reported that those who seek justice for the disappeared have faced explicit or implicit threats. These incidents are documented in reports by the Prime Ministry and the Parliamentary Committee, disclosed by perpetrators, and cited in recent legal indictments³³.

Another pattern observed is the absence of records for individuals subjected to enforced disappearance, including crucial details such as location, reasons for custody, and duration of custody. In cases where records do exist, they are often withheld from judicial authorities or intentionally kept from prosecutors or courts. This widespread lack of documentation suggests that detention was deliberately planned as part of the enforced disappearance process, with the aim of preventing State officials involved from being held accountable.³⁴

Based on the conclusions repeatedly emphasised in the reports published by the TJMC, which relied on fieldwork and research on enforced disappearances, the most significant indicator that enforced disappearance has been carried out as part of a State policy, whether widespread or systematic, is the highly consistent pattern of the disappearances during the SoE period. This pattern is characterised by the systematic use of same methods of abduction, often carried out through public arrests or detentions, and the involvement of security forces, including police, military/gendarmerie and village guards many of whom, though not in uniform were recognised by locals. Together with compelling evidence suggesting that the same individuals were involved in several cases, these recurring methods, the identifiable nature of the perpetrators, and the institutionalised response to disappearance cases reinforce the conclusion that these acts were not isolated incidents, but rather part of a broader policy of enforced disappearances.

III. Enforced disappearances in the aftermath of the 2016 coup d’état attempt

The increase in enforced disappearances during the 90s ceased after the state of emergency ended in late 2002. Since then, while annual human rights reports mention isolated cases, tracking their outcomes remains difficult.³⁵ According to data from different sources, however, there has been a discernible and undebatable decrease in instances of enforced disappearances from 2002 until 2016. A review of reports from the UN Working Group on Enforced or Involuntary Disappearances reveals that only one case was documented in 2007, with no further cases recorded until 2016³⁶. However, since the declaration of a nationwide SoE in Turkey in 2016, there has been a

32 Alpkaya, Kayıplar Sorunu ve Türkiye 52-53.

33 SEVDİREN, p. 42-43.

34 Zorla Kaybetmeler Hakkında Amicus Curae Raporu, European Center for Constitutional and Human Rights, Hakikat Adalet Hafıza Merkezi, Helsinki Yurttaşlar Derneği, İnsan Hakları Derneği, İnsan Hakları Araştırma Derneği, Türkiye Ekonomik ve Sosyal Etüdler Vakfı, Türkiye İnsan Hakları Vakfı, Publication of TJMC, p. 26.

35 Annual human rights reports of the HRA and HRFT can be consulted in this regard.

36 Report of the Working Group on Enforced or Involuntary Disappearances, A/HRC/36/39, 31.07.2017, P. 47, <https://documents.un.org/doc/un-doc/gen/g17/229/15/pdf/g1722915.pdf?token=mTtEPCbuOTP5bymZnu&fe=true> (Accessed on 25.01.2024).

resurgence of enforced disappearances. This paper examines how this political context has influenced recent cases, outlining the key characteristics of the period following the SoE declaration.

1. Returning to the concept of “war against terrorism” and the institutionalisation of “State of Emergency”

Following the failed coup d'état in 2016, enforced disappearances saw a resurgence, coinciding with a shift in Türkiye's counter-terrorism approach. This shift had already begun slightly earlier, contributing to the atmosphere of repression post-coup. The collapse of negotiations between the Government and the PKK in 2015 marked a return to conflict and violence, reminiscent of the 1980s. This perpetuated a state of war framed within anti-terrorism efforts, normalising exceptional practices with significant political and legal ramifications. Intensified clashes in urban centres in the southeastern region of Türkiye, such as Diyarbakır, Hakkâri, Şırnak, Cizre, and Silopi led to widespread destruction, displacement, and reported human rights violations, including restrictions on movement and access to basic necessities³⁷.

During this conflict period, echoing the 90s, the “asymmetric counter-terrorism methods” and “perpetual state of war” discussed earlier have resurfaced in political and legal contexts. A prime example is the reinforced legal impunity granted to members of the TAF during curfews.³⁸ Crimes committed by TAF during “counterterrorism activities” are now labelled as “military crimes,” requiring executive approval for investigation. This classification prevents direct probes into severe violations such as enforced disappearances and torture, effectively shielding those responsible from accountability under the pretext of fighting terrorism.³⁹

The attempted coup and subsequent SoE, occurring amidst a return to militarism, underscore a significant link to the crimes of this period, including enforced disappearances.

2. The declaration of State of Emergency and the conditions that followed

The Turkish government declared SoE after the failed coup on July 15, 2016, which lasted for two years, having been extended successively in three-month periods. The organisation known as the Gülen Movement, also called “Hizmet” (Service), was blamed for the coup attempt⁴⁰. This organisation had established a vast network of schools, media outlets, and charitable organisations, gaining influence particularly in the fields of education, media and business in Türkiye. Gülenists were

37 Starting in August 2015 until January 2020, there were at least 381 officially declared curfews in a total of 11 provinces and at least 51 districts.

38 DİNÇER, Hülya, Süreklileşen Olağanüstü Halde Hesap Verebilirlik Alanının Daralması ve “Kanuni” Sorumsuzluk Rejimi, Prof. Dr. Rona Aybay Anısına “Olağanüstü Rejimlerde İnsan Haklarını Savunmak”, Türkiye Barolar Birliği & Kamu Hukukçuları Platformu, p. 30 (<https://tbbyayinlari.barobirlik.org.tr/TBBBooks/686.pdf>). In Law No. 5442 on Provincial Administration, a provision was introduced granting governors the authority to request assistance from military units to intervene in incidents that may occur in their provinces. This evidently normalised the state of emergency, removing it from the realm of exceptionality. Hence, by granting the President of the Republic the authority to deploy the military anywhere in the country through the justification of “combating the terrorism” without the need to declare a state of emergency as outlined in the Constitution, an exceptional regime established during peacetime. Moreover, the command and administration of military operations initiated under this framework were largely left to the military command without effective civilian oversight. Consequently, extensive powers such as the authority to search residences, workplaces and enclosed spaces—which under normal circumstances can only be exercised with a judge's decision or, in urgent cases, a prosecutor's decision—have also been transferred to the military command. These powers constitute a serious violation of the rule of law (DİNÇER, p. 31).

39 DİNÇER, p. 31-32.

40 It is in fact a transnational Islamic social and religious movement founded by Fethullah Gülen, a Turkish Islamic scholar and preacher. Gülenists describe themselves as Hizmet (Service) due to their emphasis on “creating necessary infrastructure (the movement is famous for its extensive transnational network of schools) to reform society.” (Rusen Cakir, “Gülen cemaatinin intiharı: Mücahit Bilici ile söyleşi,” filmed July 21, 2016, 26:03, posted July 21, 2016, <https://www.youtube.com/watch?v=fcmuL6E5uZc>)

allies of Erdoğan and his Justice and Development Party (AKP) until the early 2010s when tensions between the movement and the government began to escalate⁴¹. The turning point came in 2013 when Turkish authorities launched a crackdown on alleged Gülenist elements within the judiciary and police force, accusing them of attempting to undermine the government. This crackdown intensified following a corruption scandal involving high-ranking government officials, which Erdoğan claimed was orchestrated by Gülenists⁴². Tensions climaxed on July 15, 2016, when a Turkish military faction attempted a coup d'état. Although the coup was quickly quashed, it resulted in hundreds of deaths and thousands of arrests. The government immediately blamed the Gülen movement, branding it the “Fethullahist Terrorist Organization” (FETÖ).

Following the coup, the government launched extensive purges against individuals and organisations linked or even remotely associated with the Gülen movement, resulting in severe repercussions⁴³. Since July 2016, tens of thousands have been arrested or detained not only for involvement in the coup or alleged ties to the Gülen movement, but also including journalists, academics, and politicians from the pro-Kurdish People's Democratic Party (Halkların Demokratik Partisi *in Turkish*, HDP). Many institutions, including media outlets such as newspapers and TV stations, were shut down by decree laws for alleged “terrorist ties,” alongside 1,748 foundations and associations⁴⁴. Human rights groups also noted increased torture and ill-treatment following the state of emergency declaration⁴⁵.

During the SoE, the Council of Ministers issued a total of 36 SoE decree-laws in two years⁴⁶. Although the authority to issue decree-laws is constitutionally and legally restricted to matters directly related to the State of Emergency (SoE), nearly all matters were regulated through emergency decree-laws during this period. Some decrees led to the dismissal of tens of thousands from their jobs, while others addressed unrelated matters, such as banning television marriage programmes and regulating the use of winter tyres for vehicles. Certain SoE decrees also introduced permanent changes, contradicting the intended temporary nature of the SoE⁴⁷. While some of these decree-laws were brought before the Constitutional Court (CC) for annulment, the court ultimately

41 The turning point came in 2013 when Turkish authorities launched a crackdown on alleged Gülenist elements within the judiciary and police force, accusing them of attempting to undermine the government. This crackdown intensified following a corruption scandal involving high-ranking government officials, which Erdoğan blamed on Gülenists.

42 “Unpacking Türkiye’s Failed Coup: Causes and Consequences”, Gönül Tol, Matt Mainzer, Zeynep Ekmekçi, 17.08.2016, Middle East Institute, https://www.mei.edu/publications/unpacking-turkeys-failed-coup-causes-and-consequences#_edn2.

43 Hüsnü Öndül, OHAL KHK’leri ve İnsan Hakları Mücadelesine Etkileri, İHD, <https://www.ihd.org.tr/wp-content/uploads/2022/06/OHAL-KHKlar%C4%B1-Raporu.pdf>, p. 4).

44 OHAL sona erdi: İki yıllık sürecin bilançosu OHAL sona erdi: İki yıllık sürecin bilançosu, Onur Erem, BBC Türkçe, 17 Temmuz 2018, <https://www.bbc.com/turkce/haberler-turkiye-44799489>. Please also see Hüsnü Öndül, OHAL KHK’leri ve İnsan Hakları Mücadelesine Etkileri, İHD, <https://www.ihd.org.tr/wp-content/uploads/2022/06/OHAL-KHKlar%C4%B1-Raporu.pdf>, p. 4).

45 According to Amnesty International 2016/2017 Human Rights Report, there is credible evidence that some of those detained in Türkiye after the July 15 coup attempt were beaten and tortured (Amnesty International Report 2016/2017, The State of the World’s Human Rights p. 369). Please also see Torture and ill-treatment in Turkey, Universal Periodic Review Human Rights Foundation of Türkiye (HRFT) Briefing Note, <https://en.tihv.org.tr/alternative-shadow-reports/universal-periodic-review-hrft-briefing-note/>; 10 Aralık İnsan Hakları Günü İHD-TİHV Ortak Açıklaması (Joint Statement by HRA-HRFT on Human Rights Day), <https://www.ihd.org.tr/10-aralik-insan-haklari-gunu-ihd-tihv-ortak-aciklamasi/>, and Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr. Nils Melzer on the Official visit to Türkiye– 27 November to 2 December 2016, <https://www.ohchr.org/en/statements/2016/12/preliminary-observations-and-recommendations-united-nations-special-rapporteur?LangID=E&NewsID=20976>.

46 As per Article 121 of the Constitution, “In times of emergency, the Council of Ministers, presided over by the President of the Republic, is authorised to issue decrees with the force of law concerning matters deemed essential due to the emergency situation.”

47 The Venice Commission’s report, titled “Opinion on the State of Emergency Statutory Decrees Nos. 667 to 676 issued in the aftermath of the failed coup attempt of July 15, 2016,” also highlighted this, stating that such a scenario is inconsistent with the temporary nature of the state of emergency (Opinion on Emergency Decree Laws Nos 667-676 Adopted Following the Failed Coup of 15 July 2016, Adopted by the Venice Commission on its 109th Plenary Session, Venice, 9-10 December 2016, par. 85-87, [Venice Commission : Council of Europe \(coe.int\)](https://www.venicecommission.org/en/CoE_International_instruments/Venice_Commission_Council_of_Europe_(coe.int))). For examples of decree-laws bringing permanent changes, please see Öndül, Hüsnü, OHAL KHK’leri ve İnsan Hakları Mücadelesine Etkileri, İnsan Hakları Derneği, p. 5-8.

declared that it lacked the jurisdiction to review them, reversing its earlier stance on examining SoE decrees⁴⁸. This enabled the government to enact decree-laws that conflicted with the Constitution and set a precedent for a decade in which SoE decree-laws remained beyond constitutional review.

The SoE decree-laws have profoundly impacted Türkiye's human rights landscape, both in their content and implementation. By undermining the rule of law, they have eroded fundamental rights and freedoms, stifled human rights activism through restrictive laws and practices, and fostered a climate of impunity for State-perpetrated crimes.

3. Cases of enforced disappearances

Reports and statements from human rights organisations, especially following the declaration of the State of Emergency, have documented numerous cases of enforced disappearances⁴⁹.

During the same period, many instances of abduction were also reported. An analysis of these incidents reveals a pattern of arbitrary or unacknowledged detention, where individuals were abducted by persons posing as police officers in vehicles, subjected to forced confessions through torture and physical violence, and typically released within a day. According to the HRFT's annual human rights reports, 57 people were abducted in this manner between 2018 and 2021⁵⁰. However, these figures do not include data from 2016 and 2017. Considering both the missing years and unreported cases, the actual number is likely much higher. In these cases, it was observed that abducted individuals were generally released either on the same day or the following day, with about half experiencing torture and other ill-treatment, while the rest were coerced into espionage⁵¹.

Another category of incidents involves cases where individuals are abducted by persons posing as police officers in vehicles, after which there is no information about them for an extended period. As detailed later, a small number of these cases, lasting months or even years, involve individuals who have been forcibly disappeared, only to reappear in different locations.

Due to the lack of comprehensive documentation since 2016, determining the exact number of enforced disappearances during this period remains challenging. The data used in this briefing paper relies on limited information gathered from periodic reports by various institutions and press releases. Therefore, the primary purpose of this section is not to provide precise statistics, but

48 Anayasa Mahkemesi (Constitutional Court), E: 2016/166, K: 2016/159, Karar Tarihi: 12 Ekim 2016. In its application to the CC, it was argued that the SoE decrees encompass numerous provisions unrelated to combating the Gulenist organisation, which was the rationale behind the declaration of the SoE. Although the CC invalidated numerous provisions within the emergency decrees, citing that they contained regulations beyond the practical measures necessitated by the state of emergency, it reversed its ruling in 2016 without citing any reasonable justification, in a decision that contradicted its 1992 ruling.

49 "In Custody: Police Torture and Abductions in Turkey", Report, Human Rights Watch, October 2017, <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey#:~:text=In%20Turkey%20today%2C%20people%20accused,the%20involvement%20of%20state%20authorities>. Tanrikulu'ndan Gozaltinda Kayiylar Raporu", 28.05.2020, <https://www.gazeteduvar.com.tr/politika/2020/05/28/tanrikulundan-gozaltinda-kayiylar-raporu>. "IHD: Son 10 ayda 160 kisi kacirilarak ajanlastirma ve tehditlere maruz kaldi", Insan Haklari Derneği, Diyarbakir Subesi, 15.11.2020, <https://ihddiyarbakir.org/tr/post/24312/ihd-son-10-ayda-160-kisi-kacirilarak-ajanlast>.

50 Please see: 2018 yili Baski ve Tehdit Yontemleriyle Ifade Alma, Mulakat Yapma, Ajanlastirma ve Kacirma Olaylariyla Ilgili Ozel Rapor, <https://www.ihd.org.tr/baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>; TIHV – 2019 yili Baski ve Tehdit Yontemleriyle Ifade Alma, Mulakat Yapma, Ajanlastirma ve Kacirma Olaylariyla Ilgili Ozel Rapor; <https://www.ihd.org.tr/2019-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>; TIHV – 2020 yili Baski ve Tehdit Yontemleriyle Ifade Alma, Mulakat Yapma, Ajanlastirma ve Kacirma Olaylariyla Ilgili Ozel Rapor, <https://www.ihd.org.tr/2020-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>; TIHV – 2021 yili Baski ve Tehdit Yontemleriyle Ifade Alma, Mulakat Yapma, Ajanlastirma ve Kacirma Olaylariyla Ilgili Ozel Rapor, <https://www.ihd.org.tr/2021-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/> 51 2019 Yillik Insan Haklari Raporu, p. 65, 2020 Yillik Insan Haklari Raporu, p. 70, 2021 Yillik Insan Haklari Raporu, p. 88.

rather to highlight the resurgence and upward trend of enforced disappearances since 2016, following a decline and near cessation of such cases after 2002.

In a report published by Advocates of Silenced Turkey⁵² in 2021, 27 people are categorised as forcibly disappeared in the aftermath of the failed coup d'état between 2016 and 2021⁵³. Meanwhile, the UN Working Group on Enforced or Involuntary Disappearances recorded 17 cases of enforced disappearances between 2016 and 2022⁵⁴. However, many sources suggest that the actual number of enforced disappearances is likely much higher than the cases officially reported.⁵⁵

4. Characteristics of enforced disappearances after 2016

The pattern of enforced disappearances post-2016 resembles that of the 1990s, as discussed in the second chapter, in terms of the victims' identities, the perpetrators, and the methods employed. Most individuals who were forcibly disappeared were investigated for alleged ties to the Gülenist movement, labelled as FETÖ56 by the government, and lost their jobs due to SoE decree-laws⁵⁷.

Methods:

Most abductions were carried out by individuals posing as police officers, who forcibly detained people in public places such as malls or streets, using unmarked, predominantly black vehicles, often during daylight hours⁵⁸. Nearly all victims who resurfaced after being forcibly disappeared reported experiencing torture, physical violence, police interrogation pressure, or coercion into espionage during their captivity⁵⁹.

Perpetrators:

According to witness statements or security camera footage, the incidents typically involved abduction by individuals who identified themselves as police officers⁶⁰.

Regarding the proceedings in response to claims of enforced disappearances:

52 A non-profit organisation campaigning for human rights in Türkiye established by a group of lawyers, judges, academics, journalists, and activists who are mainly the victims of the purge against Gülenist movement in the aftermath of the failed coup d'état. For more information please visit <http://silencedturkey.org>.

53 "Global Purge – 144 Abductions conducted by the Turkish Government in Türkiye and abroad in the aftermath of 2016", Silenced Turkey, 2021, pp. 3-13.

54 As to the distribution of these cases by year; 3 cases of enforced disappearance were recorded in 2016, 5 cases in 2017, 1 case in 2018, 7 cases in 2019 and 1 case in 2010 (Report of the Working Group on Enforced or Involuntary Disappearances, p. 42).

55 "IHD: Son 10 ayda 160 kişi kaçırılarak ajanlaştırma ve tehditlere maruz kaldı".

56 FETÖ is an acronym commonly used in Turkey to refer to the "Fethullah Terrorist Organization," a term designated by the Turkish government for the network of followers of Fethullah Gülen, a Muslim cleric and former ally of Turkish President Recep Tayyip Erdoğan. Gülen, who resides in exile in the United States, leads a religious movement known as "Hizmet" (meaning "service" in Turkish) or the "Gülen Movement." The Turkish government accuses this movement of orchestrating the failed coup attempt on July 15, 2016.

57 Turkey: Renewed Torture in Police Custody, Abductions- Investigate Detention Abuses and Locate Missing Men, 12 October 2017, Report, HRW (<https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>)

58 "Beyond Türkiye's Borders: Unveiling Global Purge, Transitional Repression, Abductions", Advocates of Silenced Türkiye (AST) Report, May 2023, p. 8, <https://silencedturkey.org/beyond-turkeys-borders-unveiling-global-purge-transnational-repression-abductions>

59 2018 yılı Baskı ve Tehdit Yöntemleriyle İfade Alma, Mülakat Yapma, Ajanlaştırma ve Kaçırma Olaylarıyla İlgili Özel Rapor, İnsan Hakları Derneği, <https://www.ihd.org.tr/baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>. Please also see 2020 yılı Baskı ve Tehdit Yöntemleriyle İfade Alma, Mülakat Yapma, Ajanlaştırma ve Kaçırma Olaylarıyla İlgili Özel Rapor, İnsan Hakları Derneği, İnsan Hakları Derneği, <https://www.ihd.org.tr/2020-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>.

60 "Cumartesi İnsanları 745. Haftada: Beyaz Toros'ların yerini siyah Transporter'ler aldı". 06.07.2019, T24, <https://t24.com.tr/haber/cumartesi-insanlarinda-745-hafta-beyaz-toroslarin-yerini-siyah-transporterler-aldi.829409>.

There has been no effective investigation into the allegations of abduction and enforced disappearance following the failed coup in 2016⁶¹. Opposition members from different political parties in Parliament submitted three separate parliamentary questions regarding the abductions and enforced disappearances that occurred after 2016. They asked why effective investigations were not conducted into the disappearances of these individuals, but these enquiries were left unanswered⁶².

In respect to the situation of relatives of the disappeared:

In some cases, when individuals are found after being forcibly disappeared for a period, it has been reported that families receive threats and refrain from sharing information about their whereabouts with human rights organisations or the press, out of concern for the safety of the disappeared individuals⁶³.

Comparing the 2016 post-coup “fight against FETÖ” with the earlier “fight against the PKK” reveals striking similarities in tactics and impacts on the rule of law, despite differences in their initiation and scale. Both situations framed adversaries within a “war” context under counterterrorism, marked by states of emergency—regionally in the 1990s and nationwide in 2016. Notably, the enforced disappearances post-July 15, 2016, coup echo those of the 1990s, which led to thousands of deaths implicating paramilitary groups like JİTEM.

IV. European Convention on Human Rights and the European Court of Human Rights’ case law on enforced disappearances

Enforced disappearances violate numerous provisions of the European Convention on Human Rights (hereinafter, ECHR). In numerous rulings, the European Court of Human Rights (hereinafter, the Court or ECtHR) has concluded that Türkiye violated Articles 2, 3, 5 and 13 of the ECHR, which respectively guarantee the right to life, the prohibition of torture and inhuman treatment, the right to liberty and security and the right to an effective remedy.

1. General scope of the case law of the ECtHR on enforced disappearances

When assessing the breach of Articles 2 and 3 of the ECHR concerning a disappeared individual, the Court evaluates both the substantive and procedural aspects outlined in these articles. This includes determining whether the elements of the crime are present and whether the State conducted a thorough investigation into the alleged crime⁶⁴.

61 “2019 yılı baskı ve tehdit yöntemleriyle ifade alma, mülakat yapma, ajanlaştırma ve kaçırma olaylarıyla ilgili özel rapor”, 13.01.2020, <https://www.ihd.org.tr/2019-yili-baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>. Please also see “Türkiye İnsan Hakları Raporu”, TIHV, Ankara, 2021, p. 70.

62 “HDP’den Kayıplar İlgili Soru Onergesi”, 13.09.2021, Bianet, <https://bianet.org/haber/hdp-den-kayıplarla-ilgili-soru-onergesi-250203>; “Ankara’da Yakınları Kacırılanlar Anlatıyor”, 29.06.2017, BBC Türkçe, <https://www.bbc.com/turkce/haberler-turkiye-40372013>; “Türkiye: Zorla Kaybetme Vakaları ve İşkence” 29.04.2020, Press Statement, Human Rights Watch, <https://www.hrw.org/tr/news/2020/04/29/341339>.

63 “2018 yılı baskı ve tehdit yöntemleriyle ifade alma, mülakat yapma, ajanlaştırma ve kaçırma olaylarıyla ilgili özel rapor”, 16.11.2018, <https://www.ihd.org.tr/baski-ve-tehdit-yontemleriyle-ifade-alma-mulakat-yapma-ajanlastirma-ve-kacirma-olaylariyla-ilgili-ozel-rapor/>. Please also see “Türkiye: Zorla Kaybetme Vakaları ve İşkence”, HRW Press Statement.

64 Missing Persons and Victims of Enforced Disappearance in Europe, Issue Paper published by THE Council of Europe Commissioner for Human Rights, p. 38.

Considering the substantive violation of Article 2, the Court has set a presumptive criterion. Once the Court considers that it has been established beyond reasonable doubt that the disappeared person must be presumed dead due to unacknowledged detention by State agents, the responsibility of the State is engaged⁶⁵. Furthermore, in cases where the disappearance occurs under life-threatening circumstances, and the State fails to take reasonable measures available to them to prevent a real and immediate risk to the life of the disappeared, the ECtHR has found a violation pursuant to the positive obligation inherent in Article 2 of the ECHR, in its substantive aspect in a number of cases. The Court has ruled that the disappearance of a person in southeastern Türkiye between 1992 and 1996 could be regarded as life-threatening⁶⁶, particularly if that person was suspected by the authorities of PKK involvement⁶⁷.

Under Article 3, the European Court of Human Rights has established that, besides cases with evidence of ill-treatment of disappeared persons during detention, the distress and uncertainty experienced by their relatives due to prolonged disappearances can also be deemed as “inhuman” treatment or punishment⁶⁸. The core of the violation lies not only in the serious harm done to the missing person; it lies in the authorities’ reactions and attitudes when the situation is brought to their attention⁶⁹.

In instances where Articles 2 and 3 of the ECHR are potentially violated concerning a forcibly disappeared person, the Court also examines whether the offence extends to the procedural aspects outlined in these articles. This entails the requirement for States to conduct a thorough investigation into the alleged crime, which must be initiated *ex officio*. Such an investigation should meet the following requirements: independence, impartiality, adequacy, promptness, and public oversight, regardless of its specific form. Notably, the involvement of victims or their relatives in the process is crucial to safeguard their interests to the fullest extent necessary⁷⁰. On several occasions, the Court has found that the State’s failure to conduct a thorough investigation into allegations of death, disappearance or ill-treatment—due to delays or reluctance in conducting investigations—constitutes a violation. This issue is addressed in a separate chapter below, as it is not only a key element in the ECtHR’s judgments against Türkiye concerning enforced disappearances but also a critical factor that, particularly when combined with other related processes, contributes to impunity.

65 Guide on Article 2 of the European Convention on Human Rights – Right to Life, Council of Europe, p. 30. Please also see *Akdeniz and Others v. Turkey*, no. 23954/94, 31 May 2001, § 101; *Orhan v. Turkey*, no. 25656/94, 6 November 2002 § 331; *İpek v. Turkey*, no. 25760/94, ECHR 2004-II, § 168; *Meryem Çelik and Others v. Turkey*, no. 3598/03, 16 April 2013, § 60.

66 *Osmanoğlu v. Turkey*, No. 48804/99, 24 January 2008, §§; *Meryem Çelik and Others v. Turkey*, § 58.

67 *Enzile Özdemir v. Turkey*, no. 54169/00, 8 January 2008 (§ 45) In the case of *Koku v. Turkey*, considering that dozens of politicians working for the Pro-Kurdish Political Party HADEP and its predecessors were being kidnapped, injured and killed at around the time of Hüseyin Koku’s death, who was also an active member of HADEP, the life of the applicant’s brother was at more real and immediate risk than other persons at that time. Prior to his disappearance, Hüseyin Koku had also been arrested, taken into custody and placed in detention on remand. He was accused of membership of, and helping and abetting, the Kurdistan Workers’ Party (PKK) (§ 17). According to the Court, the action which was expected from the domestic authorities was not to prevent the disappearance of the applicant’s brother – which had already taken place – but to take preventive operational measures to protect his life which was at risk from the criminal acts of other individuals (*Koku v. Turkey*, no. 27305/95, 31 May 2005, § 131-132).

68 *Orhan v. Turkey*, § 360.

69 *Orhan v. Turkey*, § 358; *Varnava and others v. Turkey*, Nos. 16064/90, 2009, § 200.

70 *Missing Persons and Victims of Enforced Disappearance in Europe*, p. 38.

2. Implementation of judgments on Türkiye and systemic barriers

ECtHR's judgments often remain unimplemented, thus re-victimising the applicants and failing to offer redress for the harm suffered, not to mention guarantees of non-repetition⁷¹. Regrettably, Türkiye's track record with the ECtHR on enforced disappearances remains concerning. As of November 2015, out of roughly 300 cases recorded by the TJMC, 118 have been reviewed by the ECtHR, which found Türkiye responsible for violating rights to life and the prohibition of torture in 78% of these cases—a stark contrast to domestic law outcomes. In 9% of these cases, Türkiye proposed amicable settlements. Overall, Türkiye was deemed responsible in about 87% of cases. Despite nearly two decades since these disappearances, only 27% of the victims have been recovered and returned to their families for burial, while 6% were found but buried anonymously. The fate of the remaining 67% is still unknown, denying their families the right to truth under Article 3 of the ECHR⁷².

As of January 2016, the TJMC's analysis of nearly 300 files shows that 68% of investigations into enforced disappearances are ongoing, but many have stalled. The ECtHR has criticised some of these investigations as ineffective, particularly noting delays during the execution phase. A major systemic problem is Türkiye's inadequate handling of the “statute of limitations” in judicial processes for these cases.⁷³ According to the same analysis conducted by the TJMC, only 23% of the investigations have resulted in prosecutions, and convictions have been handed down in only 1% of cases.

In the 1990s, despite vigorous advocacy by families and lawyers, few investigations into enforced disappearances were launched. Those that were initiated were often superficial and prone to stalling. Cases languished, reaching the statute of limitations with little to no action taken against suspects besides ongoing search warrants. This lack of progress led victims' families and their lawyers to seek justice through the ECtHR. The Court characterised the judicial inaction on these cases and related extrajudicial killings as “judicial resistance,” which perpetuated impunity for perpetrators.⁷⁴ Despite optimistic estimates suggesting that legal proceedings could extend for about thirty years, this resistance led to the gradual closure of criminal investigations into alleged State-sponsored crimes from the 1980s and 1990s due to the statute of limitations.

In the 2000s, consecutive violation judgments by the ECtHR confirmed both the reality of enforced disappearances by the State and the justice system's role in shielding perpetrators. Additionally, these judgments serve as an archive revealing the scope and prevalence of state crimes, how these crimes were carried out, whom they targeted and for what reasons⁷⁵. In cases where the ECtHR found that the State had failed in its obligation to investigate violations of the right to life, authorities were required to reopen and thoroughly examine pending investigations before prosecutors. However, this obligation remained unfulfilled⁷⁶.

71 Missing Persons and Victims of Enforced Disappearance in Europe, p. 55.

72 Zorla Kaybetmeler Hakkında Amicus Curae Raporu, TJMC Publications, p. 27.

73 İzleme Raporu, Türkiye'de güvenlik güçlerinin gerçekleştirdiği zorla kaybetmelere dair Avrupa İnsan Hakları Mahkemesi'nin Türkiye aleyhine vermiş olduğu kararlarının icrasına dair Hakikat Adalet Hafıza Merkezi (Hafıza Merkezi) ve Anayasal Haklar ve İnsan Hakları İçin Avrupa Merkezi (European Center for Constitutional and Human Rights - ECCHR) tarafından hazırlanan ortak tespit ve öneriler, 15 Ocak 2016, pp. 32-33.

74 DİNÇER, Hülya, 90'lardan bugüne Türkiye'de cezasızlık politikalarının bilançosu: Savaşın gölgesinde “adalete bağırarak”, Toplum ve Bilim, No. 152, 2020, p. 47.

75 Ibid.

76 DİNÇER, 90'lardan bugüne Türkiye'de cezasızlık politikalarının bilançosu: Savaşın gölgesinde “adalete bağırarak”. p. 48.

3. Measures of reparation

Apart from a few exceptions, the Court typically interprets “just satisfaction” as compensation for both pecuniary and non-pecuniary damages. However, it often refrains from ordering States to verify facts or disclose the truth about enforced disappearances, asserting that such matters fall under the jurisdiction of the Committee of Ministers, acting pursuant to Article 46 of the ECHR. Nonetheless, some judges advocate for the Court to mandate States to conduct comprehensive investigations into alleged violations as a form of reparative action⁷⁷.

In cases against Türkiye, where legislative gaps and inadequate domestic investigations hinder compensation for applicants, it is evident that Turkish authorities fail to provide redress to victims’ relatives. The main obstacle to compensating victims of severe human rights violations by State officials in 1990s Türkiye is the government’s persistent denial of its officials’ responsibility and the suffering endured by victims’ relatives. Additional obstacles, such as the lack of qualified interpreters during hearings, the failure to reimburse expenses for attending transferred trials, combined with the continued denial by all relevant State institutions—including the judiciary and parliament—significantly hinder victims’ access to justice⁷⁸.

V. Specific conditions leading to impunity in cases of enforced disappearances in Türkiye

In Türkiye, investigations and prosecutions concerning the crime of enforced disappearance almost invariably result in impunity. Examining the underlying causes reveals an established pattern that has become increasingly evident since the 1990s. Among the key factors contributing to impunity, the lack of effective investigations and statutory limitations hold significant importance—and these two issues are, in fact, closely intertwined.

1. Lack of effective investigations

In cases concerning enforced disappearances in Türkiye, numerous judgments by the European Court of Human Rights have highlighted the issue of ineffective investigations. The Court has identified various shortcomings and errors, including reluctance, inadequacy, and superficiality in conducting investigations into enforced disappearances⁷⁹; significant delays in obtaining witness statements⁸⁰; failure to examine crime scenes for concrete evidence⁸¹; insufficient detail in autopsy reports⁸²; delays or reluctance in soliciting statements from complainants⁸³; premature dismissal or referral decisions without gathering necessary evidence⁸⁴; lack of coordination among

77 Missing Persons and Victims of Enforced Disappearance in Europe, p. 41.

78 İzleme Raporu, p. 39.

79 Akdeniz and Others v. Türkiye, 31 March 2001, § 92, No. 23954/94.

80 Kurt v. Türkiye, 25 May 1998, § 106, No. 24276/94; Mahmut Kaya v. Türkiye, 28 March 2000, § 106; No. 22535/93; Timurtaş v. Türkiye, 13 May 2000, § 89, No. 23531/94; İpek v. Türkiye, 17 February 2004, § 176, No. 25760/94; Türkoğlu v. Türkiye, 17 March 2005, § 126, No. 34506/97; Nesibe Haran v. Türkiye, 6 October 2005, § 77, No. 28299/95.

81 Mahmut Kaya v. Türkiye, 28 March 2000, § 104, No. 22535/93; Nuray Şen v. Türkiye, 20 March 2004, § 177, No. 25354/94; İpek v. Türkiye, 17 February 2004, § 176; Şeker v. Türkiye, 21 February 2006, § 73, No. 52390/99.

82 Mahmut Kaya v. Türkiye, § 104; Tepe v. Türkiye, 9 May 2003, § 18, No. 27244/95; İkinçisoay v. Türkiye, 27 July 2004, § 78, No. 26144/95.

83 Akdeniz and Others v. Türkiye, § 91; İpek v. Türkiye, § 173; İkinçisoay v. Türkiye, § 78; Nesibe Haran v. Türkiye, § 77.

84 Mahmut Kaya v. Türkiye, § 103.

prosecutors conducting the investigations⁸⁵; issuance of permanent search warrants⁸⁶ followed by correspondence stating that no information was found⁸⁷; and even instances of conspicuous deficiencies such as avoidance of initiating investigations altogether⁸⁸. These shortcomings and errors prevent crimes and perpetrators from being uncovered, leading to ineffective legal remedies. As a result, cases are often dropped due to statutory limitations caused by excessive delays in judicial proceedings.

Moreover, the deficiencies in the investigation processes also lead to impunity during the prosecution phase, as witnessed in local criminal court proceedings, and evidenced in cases such as *Cülaz and Others*⁸⁹, *Gasyak and Others*⁹⁰, and *Nezir Tekçi v. Türkiye*⁹¹, examined by the European Court of Human Rights. For instance, in the case of *Cülaz and Others*, concerning the disappearance of 13 villagers in Görümlü in June 1993, the ECtHR ruled that the investigation process was ineffective, particularly in light of the fact that an investigation was initiated against six security personnel involved in the incident twenty years after the event, thereby contributing to impunity during the prosecution phase⁹².

Another critical issue in this context is that alleged perpetrators of these crimes are subject to special investigation rules and procedures. In most cases, they include police officers, gendarmerie, military personnel, temporary village guards, or other officials, depending on the particular context. Investigating these individuals for offences committed in connection with their duties requires the authorisation from the competent administrative authority⁹³.

Despite years of case monitoring, the Turkish state has made no effort to provide explanation regarding the fate or whereabouts of those who disappeared, the circumstances of these crimes, or the potential perpetrators. Unfortunately, the issues identified that lead to ineffective investigations persist, despite numerous legislative changes made since the late 1990s.

2. Statutory limitations

International regulations and jurisprudence consistently affirm that States bear a set of essential obligations concerning serious human rights violations. These include conducting effective investigations, prosecuting those responsible, revealing the truth, and preventing future occurrences of such crimes. Notably, statutory limitations can only apply if States fulfil these obligations; otherwise, States cannot invoke statutory limitations to evade accountability.

The United Nations Convention for the Protection of All Persons from Enforced Disappearance (herein after, the Convention) stands as the most comprehensive international regulation on enforced disappearances, explicitly recognising the continuous nature of this crime. Article 8 of the Convention stipulates that the statute of limitations for prosecuting enforced disappearances must be both proportionate to the gravity of the offence and of substantial duration. Given the ongoing nature of the crime, the Convention further mandates that the limitation period begins only when

85 *Tekdağ v. Türkiye*, 15 January 2004, § 80, No. 27699/95.

86 This order instructs the security forces to continue the search for the disappeared person and the perpetrators.

87 *Çelikkilek v. Türkiye*, 31 May 2005, § 93, No. 27693/95; *Süheyla Aydın v. Türkiye*, 24 May 2005, § 184, No. 25660/94.

88 *Osmanoğlu v. Türkiye*, 24 January 2008, § 91, No. 48804/99.

89 *Cülaz and others v. Türkiye*, 15 April 2014, No(s). 7524/06 and 39046/10.

90 *Gasyak and others v. Türkiye*, 13 October 2009, No. 27872/03.

91 *Tekci and others v. Türkiye*, 10 March 2014, No. 13660/05.

92 *Cülaz and others v. Türkiye*, § 188.

93 For further information on this, please see KURT, Gulsah, *Cezasizlik Sorunu: Soruşturma Sureci*, Truth Justice Memory Center, 2014.

the enforced disappearance ends—that is, when the fate or whereabouts of the disappeared person is clarified. This provision ensures that victims retain the right to an effective remedy throughout the statutory period, meaning statutory limitations do not apply until the State acknowledges the deprivation of liberty or provides information on the victim’s whereabouts.

In Turkey, however, there is currently no specific legal framework addressing enforced disappearances. Instead, such acts are generally prosecuted as intentional homicide. Under the Turkish Penal Code (Law No. 5237), which came into effect in 2005, Articles 81 and 82 cover the investigation and prosecution of enforced disappearances under the scope of homicide, with statutory limitations ranging between 25 and 30 years, depending on the severity of the offence (Article 66/1-a).

Regarding the prosecution of enforced disappearances committed in the 1990s, the applicable law—considering the date of the—was governed by Articles 448-450 of the former Turkish Penal Code (Law No. 765), which addressed intentional homicide⁹⁴. Under these articles, the statute of limitations period was set at 20 years (former Turkish Penal Code, Article 102/1).

The TJMC began compiling a database of investigation and prosecution data related to enforced disappearances in 2011. By 2014, it had accessed data on 253 individuals. These data were analysed by comparing them with narratives provided by the relatives of the missing persons. According to the findings, the average time elapsed from the date of the crime until the end of 2014 was 19 years and 9 months. Despite this prolonged period, an analysis of judicial processes within domestic law revealed that 69% of cases were still pending investigation without any prosecutorial decision ; only 17% of complaints led to lawsuits being filed; a total of 13% ended in dismissal, statutory limitations, or acquittal decisions; and only 1% resulted in convictions. Upon examining the application of laws on enforced disappearance cases—particularly concerning cases covered under the former Turkish Penal Code No. 765—it becomes evident the statutory limitations for such cases was interpreted as 20 years. As a result, a significant number of these crimes have gone unpunished due to the expired statutory limitations, while many others face the imminent risk of remaining unpunished⁹⁵.

The prolonged investigation periods and the failure to reach conclusions despite ongoing investigations suggest that many cases are deliberately left pending. Therefore, when combined with the lack of effective investigations, statutory limitations serve as a mechanism that conceals the responsibility of judicial authorities, ultimately leading to impunity in cases of enforced disappearances in Türkiye.

3. The impunity cycle

Ensuring accountability for enforced disappearances remains highly challenging due to the impunity shield created by these systemic conditions. Beyond the direct victims, the lack of justice for the perpetrators inflicts deep and lasting harm on the relatives of the disappeared, often as devastating as the violence itself. A powerful testament to this reality is the Saturday Mothers/People (*Cumartesi Anneleri/İnsanları* in Turkish), a movement led by families of forcibly disappeared individuals in Türkiye. Inspired by Argentina’s “Mothers of Plaza de Mayo”, they have gathered peacefully every Saturday at noon in Galatasaray Square, Istanbul, demanding accountability of

94 In Article 448 of the former Turkish Penal Code No. 765, intentional homicide was regulated, while the aggravating circumstances were specified in Articles 449 and 450.

95 KURT, p. 8-9.

enforced disappearances from the 1980s and 1990s. Holding photographs of their missing loved ones, they began as a simple sit-in protest on May 27, 1995, with two key demands: first, concrete and reliable information on the fate of their children or relatives, and second, justice—the identification and prosecution of those responsible, to end the culture of impunity for State officials involved in enforced disappearances⁹⁶. Over the years, their gatherings have become a symbol of civil society’s mobilisation for justice, human rights, truth, and accountability in Türkiye.

Following Türkiye’s candidacy for EU membership, a wave of optimism emerged in the early 2000s with the introduction of legal and structural reforms aimed at democratisation. Beginning in 2006, the Ergenekon trials⁹⁷ heightened expectations that military and paramilitary connections within the State would finally be exposed, potentially bringing accountability for some enforced disappearances from the 1990s. In 2011, then-Prime Minister Tayyip Erdoğan met with representatives of the Saturday Mothers/People, leading to the establishment of a sub-commission within the Parliamentary Human Rights Investigation Commission to investigate the fate of those forcibly disappeared in State custody. This commission produced a detailed report on Cemil Kırbayır, who was detained after the 1980 military coup and subsequently disappeared. The report concluded that Kırbayır was tortured and killed while in custody, and that his body was disposed of by the public officials responsible for his death⁹⁸. Despite these findings, the commission’s work was not sustained, and in 2022, Kırbayır’s case was closed due to the statute of limitations.

In the ensuing years, these initiatives not only failed to advance but also allowed many political figures allegedly involved in enforced disappearances during the 1980s and 1990s to remain shielded by the very government. The Saturday Mothers/People, who resumed their weekly vigils in January 2009 amid renewed hope, faced severe repression starting in 2018, when the Beyoğlu district governorship banned their gatherings⁹⁹. This marked the beginning of a broader crackdown by Turkish authorities¹⁰⁰, which has since included legal prosecutions against both the Saturday Mothers/People and their lawyers¹⁰¹. Furthermore, as noted in previous sections, enforced disappearances continued under the same ruling power following the 2016 coup attempt, reinforcing a persistent pattern of State repression rather than accountability.

The emphasis on “same ruling power” here does not refer to a single political party or entity; rather, it signifies a persistent pattern. While political regimes in Türkiye have shifted over time, the State’s approach to impunity and its resistance to accountability have remained fundamentally unchanged. The authoritarian mentality entrenched after the 1980 coup—which frames perceived threats to State authority as part of a “war” paradigm—is a continuation of earlier attitudes. This

96 For more information on Saturday Mothers/People see: <https://cumartesianneleri.org.tr/>, also see: <https://memorializeturkey.com/en/memorial/saturday-motherspeople>.

97 The “Ergenekon trials” were a series of high-profile trials which took place between 2008-2016 in Türkiye involving suspected members of an alleged criminal network called “Ergenekon”. During these trials, 275 people, including military figures, politicians, academics, and journalists were prosecuted. The trials resulted in lengthy prison sentences for the majority of the accused which were overturned shortly after. For more information on Ergenekon trials and its political and legal implications please see: “Ergenekon and Sledgehammer: Building or Undermining the Rule of Law”, Dani Rodrik, https://www.esiweb.org/pdf/esi_turkey_tpq_vol10_no1_Dani%20Rodrik.pdf.

98 The Report of the Sub-commission can be accessed here : <https://acikerisim.tbmm.gov.tr/bitstreams/4368b538-fb15-46de-93d1-030e3cd6928a/download>.

99 Beyoglu is the name of the district in Istanbul where the Saturday Mothers/People gather. For more information on the context, please see the “Communication from NGOs in the case of Oya Ataman v. Türkiye Application no 74552/01 submitted to the Council of Europe, Committee of Ministers”, [https://hudoc.exec.coe.int/#{%22excidentifier%22:\[%22DH-DD\(2023\)1504E%22\]}](https://hudoc.exec.coe.int/#{%22excidentifier%22:[%22DH-DD(2023)1504E%22]}).

100 For more information on the repression regarding the vigils of the Saturday Mothers/People, see <https://tihv.org.tr/ozel-raporlar-ve-degerlendirmeler/cumartesi-anneleri-insanlari-haftalik-gozlem-raporlari/>.

101 For more information on the prosecutions against the Saturday Mothers, please see: Joint Report of Trial Observation, Case of Saturday Mothers/People, jointly published by the Observatory for the Protection of Human Rights Defenders and International Observatory for Lawyers (<https://www.omct.org/en/resources/news-releases/t%C3%BCrkiye-first-hearing-in-latest-trial-against-saturday-mothers-people>).

mindset, combined with a policy of impunity, has been perpetuated across successive governments and appears unlikely to change without structural reform. Therefore, achieving accountability for enforced disappearances and preventing future occurrences requires more than a change of position in government or isolated legislative reforms; it demands deep democratisation and fundamental structural transformation.

CONCLUSION

The phenomenon of enforced disappearances in Türkiye has followed a recurring pattern over the last four decades, with significant surges during periods of armed conflict and political turmoil. The first notable wave occurred between 1991 and 2002, coinciding with the armed clashes between the TAF and the PKK, and the subsequent declaration of a prolonged state of emergency in Southeast Anatolia. During this period, enforced disappearances were systematically employed, particularly targeting the Kurdish population and political dissidents. The prolonged SoE, which lasted until 2002, created an environment conducive to these grave human rights violations, as the balance between State power and fundamental rights tipped heavily in favour of the State.

The resurgence of enforced disappearances post-2016 mirrors the earlier pattern, following the failed coup attempt and subsequent declaration of another state of emergency. This period saw a new wave of abductions and enforced disappearances, primarily targeting individuals affiliated with the Gülen movement—which the government labelled as a terrorist organisation—as well as journalists, academics, and pro-Kurdish political figures.

A critical factor in both periods is the “state of emergency regime,” which facilitated these human rights violations. The post-1980 coup restructuring of Türkiye’s political and legal system, characterised by a militarist approach to counterterrorism, laid the groundwork for the State’s heavy-handed tactics. This climate allowed for complex, competing State organisations to operate without legal oversight, employing brutal methods to suppress perceived threats.

The state of emergency periods have led to the erosion of rule of law mechanisms, allowing emergency “rules” to become integrated within the system and normalising the creation of a parallel regime to combat “terrorism.” These parallel regimes tend to intertwine as the State’s “self-defence” reflex intensifies, ultimately becoming an end in itself. One example of this phenomenon is the reinforcement of legal impunity for members of the TAF through labelling the crimes they commit during “counter-terrorism activities” as “military crimes.” Another example is the violent police intervention on the Saturday Mothers/People’s vigils, which persisted for months before leading to prosecutions against those peacefully demanding answers about the fate of their relatives. If the fight against terrorism continues to serve as a pretext for undermining the “rule of law,” such examples of violations will only increase, further entrenching the culture of impunity. Therefore, ensuring accountability remains paramount to prevent further abuses.

As outlined in the chapter on impunity, tackling this issue requires comprehensive reforms. Above all, it is crucial to foster a legal and political environment that upholds human rights and curtails State practices that enable enforced disappearances. This entails establishing independent oversight mechanisms, promoting transparency in investigations and legal proceedings, and ensuring accountability for State-perpetrated crimes. Only through such measures can Türkiye eradicate the

scourge of enforced disappearances and restore justice and dignity to the victims and their families. With this in mind, recommending concrete actions, particularly alongside structural reforms, remains both necessary and achievable.

RECOMMENDATIONS

1. Reforming the State of Emergency Framework

The constitutional and legal framework regarding the “state of emergency regime” should be reformed to prevent its frequent use during political turmoil as a means of restoring order. Therefore,

- i. The declaration of a state of emergency should be subject to strict conditions and used only as an exceptional measure when absolutely necessary, in line with international standards.
- ii. Judicial review of SoE decrees must be ensured to safeguard against potential abuses.

2. Implementation of the Declaration on the Protection of All Persons from Enforced Disappearances

As noted in the introduction, the Declaration on the Protection of All Persons from Enforced Disappearances, as a reflection of customary international law, is legally binding on all States concerning the obligation to investigate and punish perpetrators. This rule takes precedence over treaty law, meaning that, regardless of whether Türkiye has ratified the Convention, perpetrators can be held criminally accountable, without protection from statutes of limitations. However, this requires codification to align domestic law with international standards. Therefore, Türkiye should:

- i. Take all necessary measures to implement the Declaration and provide concrete information on such measures to the UN Working Group on Enforced or Involuntary Disappearances.
- ii. Engage and cooperate with the UN Working Group on Enforced or Involuntary Disappearances, including accepting country visits, regularly responding to general allegations, and implementing recommendations regarding existing obstacles in the implementation of the Declaration and ways to overcome them.

3. Ratification of the International Convention for the Protection of All Persons from Enforced Disappearances

Türkiye should ratify the International Convention for the Protection of All Persons from Enforced Disappearances, and ensure that:

- i. Enforced disappearance is codified as a standalone criminal offence under domestic criminal legislation, with a definition incorporating the following three cumulative elements outlined in the International Convention for the Protection of All Persons from Enforced Disappearances: deprivation of liberty of the victim, involvement of government officials, at least indirectly by acquiescence, and refusal to disclose the fate and whereabouts of the person concerned.
- ii. The sanctions imposed are commensurate with the extreme gravity of the crime.

- iii. Enforced disappearances are not justified on any grounds and, particularly under the pretext of protecting national security and combating terrorism.
- iv. The statutory limitations for criminal proceedings are of long duration, proportionate to the extreme seriousness of this crime, and commence from the moment when the crime of enforced disappearance ceases, considering its continuous nature.
- v. The State guarantees the rights of victims of enforced disappearance to an effective remedy throughout the duration of the statutory limitation period.

4. Full Implementation of ECtHR Judgments on Enforced Disappearances

Türkiye should ensure the full implementation of ECtHR judgments related to enforced disappearances, with a focus on addressing systemic issues that impede justice. This includes:

- i. Guaranteeing that investigations into enforced disappearances are conducted promptly, independently, impartially, and with adequate resources, while ensuring that victims' relatives are involved as required by the ECtHR.
- ii. Ensuring that the statute of limitations is not applied to obstruct investigations, and that cases are reopened and pursued when necessary.
- iii. Providing effective reparations to victims' families, including both pecuniary and non-pecuniary compensation, along with access to the truth and accountability.
- iv. Eliminating judicial resistance and impunity for perpetrators of State-sponsored crimes, ensuring that those responsible for enforced disappearances are held accountable.