

Police Duties And Powers Law

'Under Article 16'

EXTRAJUDICIAL EXECUTIONS

REPORT

“**Suspected police**’ who arbitrarily attributed some meanings to such abstract concepts as “**Foresight, Reasonable Suspicion and Discretion**” inserted in Article 16 of PDPA instead of starting legal procedures as per the Highway Traffic Act or Misdemeanours Act and including a majority of the cases into the legal process punished over 410 people with death.”

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Norwegian Helsinki
Committee

“This report is issued with support from the Norwegian Helsinki Committee. Baran Tursun Foundation is entirely responsible for the content of the report and the report does not reflect the views of the Norwegian Helsinki Committee.”

TURKEY: Summary Executions-Turkey Report under the Article 16 of the Police Duties and Powers Act is issued in Turkish and English by the specialised reporters Mehmet Tursun and Sinem Hun, J.D. assigned with the financial support provided to the Baran Tursun Foundation by the Norwegian Helsinki Committee¹ in order to reduce the violations of the right to life and to provide access to the national and international human rights mechanisms.

Yaşamı Koruma Protecting Life



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TABLE OF CONTENTS

I.	EXTRACT.....	5
II.	INTRODUCTION.....	6
III.	SCOPE AND METHODOLOGY.....	7
IV.	LEGAL FRAMEWORK.....	8
V.	SUMMARY EXECUTIONS UNDER ARTICLE 16 OF PDPA.....	10
	A. Baran Tursun Foundation and Human Rights Watch.....	12
	B. Disobeying Stop Warning.....	15
	C. Litigation and Scope of Cases.....	16
	D. Distribution of Cases by Categories (Table).....	16
	E. Distribution of Cases by Gender (Table).....	17
	F. Narrow / Distribution of Cases by Age (Table).....	18
	G. Large / Distribution of Cases by Age Groups (Table).....	18
	H. Distribution of Cases by Provinces (Table).....	19
	I. Deaths Occurring under Detention.....	20
	J. Building Good Reputation for Police Force.....	21
	K. Deaths Occurring as a Result of Being Hit by a Police Vehicle.....	21
VI.	USE OF WEAPONS AGAINST WOMEN.....	23
	A. Women Killed with Extreme Prejudice.....	23
	B. Women Whose Right to Life Is Violated.....	23
VII.	USE OF WEAPONS AGAINST CHILDREN.....	26
	A. Children Whose Right to Life Is Violated (-18).....	26
	B. Regional Distribution of Children Whose Right to Life Is Violated (Table).....	27
VIII.	IMPUNITY.....	28
	A. Impunity and Processes Thereof.....	28
IX.	FAIR TRIAL.....	29
	A. Equitability Assessment.....	30
	B. Open Trial.....	32
	C. Reasonable Time.....	32
X.	ACCESS TO JUSTICE.....	33
XI.	INTERNATIONAL DOCUMENTS CONCERNING THE POLICE TO USE FORCE AND WEAPON.....	35
	A. United Nations General Assembly - Code of Conduct for Law Enforcement Officials	35
	B. European Council Parliamentary Assembly - Declaration on Police #690....	36
	C. United Nations Basic Principles on Use of Force and Fire Arms by Law Enforcement Officials	36
	D. United Nations Manual on Effective Prevention and Investigation of Extra- Legal, Arbitrary and Summary Executions - Minnesota Protocol.....	38
	E. 10 Basic Human Rights Standard for Law Enforcement Officials	39
	F. Principles of Procedurally Just Policing.....	39

XII. EUROPEAN COURT OF HUMAN RIGHTS DECISIONS UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS.....	41
A. Bektaş and Özalp - Turkey Decision.....	41
B. Gongadze - Ukraine Decision.....	43
C. Cases of Death and Ill-treatment Occurring under Detention	44
XIII. TURKISH JUDICIAL DECISIONS UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS.....	46
XIV. OBLIGATIONS OF STATES ON RIGHT TO LIFE UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS.....	47
A. Negative Obligations.....	47
B. Positive Obligations.....	48
C. Procedural Obligations.....	48
XV. POLICE VIOLENCE AND SUMMARY EXECUTIONS IN TURKEY AS THEY APPEAR IN UNITED NATIONS MECHANISMS.....	49
XVI. SOCIAL GENDER INEQUALITY.....	52
XVII. CONCLUSION AND RECOMMENDATIONS.....	53

I. EXTRACT:

Baran Tursun Foundation (BTF) with its head office in İzmir is a non-governmental organisation which has been carrying on its operations from the perspective of police violence and right to life since 2010. BTF follows up the case files of those who lose their lives as a result of disproportionate violence of police, creates a database and implements a mapping study on the matter, being conscious that the most important and indisputable duty of the State is the obligation of protecting the right to life. According to the information obtained as a result of this mapping study, more than 410 people have lost their lives as a result of the unreasonable use of fire arms or misuse of weapons by the police assigned with the protection of life between 2007 and 2021. This number shows us to what extent the right to life is protected both in law and in practice in Turkey.

In the section entitled *'Police Violence and Summary Executions'* of the report, bitter experiences and statements of the families that try to overcome the loss of their kinsmen reveals against whom, how and by what means the disproportionate violence of the police is directed and how the violence so directed is 'legitimised' and pushed out of the scope of law by the investigating and prosecuting authorities in accordance with the qualitative and quantitative data collected in the field interviews and continuous monitoring BTF's activity. For instance, retaliation actions are unnecessarily filed against the suffering families on the basis of such abstract concepts as reasonable suspicion, foresight and discretion and suffering families are exposed to ill-treatment and pejorative treatments.

On the other hand, despite the Duties and Powers of Police Act and the relevant regulations give an impression of compliance with the international standards, it is understood by hundreds of cases identified and watched by BTF that the strong messages of the international documents and conventions regarding police violence and summary executions are not reflected on practice. The sections entitled *'European Court of Human Rights Decisions under European Convention on Human Rights'*, *'Turkish Judicial Decisions under European Convention on Human Rights'*, *'Obligations of States on Right to Life under European Convention on Human Rights'* and *'Police Violence and Summary Executions in Turkey As They Appear in United Nations Mechanisms'* of the report reveal the discrepancies between the national practices and the international regulations and identifies significant legal loopholes.

Strong perceptions have arisen in the society as to the fact that the disproportionate force applied both in case of violations of right to life and against the consciousness of claiming rights and the social reflexes by the police goes unpunished. In the section entitled *'Impunity'* of the report, how such perceptions have arisen is addressed. Particularly, we dwell upon the fact that the obligation of the police to comply with the 'proportionality and necessity' criteria of the international human rights law is ignored by the administrative authorities and that the governmental authorities create a perception that they protect criminals with their statements.

One of the noteworthy sections of the report is that the data and cases related to vulnerable groups are perhaps contained for the first time. We also mention how such groups are caused to suffer doubly when the police violence is involved while

addressing the cases which result in the death of children and women as a consequence of the unreasonable use of weapons or use of lethal weapons by the police.

BTF has found out that there was not any violence against the police, that there was not any gunfight with the police, that the governmental operations were not responded with guns, but that summary executions of this kind occurred despite there was not any violence and attack on the safety of life and property of any other people in the events resulting in the death of civilians. In the section entitled “Conclusion” of the report, recommendations are contained addressing to the government to prevent the recurrence of any summary executions of this kind.

II. INTRODUCTION

This report is issued by studying that more than 410 cases a majority of which must be, in fact, treated as per the article 47 of the Highway Traffic Act and as per the Misdemeanours Act, but which resulted in death as a consequence of the unreasonable use or misuse of weapons by the police assigned with the protection of life and to what extent what extent the right to life is protected both in law and in practice in Turkey.

Object of writing this report is to create a document to be used in accessing the national and international human rights mechanisms related to the matter and generate an advocacy material for the non-governmental organisations on the matter. Besides, it is to make some contribution to the improvement of PDPA by analysing to what extent the right to life is protected both in legislation and in practice in Turkey. Moreover, it is to provide the reader with an opportunity to make a comparison of national and international law by including any international documents of law and ECHR and United Nations mechanisms related to the matter. In this respect, the report intends to provide information on both national and international relevant law.

When considering the report with respect to these three objects, the sections V, VI and VII hereof contain qualitative and quantitative data illustrated with infographics of which non-governmental organisations will make enormous use in their advocacy activities. Of such data which we have retrieved from BTF’s data bank, particularly those concerning women and children have been made into a data set for the first time to the best of our knowledge.

Sections IV, IX, X, XI and XII of the report aims at providing information about such general legal concepts as the national legal framework, impunity, access to justice, fair trial, etc. within the context of police violence and summary executions. Sections XIII, XIV, XV and XVI hereof focus on the international legal framework and the practices in Turkey are analysed from the perspective of international law and judicial decisions. Section entitled “Recommendations” at the end of the report is related to the measures and actions

which must be taken in order to prevent the recurrence of summary executions based on police violence.

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This report will be distributed to any national and international human rights mechanisms. This report will be updated every second year by the Baran Tursun Foundation in order to keep track of the implementation of the recommendations as contained by the report.

III. SCOPE AND METHODOLOGY

As it is explained above, the report analyses the cases which resulted in the death of more than 410 civilians who did not apply violence to the police, who did not fight back the police and who did not have any actions against the safety of life and property of others and particularly the summary executions occurring due to the use of excessive force by the police in the light of the national and international legal documents.

Target group of this report is the international human rights mechanisms, human rights departments and schools of law of universities, bars, members of the Turkish Grand National Assembly (TGNA) in their capacity as the legislators, all units of the Ministry of Internal Affairs and General Directorate of Security, all national Non-Governmental organisations carrying out advocacy on basic human rights, sufferers who have lost their kinsmen as a result of police violence and summary execution and eyewitnesses, including but not limited to the United Nations and European Council.

Use has been made of two data collection and analysis methods in the report: literature survey has been carried out and a compilation made to provide plain, comprehensible and practical information which is far from the inextricable and complicated language of law in the sections which covers the legal survey and in which national and international law which is related. On the other hand, a political and legal situation analysis has been made by making use of the qualitative and quantitative data from the Databank² in which BTF, which has been observing and tracking the police violence and summary execution cases since 2007, has collected through field and observation studies, NGO reports and open resources, and the data so collected have been visualised.

Qualitative data are those which are available in BTF's databank and which have been semi-structured by the kinsmen of those who were summarily executed as a result of police violence, sufferers and eyewitnesses of the events and which are obtained in the

² Baran Tursun Foundation, *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>.

vis-à-vis interviews in the form of chats. In the collection, processing and storage processes of such data, BTF has complied with its obligations arising from all national and international legislation including, without limitation, the Protection of Personal Data Act.

This report has been detailed on the basis of a total of 411 cases of which 73 are women and 94 are children.

IV. LEGAL FRAMEWORK

Right to life which is the first and basic in terms of the human rights value sequence involves the right not to be killed by public authorities and to be protected against dangers and risks for life by the public authorities. In short, the right to life is the right not to be killed.³

Obligation of respect for human rights requires that all included in the area of authorisation of the States that are parties to the European Convention on Human Rights (EConHR) should benefit from the rights and freedoms as described in the first chapter of the Convention. As per the article 2 of the EConHR, the right to life of all is protected by law. Life of anyone may not be deliberately terminated except in case of the execution of a capital punishment adjudged for a crime which the law punishes with capital punishment.⁴

Right to life occupies the first place in a significant majority of national and international documents protecting the basic rights and freedoms. Right to life has been made a reference in the national and international documents intended for the protection of "Human Life" and some States have made principal regulations into laws in the light of such references.

Despite such principal regulations, the problem in Turkey is what the police using weapons under the Police Duties and Powers Act (PDPA) understands from the statement "**the most sacred and most indisputable right is a man's right to life**".

PDPA is one of those laws modified as the political conditions change in the country. On 2nd June 2007, some modifications were made in PDPA for such reasons as "*Spread of terrorist actions, increase in complaints and rapid increase in crime rates*". Power to "**stop and ask identity**" as well as "**use of force and weapons**" have been granted to the police with this modification.

³ Çiftçioğlu, Cengiz Topel, "Right to life", *Association of Bars of Turkey Periodical*, 2012(103), 137-168, <http://tbbergisi.barobirlik.org.tr/m2013-103-1230>

⁴ European Council, *European Human Rights Convention*, 1950, https://www.echr.coe.int/documents/convention_eng.pdf, 6.

Some modifications were also made in the Internal Security Act No. 6638 on 27.03.2015. Upon the modifications so made, such new concepts as “**reasonable suspicion, foresight and discretion**” have been inserted in the article 16 of PDPA.

Upon the modifications made on the basis of such abstract concepts as “**stop and ask identity**” added to PDPA in June 2007 and “**reasonable suspicion, foresight and discretion**” added in April 2015, the police was granted a broad discretionary power to use lethal force. With such discretionary power, arbitrary stoppages, searches and actions of using lethal force without hesitation have increasingly continued. Serious concerns have been created in the society as to the fact that a policeman may draw their guns, fire them and use violence any time.

As a matter of fact, these concerns are not groundless as it will be seen in the report: According to the databank⁵ which BTF has created by watching human rights violations and following up legal actions in the judicial and non-judicial mechanisms, more than 410 people including women and children who did not use violence against the police, who did not fight the police, a majority of whom must be in fact treated for the violation of the Misdemeanours Act were summarily executed as a result of the fact that each policeman arbitrarily attributed some meaning to such abstract concepts as reasonable suspicion, foresight and discretion between 2007 and 2021.

On the other hand, there are international regulations and standards along with the national regulations regulating when and how the police may resort to the use of force including but not limited to lethal force. United Nations Basic Principles on the Use of Force and Fire Arms by the Police Forces is the most important international document regulating the police’s use of force.⁶

In the national and international documents, the very first condition for a policeman to use lethal force is proportional to a suspect’s aggressive use of the action of causing the death or explicit injury on the body of the policeman or another person.⁷ This proportion and necessity are further taught in the professional trainings. A policeman is not an official working in the land registry or vital statistics office. He is a security specialist assigned with the protection of life, trained and equipped accordingly. It is possible and necessary for a policeman to apply the use of lethal force by the police through the training and equipment they receive. Bittner (1991:42) puts forward that “the police’s role of having the capacity of using force is the basis for understanding the police profession”.⁸

On the other hand, as it is stated both in the legislation and in doctrine and in the

⁵ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>.

⁶ For more information, see United Nations *Basic Principles on the Use of Force and Firearms by Law Enforcement Officers*, 07.09.1990, <https://www.un.org/ruleoflaw/files/BASICP~3.PDF>, Chapter XII.

⁷ Basic Principles on the Use of Force and Weapons by the Police Forces, <https://hukukbook.com/kolluk-guclerinin-zor-ve-silah-kullanmalarina-dair-temel-prensipler/>

⁸ Altıntop, Serkan, “Problem of Using Excessive Force by the Police in the Establishment of Public Security”, *Gaziantep University Social Studies Periodical*, <https://dergipark.org.tr/tr/download/article-file/223133>, 873-904.

international basic human rights documents, when the police force assigned with the protection of life may use lethal force and under what conditions they may fire their guns is particularly made conditional upon clashing with the police, applying violence to the police and relieving of a destructive impact while listing the exceptions stipulated in the subparagraph (c) of the paragraph 2 of the article 2 of the EConHR.

Article 2 of the European Convention on Human Rights:

Right to life: 1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.⁹

In case of armed clash with the police assigned with the protection of the public order, violence against the police, quelling of a riot or insurrection against the State authority and lethal threat to the life and property of others, governmental bodies may be granted the exceptions of violating the right to life and carrying out summary executions. (See footnote 9)

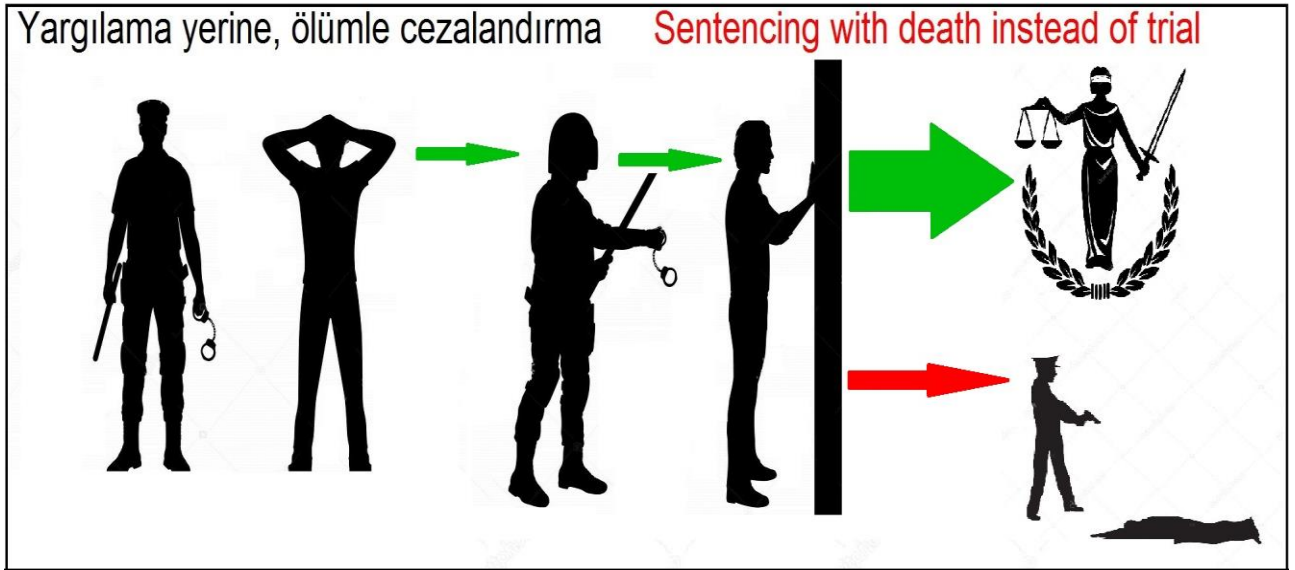
V. SUMMARY EXECUTIONS UNDER ARTICLE 16 OF PDPA

Summary execution is the name assigned to physical punishment given without the permission of a legal authority or court. In general, it may be applied by a governmental body wanting to be relieved of a dangerously destructive effect.¹⁰ And this governmental body is usually the dominant police force in the country.

Police in Turkey construe the "proportionality" and "necessity" concepts in their narrow forms but not in broad forms within the framework of international human rights law and, as a result, make it their legal assignment to override their legal powers and commit the action of killing in some cases instead of including the people into the judicial process and leave the punishment to the courts.

⁹ Guide to the Enforcement of the Article 2 of the European Convention on Human Rights/Page 4, <https://www.anayasa.gov.tr/media/5803/aihsmad2yasamhakki.pdf>

¹⁰ Report on Right to Life in Turkish Law, M. Sezgin Tanrikulu 2006 pages 53-54-65: <http://tbbdergisi.barobirlik.org.tr/m2006-66-255>.



A significant increase has been observed in the right to life violations particularly as a result of the police's unhesitatingly resorting to their powers enhanced on using fire arms upon the modification made in the PDPA No. 5681 on 14th June 2007. The police attributed some meanings¹¹ to such abstract concepts as reasonable suspicion, foresight and discretion in their own way and consider it to be a '**legal duty**' to use weapons without hesitation as a '**first option**' instead of the '**last option**' in the use of disproportionate and lethal force. Policemen tried as suspects in cases resulting in death have usually made defensive statements which may be summarised as "**We have performed our legal duty**". In these defensive statements, the policemen perceive the use of force and weapon as the "**first option**" under the meaning which they assign to the provision "use of force and weapon" of PDPA while they have to use weapons as the "**last option**" as stipulated by the Act. This perception of the police causes Turkey, which is included in the democratic countries, let alone in the authoritative and totalitarian regimes, to be listed among the countries where the percentage of the people killed by the police is rather high.

Police's ill-treatment, killing people and even violence in front of cameras is increasing by every passing day and is tried to be made ordinary in the public conscience and governmental bodies. As a consequence of the police's resorting to violence which has become ordinary without hesitation, significant increases occur in the right to life violations: police has been held accountable for the death of more than 410 civilians during the past few years, 30 people having been killed at the detention centres.

This shows that the police violate the right to life in a constant and down-and-dirty manner. Such violations committed by the police show up in so large a range from killing due to failure to obey the stop warning to the deaths under detention. Action of summary execution have been kind of tried to be shown as the ordinary duty of the police and this has turned to ordinary summary executions which will not be agreed by any conscience.

¹¹ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>.

The police have poor effective investigation and fair trial practices for the use of disproportionate force, unreasonable use of weapons or misuse of power in any peaceful rallies, spontaneous social events or in any ordinary event. And this makes the “obligation of protection of life by law” dysfunctional as per the first paragraph of the article 2 of EConHR.

Police getting authorisation from the article 16 of PDPA were held accountable for the death of hundreds of people including babies, children or adults and tried therefor within a few years, but a great majority of those cases concluded with impunity and a very small portion thereof was closed with symbolic sentences or suspended sentences.

In this kind of cases in which the offender is a policeman, judiciary has been clearly biased. As a result of such biased tolerance of judiciary, the police’s right to life violations against civilians have increased and rights to life violations of more than 410 civilians have been kind of encouraged.¹²

AYDIN BEDİRHAN / Rüştü Ünsal Police Academy Academician / Class 3 Police Chief:

“A policeman’s power to use force is his use of force by putting himself into the person’s shoes and trying to understand him and by establishing balance between the physiological and psychological distress into which the person and himself will fall as a result of such use of force before and during an event within the framework of proportionality, necessity and eligibility criteria. In this context, the police’s establishing empathy and using force professionally by observing human rights and laws will protect both the public order and the person who disturbs such order.”¹³

There is so significant and established perception in the society as to the fact that the disproportionate force used by the police goes unpunished. In the creation of this perception, the statements of the State authorities legitimising the actions of the police are effective as much as the police’s failure to comply with the “proportionality and necessity” criteria of the international human rights law. Such discourses contained in the media, which may be considered to be the protection of the criminal affect the trial processes and pave the way for impunity as well.

A. Baran Tursun Foundation and Human Rights Watch

In the cases in which the right to life is violated, the Baran Tursun Foundation has created a databank and carried out mapping by watching human rights violations and following up legal actions in the judicial and non-judicial mechanisms. Some of the hundreds of cases on which physical and online interviews have been carried out with the sufferers who lost

¹² Baran Tursun Foundation *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>

¹³ Bedirhan, Aydın; Ünsal, Rüştü, *Empathical Power Concept as a Psycho-Legal Concept in the Police’s Power to Use Force*, <https://temsad.org/duyuru/kollugun-zor-kullanma-yetkisinde-psiko-hukuksal-bir-kavram-olarak-empatik-guc-kavrami/>.

their kinsmen and transferred to the databank are the following:¹⁴

Name & Surname	Statement by Sufferer
411- MİHRAÇ MİROĞLU (7) Manner of Death: Hit by police car Date of Event: 02.09.2021 Place of Event: Şırnak/İdil Event: Killed by being hit by an armed vehicle.	<p>An online interview was held with the Victim's father Salih Niroğlu on 25.09.2021. Salih Miroğlu said, "Mihraç never used to set his foot outside. He was so quiet a boy. H was attached to his mother. Despite he was attending the second grade, he was fond of reading books. He said he wanted to be a teacher when he grew up. Well, why did my son die? Why did so many children die in this way? May any children not die any longer! Thy do not hear our voice no matter what we say."</p>
404-ALİCAN RAZI (20) Place of Event: Ankara Date of Death: 25.05.2020 Manner of Death: Police bullet Event: Killed for not obeying the stop warning in Ankara.	<p>Maktul Alican's mother Gönül Razi: "We need judicial assistance as our income level is low. We receive psychological support as we have lost our child. We feel so weak and hopeless and aware that we cannot pursue our case without judicial assistance. In this case of ours in which the State is the defendant, we do not believe there will be fair trial."</p>
403- ALİ HEMDAN (19) Place of Event: Adana /Seyhan Date of Death: 24 Nisan 2020 Manner of Death: Police bullet Event: Killed as a result of stop warning.	<p>The family is refugee from Syria. We could not contact them. Lawyer Tugay Bek has provided information: "Suspect is now being tried under detention. The family cannot attend the hearings because of fear; hesitate to issue a power of attorney; suffer oppression and almost all their requests of the court are denied and disapproved."</p>
402 - MUSTAFA ALINÇ (17) Manner of Death: Police bullet Date of Event: 05.02.2020 Place of Event: Bursa EVENT: Killed as a result of stop warning.	<p>Sufferer Nurdan Esgünoğlu (Mother): "They killed my son all for nothing. What did my son do to the policemen? I want the murderer who killed my son to be punished in the heaviest manner. But, where is that justice? Now, we do not trust justice."</p>
399 CİHAN CAN (33) Manner of Death : Hit by an armed vehicle Date of Event: 28-12-2019 Place of Event: Diyarbakır Event: Killed by an armed vehicle crash.	<p>Hayriye Can (Mother): "My son was an engineer and took care of us. He was engaged. The vehicle intentionally ran over him. It ran over him three times and the whole world saw it. What wrong did my son do? It is not certain whether or not a legal action will be filed against the policeman who killed my son. Is human life so cheap? We are at a loss. They killed my sturdy engineer son."</p>
394-RECEP HANTAŞ (20) Age: 20 Place of Being Shot: Diyarbakır Date of Being Shot: 13.04.2019 Manner of Being Shot: Police bullet Event: Killed by police bullet.	<p>A physical interview was held with Efe Hantaş, elder brother of deceased Recep Hantaş. He said, "My brother earned his livelihood by collecting and selling scraps. Any legal action has not yet been filed despite two years have elapsed since the event. To be frank, we do not know whether or not any legal action will be filed. We suffer so much and are so poor, need judicial assistance. We do not believe that there will be fair trial in the litigation process. We feel alone and hopeless. We want NGOs to own us and our case."</p>
393 – HANDE ŞEKER (22) Manner of Death: Police bullet Date of Event: 10/01/2019 Place of Event: İzmir Event: Shot by a policeman entering the house of a transsexual individual.	<p>Suffering Elder Sister: "My mother whose illness got worse after the murder committed dis two days ago. My mother's last wish was that the suspect would be punished in the heaviest manner." Attorney Mahmut Şeren, "The fact that the unjust provocation and good conduct times have not been applied is important in terms of the hate crimes targeting transvestite women."</p>
381-E. Görkem Karakan (16) Manner of Death: Police bullet Date of Event: 14.1.201 Place of Event: Gaziantep Event: Killed for alleged failure	<p>A physical interview was held with Lawyer Yaşar Karakan, elder brother of the deceased. Yaşar Karakan, J.D.: "We are aware how hard the things are for us. As in any other cases, our case has been concluded with impunity. The policeman says he fired a</p>

¹⁴ Baran Tursun Foundation *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>.

to obey the stop warning.	shot from behind. However, it has been proven by reports that the police bullet entered in my brother's chest They did not give my bother a stop warning and my brother did not run away."
354-OĞUZHAN ERKUL (24) Manner of Death: Police bullet Date of Event: 14.04.2017 Place of Event: İstanbul Event: Killed for alleged failure to obey the police's stop warning.	A physical interview was held with İsmail Erkul, gather of deceased Oğuzhan Erkul. Sufferer İsmail Erkul: "My son was at a picnic with his friends that day. On their way back, the police mowed down our children. The penalty for killing two children is 24.000 liras in this country. This cuts us to the bone but we are not strong enough to overcome them. May the God punish them!" Result: Suspected policemen Erkan Ekmekçi, Kenan Akıl, Zafer Sağlam and Davut Bakır were sentenced to 6 years' imprisonment each. The sentence was turned to TRY 24.300,- and divided into 24 months. There is no justice in this country.
353-BARIŞ KEREM (19) Manner of Death: Police bullet Date of Event: 14.04.2017 Place of Event: İstanbul Event: Killed for alleged failure to obey the police's stop warning.	A physical interview was held with Melike, mother of deceased Barış Kerem. Sufferer Melike Taş: "My son was on his way back from a picnic with his friends. Why did they mow down our children coming back from a picnic? Do they have a fear of God?" Result: Suspected policemen Erkan Ekmekçi, Kenan Akıl, Zafer Sağlam and Davut Bakır were sentenced to 6 years' imprisonment each. The sentence was turned to TRY 24.300,- and divided into 24 months. There is no justice in this country.
183-NİHAT KAZANHAN (12) Manner of Death: Police bullet Date of Event: 13.01.2015 Place of Event: Cizre-Şırnak Event: Killed as a result of the fire of a policeman who intervened with a group protesting the events in Cizre.	The court which first sentenced Mehmet Nurbaki Göçmez, one of the suspects, to lifelong imprisonment due to "killing the child with possible premeditation" 4educed such sentence to 16 years' imprisonment on the ground that "he committed the crime with eventual intent under unjust provocation" further down to 13 years 4 months , opining that the suspect displayed affirmative conduct during the trial period.
129 -BURAK TOPÇU (23) Manner of Death: Hit by a police car Date of Event: 27.09.2012 Place of Event: Eskişehir Event: Killed by a car driven at excessive speed by a policeman	A physical interview was held with Volkan Topçu, father of the deceased. Volkan Topçu: "I am a retired policeman. I cannot get over my son's murder by my colleagues. Other witness policemen made their statements against us. Justice has not been secured in this case of ours. Our file has been going between the local court and the Supreme Court for ten years. Result: In the pending case on the matter, the policeman who was found guilty was sentenced to 4 years' imprisonment and then such sentence was turned to a fine of TRY 24.000,-. The file is before the Supreme Court for the third time.
125-Cem Aygün (24) Place of Event: Ankara Date of Death: 30.08.2012 Manner of Death: Police bullet Event: Shot for failure to obey the police's stop warning in İncirli, Keçiören, Ankara.	A vis-à-vis interview was held with the family of deceased Cem Aygün. Father İsmet Aygün: "The State downright protects the murderer policeman. This sentence will be reduced and he will stay in prison for so short a time." Result: The court sentenced the suspected policeman Fatih Yılmaz to 14 years' imprisonment as per the fourth paragraph of the article 87 of the Turkish Criminal Code for he was proven to have caused death as a result of wilful injury. Then the court reduced the sentence to 11 years and 8 months due to the suspect's conduct and behaviours and the effects of the sentence on him. The court further ordered the continuation of detention due to suspicion of escape.
95 - SİNAN ÖZKILINÇ (30) Manner of Death: Police bullet Date of Event: 04.05.2010 Place of Event: İzmir Event: Found shot dead by a gun at his job at the Security Department of İzmir.	Result: The case which was denied for prosecution in Turkey was also concluded against at the ECofHR. Süleyman Özkılınç (Father): "They say 'your son has committed suicide'. Why should my son commit suicide? My son was not one who would commit suicide. Further, my son was one who had graduated from two faculties, would get engaged some 15-20 days afterwards and then would get married on 11 th February which was his birthday and further had a house and car. He was one who voluntarily the police profession as I am also a retired policeman and who had money in the bank."
077 - OSMAN ASLI (20)	A vis-à-vis interview was held with İsmet Aslı, father of deceased Osman Aslı.

<p>Manner of Death: Death under detention Date of Event: 20.12.2009 Place of Event: İstanbul Event: Killed under detention at the İstanbul Firüzköy Police Station.</p>	<p>İsmet Aslı: “My son was doing his military service. He had his certificate of leave to go to his unit in his pocket. They detained my son that day and whatever happened happened when he was under detention. They said my son had committed suicide. All these statements are lies and calumnies. My son did not commit suicide at all. They killed my son at the police station and then concocted this suicide.”</p> <p>Result: At the end of the trial, the suspected policeman was sentenced to a fine of TRY 6.000,-. The file is pending at the ECofHR.</p>
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B. Failure to Obey the Stop Warning

According to the Baran Tursun Foundation’s Databank, 108 cases resulting in death occurred due to failure to obey the police’s stop warning.

Penalty for failure to obey a stop warning is stipulated in the article 47 of the Highway Traffic Act No. 2918.¹⁵

Article 47 – Those who make use of a highway must comply with

a) warnings (Stop) and signs of the traffic police or other authorised people wearing special clothes or bearing signs who are assigned with the regulation and control of traffic;

b) traffic lights;

c) any issues indicated or shown by traffic signs, devices and ground marks; and

d) any other rules, prohibitions, necessities or obligations related to traffic safety and order and stipulated in the regulations in the sequence as provided in these items.

(Amended: 21/5/1997 - 4262/art. 4) Any drivers who fail to obey the stop signs of the traffic policemen or other authorities, the red one of the traffic lights or audible signs are not use of force which will result in the death of a policeman due to failure to obey the audible or light signs of the police as per the Highway Traffic Act and attached to administrative fine sanction. **In this context, it is understood that the administrative fine sanction for failure to obey the police’s stop warning is TRY 314,- for 2021.**

When one considers the article of law and police practices together, the right to life of 108 people has been violated for an action which requires an administrative fine Of TRY 314,-.

Violation of Misdemeanours Act:

In some cases resulting in death, Summary Executions occurred due to some actions as listed in the Misdemeanours Act as in the case of actions as listed in the article 47 of the Highway Traffic Act.

In the Misdemeanours Act No. 5326, some actions are identified in order to protect the social order, public morality, public health, environment and economic order and defined as various misdemeanours. What actions constitute misdemeanour and the type, duration

¹⁵ Highway Traffic Act No. 2918, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.2918.pdf>.

and amount of the sanctions corresponding any misdemeanours are only determined by law.¹⁶

Some misdemeanours as contained in the Misdemeanours Act:

1. **Action violating an order**, 2. Beggary, 3. Gambling, 4. Drunkenness, 5. Noise, 6. Disturbing, 7. Occupation, 8. Consumption of tobacco products, **9. Failure to provide identity**, 10. Contaminating the environment, **11. Hanging a banner, 12. Bearing a gun**

Are misdemeanours included into any laws other than those misdemeanours as provided in the Misdemeanours Act?

As actions which should be sentenced to administrative fine in the laws other than those actions listed in the Misdemeanours Act, administrative fine is sentenced for those actions as provided in such laws.

While describing 411 lethal cases in this report, the fact that cases resulted in death instead of administrative fine sanctions or administrative measures as per the Misdemeanours Act or Highway Traffic Act has been analysed by our statement “The suspected policemen who arbitrarily attributed some meaning to these Acts punished more than 410 civilians with death while they should include a majority of such actions into the Misdemeanours Act and Highway Traffic Act”.

C. Follow-up and Scope of Cases

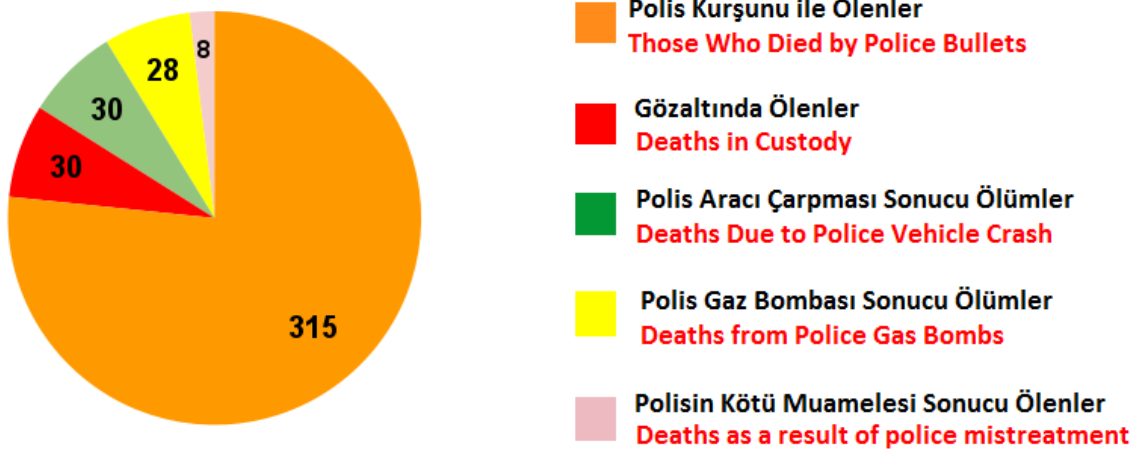
Follow-up and scope of the cases: Summary execution of more than 410 civilians who did not clash with the police, who did not apply violence against the police and who did not have any actions against the life and property of other people as per the public law but who only violated the “Misdemeanours Act” and who were killed as a result of police violence has been included in the follow-up programme.

D. Distribution of Cases by Categories¹⁷

¹⁶ Misdemeanour Act No. 5326, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf>.

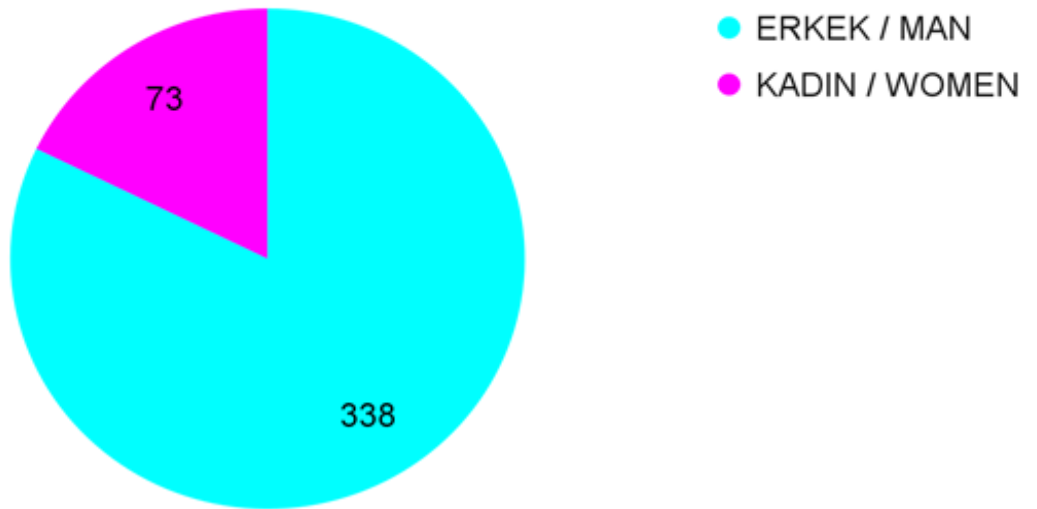
¹⁷ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/tr/>

Vakaların Kategorilere Göre Dağılımı / **Distribution of Cases by Categories**



E. Distribution of Cases by Gender¹⁸

Vakaların Cinsiyete Göre Dağılımı / **Distribution of Cases by Gender**

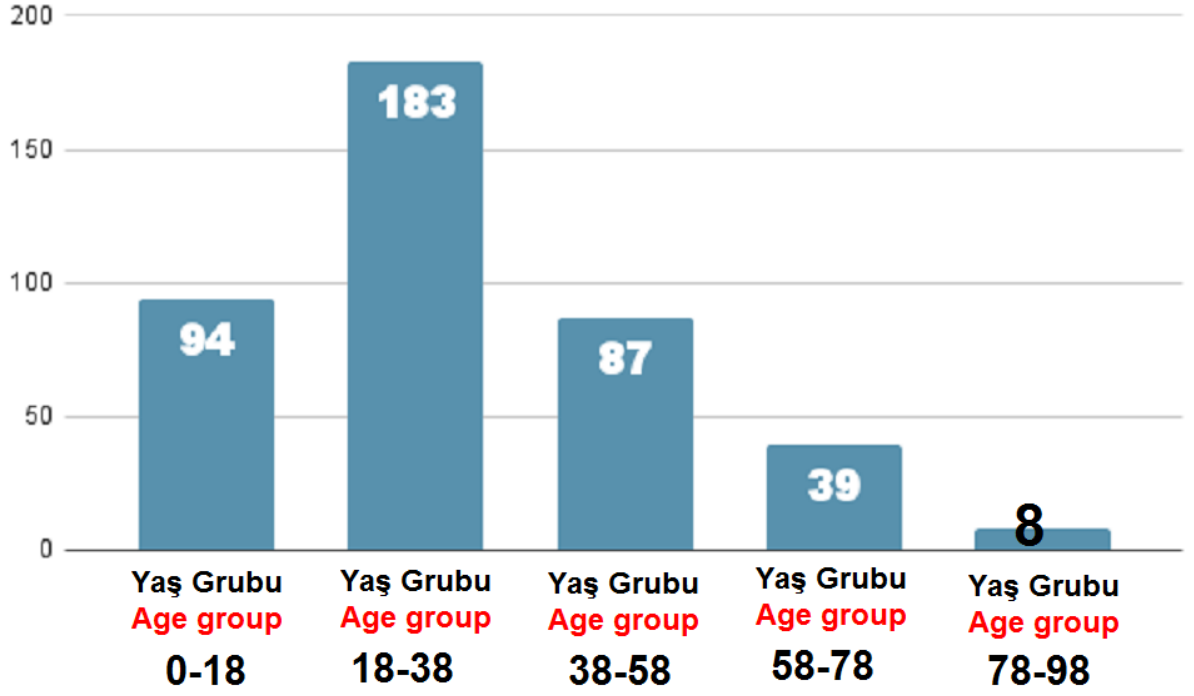


F. Distribution of Cases by Age Groups¹⁹

¹⁸ Ibid.

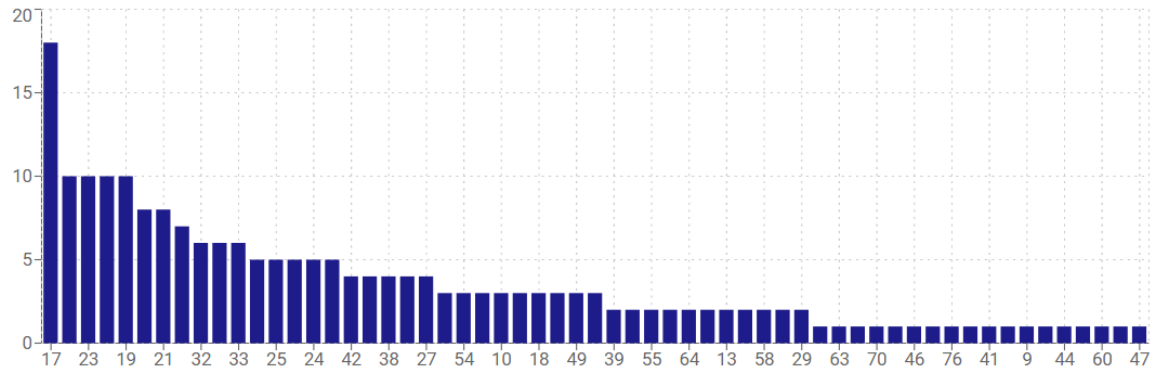
¹⁹ Ibid.

Vakaların Yaşa Göre Dağılımı / Distribution of Cases by Age



G. Distribution of Cases by Age²⁰

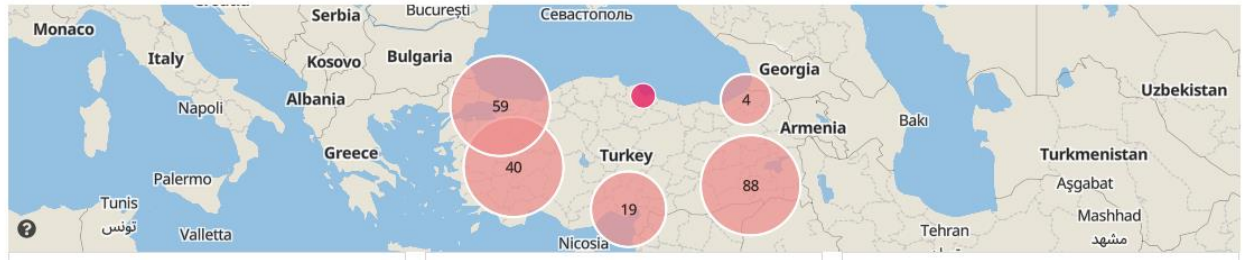
Vakaların Yaşa Göre Dağılımı / Distribution of Cases by Age



²⁰ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*. <https://barantursun.uwazi.io/tr/>

H. Distribution of Cases by Provinces²¹

Vakaların İllere Göre Dağılımı Distribution of Cases by Provinces



The essence of the right to life is the survival of an individual. This rights which constitutes the basis and prerequisite of all human rights is one which is not though to restrict in any manner whatsoever except in case of some exceptions. Indisputable obligations have been imposed on States in the protection of the right to life both by the strong effect of the international conventions and by the binding effect of the judiciary practices. One of these obligations is the one which states that **“Everyone has the right to life, liberty and the security of person”** as stipulated in the article 3 of the Universal Declaration of Human Rights and the other is the guarantee of **“protection of life by law”** as per the first paragraph of the article 2 of the EConHR and such obligations are imposed on the States.

International law related to the use of disproportional force by the police states that direct shooting or use of lethal force may be resorted to as the ultimate remedy, conditional upon the protection of life, proportionality and necessity. The fact that hundreds of cases have resulted in death as a consequence of the unreasonable use or misuse of weapons by the police in Turkey has made the **“obligation of protection of life by law”** as per the first paragraph of the article 2 of EConHR dysfunctional.

Such indispensable basic rights as security and liberty of person, immunity of private life including but not limited to the right to life as well as such abstract concepts as reasonable suspicion, foresight and discretion on which each policeman arbitrarily attributed some meaning have been entirely left to the perception of each policeman. The Act provides the police with freedom of stopping and checking almost everybody anywhere, anytime in the ordinary course of their life for such an abstract reason as the prevention of a crime or misdemeanour. Police forces’ resorting to the exercise of their powers enhanced on the use of fire arms particularly after 2007 has played an important role in the increase of the violations of the right to life.

²¹ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*. <https://barantursun.uwazi.io/tr/>

I. Deaths Occurring under Detention²²

Detentions entirely carried out as per the Misdemeanours Act and the deaths a majority of which have occurred upon torture or ill-treatment under detention were contained in the 2007-2012 reports of the Baran Tursun Foundation.²³ Twenty-nine people including Hakkı Cangı, who died at the Anafartalar Police Station at Çanakkale on 4th June 2007, Festus Okey, who died at the Beyoğlu Police Station at İstanbul on 20th August 2007, and finally Birol Yıldırım, who lost his life at the Esenyurt Security Department at İstanbul on 5th June 2021, lost their lives under detention.

Despite the security cameras is a system which has been developed in order to monitor those who are detained and the police forces, to collect evidence against false charges of torture and violations of rights and to keep the police stations and thereby detention rooms under surveillance, all security cameras at the police stations where the events of death occurred either malfunctioned or partially recorded or did not record at all without exception. When the situation is reflected in this way, it has not been possible to carry out procedures and collect evidence via the detention centres where deaths occurred. Therefore, it has been made easier for the ill-treatment and events of death to go unpunished.²⁴

With the statements which may be summarised as “**I have not seen nor heard**” of the policemen who are present at the police stations at the time of the events but who are in fact responsible for the events, the files were resulted in either denial for prosecution or impunity or symbolic deferred punishments.

Baran Tursun Foundation has obtained various data by monitoring and observing some cases of death which occurred at the detention centres via judiciary and non-judiciary mechanisms.²⁵

Thirty-two cases of death unusually occurred at detention centres between 2007 and 2012.²⁶ **Baran Tursun Foundation** and **Mazlum-Der**, which found out that it was against the natural course of life that the security cameras were dysfunctional, defective or recorded partially at the police stations where the cases of death occurred, held meetings with the representatives of the political parties that have established groups at the TGNA and the TGNA Human Rights Survey Committee together with the suffering families in order to make some advices.

²² Tursun, Mehmet; Kurşun, Günel, *Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces' Use of Disproportional Force*, <http://www.baransav.com/?pnum=768&pt=RAPOR%3A+Kolluk+Güçlerinin+Orantısız+Güç+Kullanımı+Sonucunda+Yaşama+Hakkı+İhlalleri>, 15.

²³ Baran Tursun Foundation Deaths at Police Stations, <http://www.baransav.com/?pnum=343&pt=KARAKOLLAR+DA+%C3%96L%C3%9C+BULUNANALAR>

²⁴ United Nations Human Rights Committee, *Report by Christopher Heyns, Special Rapporteur on Extrajudicial, Arbitrary and Summary Executions*, 18.03.2013, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/122/89/PDF/G1312289.pdf?OpenElement>.

²⁵ Baran Tursun Foundation Police Violence and Summary Executions Databank, *People Who Lost Their Lives at Detention Centres*, <https://barantursun.uwazi.io/en/>.

²⁶ Tursun, Mehmet; Kurşun, Günel, *Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces' Use of Disproportional Force*, <http://www.baransav.com/?pnum=768&pt=RAPOR%3A+Kolluk+Güçlerinin+Orantısız+Güç+Kullanımı+Sonucunda+Yaşama+Hakkı+İhlalleri>, 15-17.

Meeting with the same agenda were further held with the governmental authorities and the Deputy Prime Minister Ahmet Aydın and the authorities from the Ministry of Internal Affairs on 24th January 2013.²⁷ Both the Deputy Prime Ministers and the authorities from the Ministry of Internal Affairs took notes of the allegations of the **Baran Tursun Foundation** and **Mazlum-Der** concerning the unusual deaths occurring under detention and the fact that the camera systems installed in order to monitor dishonest police forces and to collect evidence against false charges of torture and violations of rights.

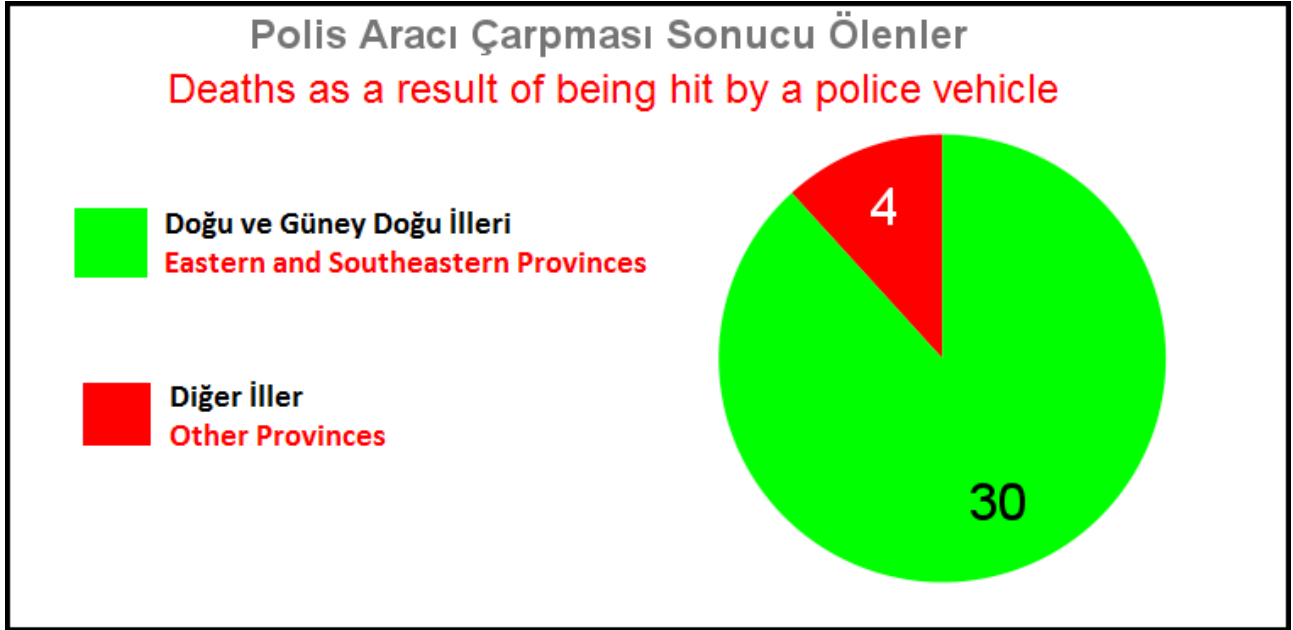
J. Building Good Reputation for Police Force

Allegations heard, notes taken and issued communiqués took effect and any case of death has not occurred at detention centres from 2013 to 2021 except the death of Birol Yıldırım at the Esenyurt Police Station at İstanbul on 5th June 2021.

By these studies carried out by the Baran Tursun Foundation and Mazlum-Der, both deaths under detention have been prevented and a good reputation has been built for Turkey and Turkish Police Force before the national and international human rights mechanisms.

K. Deaths Occurring as a Result of Being Hit by a Police Vehicle

According to the verified data which the Baran Tursun Foundation has obtained in the course of field studies, out of 34 lethal cases which occurred as a result of being hit by armed vehicles owned by the police force, 4 cases occurred in the western provinces and 30 in the eastern provinces.



²⁷ Baran Tursun Foundation archive, 24.01.2013, <http://www.baransav.com/?pnum=580&pt=AK+PART%C4%B0+%C4%B0le+q%C3%B6r%C3%BC%C5%9Fmeler>.

Baran Tursun Foundation analysed those who died as a result of being hit by a police vehicle in detail in its report issued in 2021. ²⁸

Right to life of 34 civilians was violated between 2016 and 2021 as a result of being hit by police vehicles which the police force which failed to take the necessary care in the civilian settlements drove in violation of the traffic rules about excessive speed. Drivers of such police vehicles were all protected in the investigations and prosecutions initiated for the cases of death and the traffic accident reports issued by their colleagues were issued to prevent them from being punished. Investigations and prosecutions were closed down with either denial of prosecution or reduced penalties.

Human rights advocates state that the governmental agencies and police forces responsible for driving the armed vehicles fail to take any preventive actions against potential risks and violations which may arise from such use and behave carelessly and arbitrarily and draw attention to the fact that acquittal or reduced penalty of the offenders after the incidents experienced encourages the offenders.

The fact that judiciary processes kind of appears before us as a manifestation of impunity as a consequence of the fact that the offenders of such incidents are given reduced penalties or acquitted in the investigations initiated and/or lawsuits filed encourages the offenders of such incidents and gives them the confidence of the fact that they will not face any legal sanctions. Incidents thus gain wide currency and cause the drivers involved in the incidents to conduct in an irregular and arbitrary manner in the through traffic.

It has been encountered in the files prepared due to armed vehicle hit that administrative and judicial investigations were carried out in a deficient, biased manner to acquit the offender(s) with the information obtained from the relevant policemen. It has been seen that the investigating authorities took action considering the incident as a traffic accident which occurred in the course of the performance of the armed vehicle driver who was a public official.

Some members of the Turkish Grand National Assembly have brought the incidents involving the armed vehicles as owned by the police, deaths and injuries which occurred as a result of being hit by police vehicles and the trial processes to the agenda of the TGNA in written questions.

The written question filed on the matter under no. 7/4224 on 17th September 2018 has not yet been replied.²⁹

VI. USE OF WEAPONS AGAINST WOMEN

²⁸ Baran Tursun Vakfı, Tursun, Mehmet; Kurşun, Günel, *Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces' Use of Disproportional Force*, <http://www.baransav.com/?pnum=768&pt=RAPOR%3A+Kolluk+Güçlerinin+Orantısız+Güç+Kullanımı+Sonucunda+Yaşama+Hakkı+İhlalleri>, 19.

²⁹ Nuran İmir, MP, *Written Question*, E. 7/4224, <https://www.tbmm.gov.tr/Denetim/YaziliSoruOnergesi/238295>, 17.09.2018.

A. Women Killed with Extreme Prejudice

Baran Tursun Foundation has been monitoring human rights in judiciary and non-judiciary mechanisms, following up cases and storing data in order to provide access to any national and international human rights mechanisms since 2010.

Stored data are updated, edited and verified and then transferred to the Baran Tursun Foundation Databank.

Data classified and mapped about summarily executed 77 women are shown in the following Baran Tursun Foundation Databank.³⁰

B. Women Whose Right to Life Is Violated (Detailed Table)

No	Name & Surname	Yaş	Place of Event	Date of Event	Manner of Death
77	Esra Çelik	23	Ağrı	28.04.2021	Shot to death by her fellow policeman in charge at the Ağrı Security Department.
76	Nagehan Üste	33	İzmir	22.03.2021	Shot to death by her fellow policeman in charge at the İzmir Security Department.
75	Büşra Çetinkaya	26	Aydın	04.02.2021	Killed by her fellow policeman in Aydın.
74	Merve Ünal	23	D.Bakır	26.05.2019	A policeman killed his colleague Merve Ünal by a gunshot in Diyarbakır.
73	Hande Şeker	22	İzmir	10.01.2019	Shot by a policeman who broke in the apartment where transvestite individuals resided at Alsancak.
72	Elif Kaya	38	Kocaeli	25.06.2018	Policeman İbrahim Yavuz killed his wife who wanted to divorce him at Körfez, Kocaeli.
70	Ümran Yetişgen	28	Antalya	14.01.2018	Killed by a policeman in charge at the Antalya Security Department.
70	Çocuk	04	D.Bakır	28.12.2017	Lost her life as a result of being hit by a police vehicle which turned around a curve fast at the Seyrantepe junction.
69	Emine Saban	21	Sakarya	17.12.2017	21-year-old Eine Saban lost her life as a result of being hit by a police vehicle at Sakarya.
68	Felek Batur	07	Siirt	21.10.2017	Died as a result of being hit by a police vehicle patrolling in the Çal quarter.
67	Gülten Yarayışlı	55	Bitlis	19.10.2017	Died as a result of being hit by an armed police vehicle in the town of Hizan.
66	Feray Şahin	23	Mersin	19.09.2017	Shot to death in Mersin by a special operations policeman.
65	Remziye Mentеше	29	D.Bakır	19.06.2017	Died as a result of being hit by an armed police vehicle on the Diyarbakır-Bingöl Highway.
64	Pakize Hazar	85	D.Bakır	15.06.2017	An armed police vehicle ran over and killed 85-year-old Pakize Hazar in Lice.
63	Fatma Eroğlu	54	Hatay	24.05.2017	Police official in charge killed her parents.

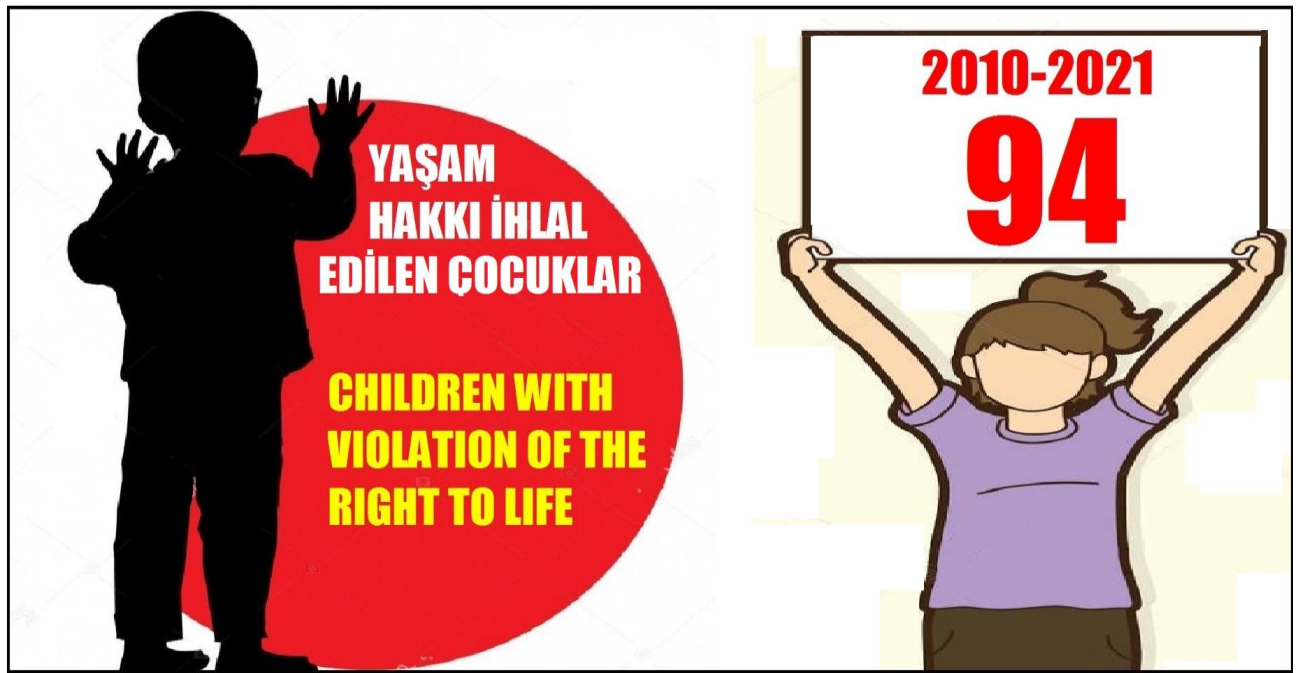
³⁰ Baran Tursun Foundation, *Police Violence and Summary Executions Databank*, <https://barantursun.uwazi.io/en/>.

62	Berfin Dilek	07	Mardin	09.02.2017	Died as a result of being hit by a police panzer in the town of Dargeçit.
61	Naciye Özdemir	73	Tunceli	06.09.2016	Died as a result of being hit by an armed police vehicle at Seyid Rıza Square in Dersim.
60	Zeliha Cuma	07	İstanbul	19.05.2016	Killed by a police bullet.
59	Pınar Gemsiz	28	İstanbul	15.05.2016	Killed by a police bullet.
58	Necmiye Ceren	20	Ankara	15.05.2016	Special operations policeman Batuhan K. killed his girlfriend Necmiye Ceren.
57	Tansu G. Çakı	45	İstanbul	29.04.2016	Veli Çakı in charge at the Taksim Police Station killed his wife.
56	Hatun Elhun	55	D.Bakır	24.04.2016	Lost her life as a result of being hit by a police panzer at Yenişehir, Diyarbakır.
55	Semra Çelik	17	D.Bakır	05.04.2016	17-year-old Semra Çelik was heavily wounded by police fire and died at hospital.
54	Gülşah Ak	59	Mardin	19.02.2016	Died as a result of gunfire shot from an armed vehicle as owned by the police.
53	Serap Çınar	33	Antalya	20.01.2016	Killed by a policeman in charge at the Antalya Security Department.
52	Nidar Sümer	17	Şırnak	07.01.2016	Killed by a shot in her abdomen by the police in Yokuşlu Street in the Cudi Quarter.
51	Miray İnce	0,3	Şırnak	25.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
50	Adile Karaduman	55	Şırnak	23.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
49	Azime Aşan	46	Şırnak	22.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
48	Taybet İnan	57	Şırnak	21.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
47	Çocuk	0,1	Şırnak	20.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
46	Zeynep Yılmaz	45	Şırnak	20.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
45	Emire Gök	39	Mardin	20.12.2015	Died as a result of fusillade shot by the special forces teams at Nusaybin.
44	Ayşe Buruntekin	40	Şırnak	19.12.2015	40-year-old Ayşe Buruntekin, who climbed to the roof of her house, was killed by police fire.
43	Hediye Şen	30	Şırnak	17.12.2015	Died as a result of fusillade shot by the special forces teams at Cizre.
42	Fehime Atkı	56	Mardin	07.12.2015	Died as a result of fusillade shot by the special forces teams at Nusaybin.
41	Hatice Şahin	31	Kocaeli	2015	Killed as a result of family conflict in the town of Gebze, Kocaeli.
37	Dilan Kortak	20	İstanbul	03.12.2015	Lost her life by a police bullet during an operation launched at her house.
40	Selman Açar	10	Şırnak	02.12.2015	Killed by fire from a sniper at Cizre where curfew continued.
39	Nurhan Kaplan	45	Şırnak	19.11.2015	Killed by fire allegedly shot by snipers in the Hayli Street.
38	Fatma Yiğit	20	Şırnak	10.11.2015	Killed by shrapnel of a grenade launched by a gun called "grenade-launcher".
37	Dilek Doğan	25	İstanbul	25.10.2015	Killed by a police bullet during the house search under the designation of "anti-terrorism operation".
36	Helin Şen	12	D.Bakır	10.10.2015	Killed during curfew.
35	Rezan Kaya	20	D.Bakır	04.10.2015	Lost her life as a result of fire shot by a young policeman called Rezan Kaya.

34	Zeynep Taşkın	17	Şırnak	07.09.2015	Died as a result of fire shot by the police launching an operation at Cizre.
33	Cemile Çağırğa	10	Şırnak	07.09.2015	Died as a result of fire shot by the police launching an operation at Cizre.
32	Ayten Gülhan	32	Tunceli	05.09.2015	Ayten Gülhan, who was wounded in the gunfight, lost her life at hospital early in the morning.
31	Gülay Memiş	38	Manisa	28.08.2015	A policeman killed his 38-year-old fiancée Gülay Memiş.
30	Gülgün Tuna	72	İzmir	17.08.2015	Died as a result of being hit by a police vehicle in the Yalı Street.
29	Günay Özarslan	31	İstanbul	17.06.2015	Killed in an operation launched on her house by the police.
28	Ayşe Şahin	75	Bursa	17.06.2015	Shot dead by a policeman in charge at the Protection Department.
27	Sevda Uysal	42	Bursa	17.06.2014	Killed by policeman Abbas Usta.
26	Fatma Zaim	21	Trabzon	01.07.2014	23-year-old Ali Aktaş killed his girlfriend with he had a quarrel and then committed suicide.
25	Şengül Özek	32	Ankara	01.07.2014	Shot dead in Ankara by the policeman Bircan Tanyeli, who harassed her.
24	Nuray Atay	26	Ankara	01.07.2014	Shot dead in Ankara by the policeman Bircan Tanyeli, who harassed her.
29	Bircan Tanyeli	32	Ankara	01.07.2014	Policeman Bircan Tanyeli, who killed two women, was shot dead by another policeman.
22	Elif Çermik	64	İstanbul	30.05.2014	Elif Çermik lost her life as a result of gas bombing on 30 th May 2014.
21	Ayşe Uğur	70	Karaman	03.11.2013	Died as a result of being hit by a car driven by the policeman M.Ö.
20	Ayşe Kanat	72	Hakkari	27.10.2013	Died as a result of being hit by a police vehicle.
19	Zeliha Meral	23	Elazığ	27.09.2013	Killed by the policeman Selim Meral in charge at the Van Security Department.
18	Ayten Sönmez	42	Elazığ	27.09.2013	Killed by the policeman Selim Meral in charge at the Van Security Department.
17	Melek Danışman	32	Antalya	04.10.2012	Died as a result of police bullet.
16	Yasemin Akpan	31	Ankara	20.11.2012	Killed by a police bullet.
15	Merve Erçetin	24	Erzurum	21.09.2012	Shot dead by a policeman in charge at the Action Force Department.
14	Ayşe Al	75	D.Bakır	13.03.2012	Died as a result of being hit by a police panzer in Diyarbakır.
13	Perihan Aktaş	53	Manisa	21.02.2012	53-year-old Perihan Aktaş was killed in front of her house by the police.
12	Kamile Özbek	55	Adana	14.09.2011	Shot dead by the police once she had left her house.
11	Yeşim Çelik	23	İstanbul	20.11.2011	Yeşim Çelik, a student at the Dumlupınar University, was shot dead by a policeman with whom she had just met.
10	Tuba Korkmaz	21	Tunceli	17.03.2011	Shot dead in Tunceli by her fiancé policeman Savaş C.
09	Çiğdem Şahin	20	İzmir	11.11.2010	Shot dead in İzmir by the policeman Anıl in charge at the İzmir Action Force.
08	Sabire Yaman	29	İstanbul	27.07.2010	Sabire Yaman was shot dead in the Bakırköy Branch Office of the company Tacirler Menkul.
07	Maziye Alslan	8	Van	29.04.2009	Lost her life by being run over by a vehicle driven by a special operations policeman.
06	Özge Keyikçi	13	Kütahya	19.10.2009	Perished by a bullet from the gun of the policeman Enver ACAR.

05	Narin Böğür	32	Antalya	2008	Narin Böğür lost her life as result of the fire shot by a policeman in Alanya.
04	Visuale S.Ova	22	İğdır	2008	Woman of foreign nationality who was taken in a police car to be taken to a police station was found dead.
03	Kevser Mızrak	38	Ankara	08.12.2007	Killed during an operation launched by the police.
02	Yüksel Nergiz	26	Malatya	22.10.2007	Killed due to failure to obey the police's stop warning in the town of Kale.
01	Narin Bulut	35	Antalya	03.08.2007	Killed for failure to obey the police's stop warning while running away after stealing.

VII. USE OF WEAPONS AGAINST CHILDREN



A. Children Whose Right to Life Is Violated (-18)

It has been found out that the right to life of children is commonly violated and that it is too hard to have access to any necessary and reliable data in order to carry out watching and reporting in Turkey. Yet another fact encountered in the cases resulting in death of children is "Impunity". It is seen that any comprehensive and discouraging investigation is not conducted, that the responsible ones are not revealed and that investigation and prosecution are not conducted in an effective manner.

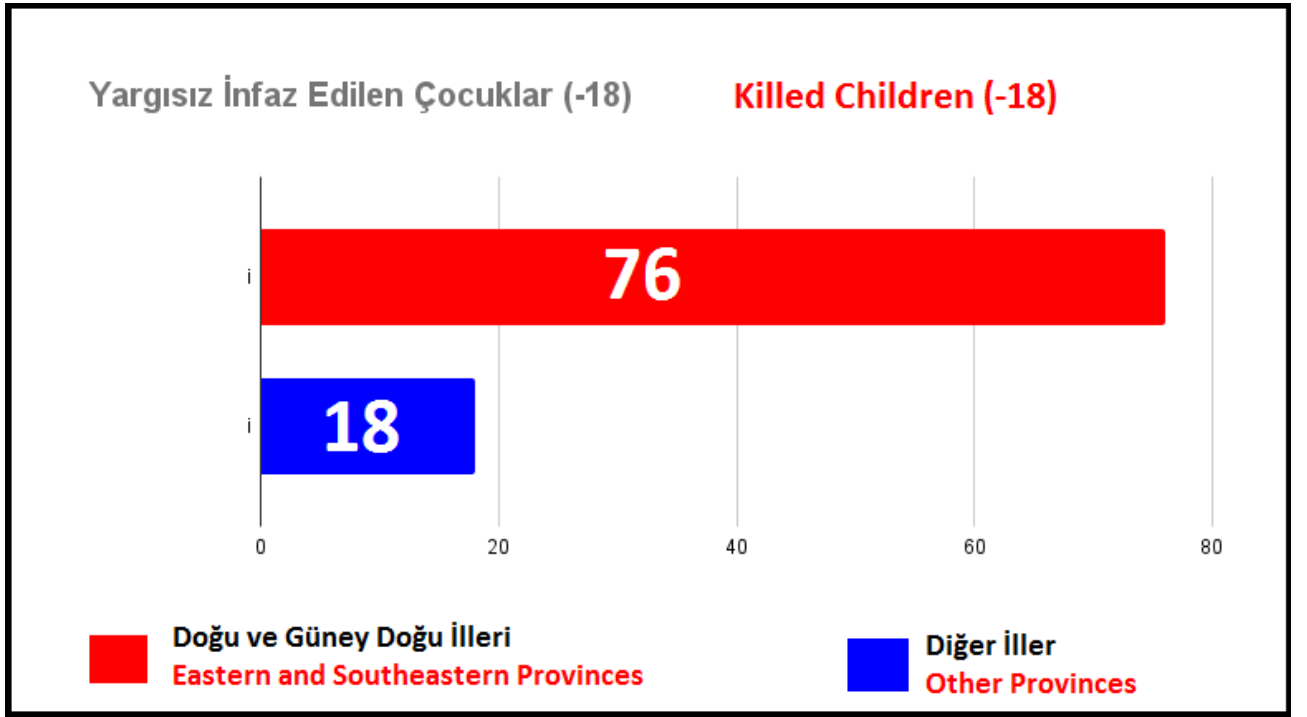
Upon the modifications made in the Police Duties and Powers Act in 2007 and 2015, the police have been granted new powers basing upon abstract concepts. The police arbitrarily attributing some meanings to such abstract concepts have violated the right to life of 94 children who have not been turned 18 years of age, including babies.

As a result of the classification of the children whose right to life has been violated by the western and eastern regions under the Baran Tursun Foundation's human rights watch

programme, it has been found out that out of 94 children killed with extreme prejudice are in the eastern and south-eastern provinces and 18 children in the other provinces.³¹

The fact that out of 94 children who do not even know how to run away from the police, 76 are in the eastern and south-eastern provinces has hurt the people residing in the region and it has been found out that sense of confidence in the administrative authorities and the police force has reduced.

B. Regional Distribution of Children Whose Right to Life Has Been Violated



³¹ Baran Tursun Foundation, *Data Map of -18 Children Who Died under PDPA*, <http://www.baransav.com/?pnum=722&pt=%C3%96len+18+ya%C5%9Ftan+k%C3%BC%C3%A7%C3%BCK+%C3%A7ocuklar-Veriler>.

VIII. IMPUNITY

In the “Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces’ Use of Disproportional Force” issued by the Baran Tursun Foundation, it has been found out that impunity is kind of perceived as an ordinary judiciary process and that the decision makers have failed to eliminate such unusual impunity processes. Judiciary’s different perspective regarding the crimes committed against the State and crimes committed by the State has made the judiciary biased. With this biased attitude, the judiciary has moved away from universal law and fair trial and become disreputable in the public conscience.

A. Impunity and Processes Thereof

Quoted from pages 25 and 26 of the Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces’ Use of Disproportional Force” issued by the Baran Tursun Foundation.³²

Any effective and unbiased investigations have not been carried out in some cases resulting in death as a consequence of the police’s use of excessive force. In order to accept that trial has carried out in a legal manner, it is required to present any evidence on which the trial will be based and any criminal evidence to the judiciary authorities and to keep in a legal, orderly and complete manner in order to cast a light on whether or not the offender has really committed the crime and the crime which has been committed.

The provision “Any findings made in an illegal manner may not be deemed to be evidence” was added to the article 38 of the Constitution by the article 15 of the Act No. 4709 of 3rd October 2001. Despite of this mandatory provision of the Constitution, the fact that those who are involved in incidents of killing in a great number of cases and those who must be tried as suspects perform such effective duties as collecting evidence, acting as witnesses, implementing investigation, etc. at the investigation and prosecution stages paves the way to create evidence and tamper with evidence. In this way, accountability and fair trial are prevented through the evidence collected in an illegal manner.

The fact that the security forces keep their offices during the investigation and prosecution stages in a great number of cases heard within the scope of torture, ill-treatment and violations of the right to life has an adverse effect on the judiciary process and makes it harder to punish criminals. Promotion of the policemen who are responsible or who are suspected to be responsible for the violations of the right to life instead of being tried therefor constitutes an obstacle before those who seek justice.

³² Tursun, Mehmet; Kurşun, Günel, *Report on the Violations of the Right to Life Occurring as a Consequence of the Police Forces’ Use of Disproportional Force*, <http://www.baransav.com/?pnum=768&pt=RAPOR%3A+Kolluk+Güçlerinin+Orantısız+Güç+Kullanımı+Sonucunda+Yaşama+Hakkı+İhlalleri>, 25.

The policeman who is the offender of an incident of killing usually collects evidence at the crime scene by himself or generates evidence in accordance with the course of events. The security units issue a report for the incident in consideration of the evidence generated and collected by the suspects.

Such evidence generating activities as issuing a traffic accident report by concealing the gun fire after killing Baran Tursun in İzmir, leaving a blank firing gun on 20-year-old Soner Cankal's body after killing him in Ankara, leaving a few grams of narcotics next to the body of 17-year-old Çağdaş Gemik, who was killed while riding his motorcycle in Antalya, leaving a gun on 12-year-old Uğur Kaymaz's body after killing him in Kızıltepe are commonly seen in other cases as well.³³ What is intended by such actions is to conceal the evidence of the cases of any ill-treatments or killings in which they or their friends are offenders and to generate evidence to acquit them.

We see that the "impunity" culture prevails among both the judiciaries and decision makers when the right to life is involved in Turkey. Such bias and tolerance actually facilitate the suspected policemen to get away with what they do. The reduced percentage of cases resulting in conviction in the violations of the right to life occurring as a result of the police's use of excessive and disproportionate force and collection of evidence by the police, police's acting as witnesses and being allowed to keep their active positions in a great number of incidents in which the police are suspects have increased the violations of the right to life.

In cases where the defendant is a security official of the State, mechanisms of protecting criminals becomes involved. Those administrators who say they believe in the supremacy of law pave the way for impunity, using different effects and methods. Administrative authorities defame and humiliate the deceased and those who have been exposed to aggravated human right violations on one hand and give their protective opinion in the media and act tolerant as if the police involved in a crime on the other instead of assisting the provision of justice.

Any procedures and proceedings related to the impunity process are not limited to one person, but there are many different effects and methods to the occurrence of the resulting impunity. Such concepts as the protection of criminals, investigation process, generation of evidence, perception of right to life in the State, vital interests of the State, discretionary power of a judge who values the survival of the State above all, impotence of the non-governmental organisations constitutes the conditions for impunity either individually or severally or altogether.

³³ Baran Tursun Foundation's Report, 2021, Page 27

<http://www.baransav.com/?pnum=768&pt=RAPOR%3A+Kolluk+G%C3%BC%C3%A7lerinin+Orant%C4%B1s%C4%B1z+G%C3%BC%C3%A7+Kullan%C4%B1m%C4%B1+Sonucunda+Ya%C5%9Fama+Hakk%C4%B1+%C4%B0halleri>

IX. RIGHT TO FAIR TRIAL

Right to fair trial is secured by the article 6 of the EConHR at the international level and by the article 36 entitled “Freedom to Legal Remedies” of the Constitution of the Republic of Turkey and is a basic right which constitutes the backbone of the modern legal systems. Even if it is not possible to mention a framework which has been completely agreed upon, the text of the article 6 of the EConHR and the ECofHR decisions made as per this article must be taken as a reference as it is represented by the Constitutional Court (CC).³⁴

Article 6 of EConHR reads, “*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law*”, thus sort of revealing the criteria which will constitute the content of the right to fair trial. Unlike the EConHR, the Constitution provides some of such criteria in its different articles. For instance, the principle of independence and impartiality of courts is contained in the article 9 of the Constitution which regulates the jurisdiction but not in the article 36 which secures the right to fair trial. However, when we study the text of the Constitution as a whole, we encounter a framework tallying with the EConHR.

While construing the content of the article 6 of the EConHR, the ECofHR makes a dual distinction as institutional and procedural requirements. While such issues as the establishment of the court by law and its independence and impartiality constitute the institutional requirements aspect of the right to fair trial, such components as equitability assessment and right to trial within a reasonable time constitutes the procedural aspect of the article 6 thereof.³⁵

CC carries out its studies with a categorical distinction different from ECofHR. However, such difference in the manner of categorisation would not of course present any difference with respect to the essence of the right. For CC, the basic principles constituting the right to fair trial may be listed as right to jurisdiction, right to trial by an independent and impartial tribunal established by law, right to trial within a reasonable time, right to equitable trial, right to public hearing and public decree, presumption of innocence and minimum accused/suspect right.³⁶

From the standpoint of this present report, the section entitled “Right to fair trial” corresponds to the “procedural requirements” category and the section entitled “Access to Justice” to the “institutional requirements” category.

A. Equitability Assessment

³⁴ Constitutional Court, *Rahil Dink*, Application No: 2012/848, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/848>.

³⁵ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf.

³⁶ Çelik, Abdullah, *Constitutional Court's Guide to the Right to Fair Trial*, 2014, https://www.anayasa.gov.tr/media/3503/adil_yargilanma.pdf.

When we look into the assessments of ECofHR concerning the article 6, we see that the Court makes an assessment according to the conditions of the concrete application instead of expressing the “justice” concept which is the basic subject of examination with respect to the right of legal remedies in a static definition. While studying the equitability of trial, the process is taken into consideration as a whole, but a single phase or leg of the trial is not studied alone by isolating it from the other phases.³⁷ The most important reason for this is to eliminate the probability for multiple incidents which, when studied alone, will not lead to the violation of the article 6 to combine and create a cumulative effect, thus constituting the violation of the right to fair trial. However, it is of course possible for a single factor to bear importance to be effective on the court decision and to lead to the violation of the right to fair trial.³⁸

- **Effective Participation**

While making an equitability assessment, it is first studied whether or not effective participation in judgment is made possible. Effective participation of the parties is provided by the capability of obtaining information about the judgment procedures, following the hearings and submitting evidence. In this context, failure to hear the speeches clearly due to the poor acoustic in the hearing room may even lead to the violation of the right to fair trial.³⁹

- **Equality of Arms**

This trial principle as contained in our national criminal procedure law is another basic principle which is subject to investigation by ECofHR as it is an indispensable part of the right to fair trial. As per the equality of arms principle, any legal means must be made accessible in order to ensure effective and equal participation of the parties in the trial. Parties to the trial should have equal and just opportunities so that they can put forward their claims.⁴⁰ Criminal procedure acts should introduce detailed regulations related to the trial process and prevent the parties to the procedure from remaining defenceless before the judiciary power and investigating authorities that exercise the public authority.⁴¹ ECofHR emphasises that unlimited access to the case file and a copy of each of the documents inserted in the case file is an important guarantee with respect to the right to fair trial.⁴² Accordingly, we must also mention the obligation of the investigation and prosecution authorities to create documents. As per this obligation, all criminal procedure

³⁷ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, 7.

³⁸ ECofHR, *Edwards v. United Kingdom*, Application No: 13071/87, <http://hudoc.echr.coe.int/eng?i=001-57775>, §34.

³⁹ ECofHR, *Stanford v. United Kingdom*, Application No: 16757/90, <http://hudoc.echr.coe.int/eng?i=001-57874>, §29.

⁴⁰ ECofHR, *Öcalan v. Turkey*, Application No: 46221/99, <http://hudoc.echr.coe.int/eng?i=001-69022>, §140; *Faig Mammadov v. Azerbaijan*, Application No: 60802/09, <http://hudoc.echr.coe.int/eng?i=001-170465>, §19.

⁴¹ ECofHR, *Coëme et al. v. Belgium*, Application No: 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96, <http://hudoc.echr.coe.int/eng?i=001-59194>, §102.

⁴² ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §170.

processes are entered in records under certain legal standards and archived ready to be accessed. This obligation is also valid for the investigation phase in which verbal trial principle prevails.⁴³

- **Justified Decisions**

Any interlocutory decisions made during the trial process, which affects the merit of the case, and the final decision made at the end of the trial must be expressly justified by the competent court. A judge's obligation to make justified decisions constitutes the guarantee for carrying out the trial in accordance with objective criteria. ECofHR examines whether or not the reason set forth by the court is based on a "uniform template" presented in all similar cases in the applications brought before the court about the right to justified decisions.⁴⁴ In this context, any reasons of template nature which do not reflect the tangible differences of the subject of the case are far from insuring the right to fair trial. Each judgment affecting the sphere of right of the parties must be based upon the objective and legal reasons associated with the conditions of the concrete incident.

B. Public Hearing

Holding the trial publicly serve to protect the parties of the case from the arbitrariness of the judiciary authorities who have the public authority.⁴⁵ For this reason, it is very important to be able to ensure the right to fair trial in a complete and effective manner. Publicity of trial may be ensured by holding the hearings in an open manner and making the decisions in an open hearing.⁴⁶ Even if it is exceptionally possible to hold a closed hearing, making the judgment in a closed hearing and restricting the public access completely is not acceptable.⁴⁷ If the publicity of the decision gives rise to a reasonable security concern, it is possible to impose a partial restriction only on such issues.⁴⁸

C. Reasonable Time

By providing that "*Everyone is entitled to a fair and public hearing within a reasonable time ...*", the first paragraph of the article 6 of EConHR emphasises that the trial should be completed within a reasonable time in order to be able to mention that the right to fair trial has been satisfied. And it is possible to the reflection of this principle on the domestic law in the provision of the subparagraph (d) of the first paragraph of the article 141 of the Criminal Procedures Act (CPA) which is originated from the article 19 of the Constitution. According CPA, a suspect who is tried under detention is entitled to claim compensation if

⁴³ Ünver, Yener - Hakeri, Hakan, *Criminal Procedure Law*, Ankara, 2019, 63.

⁴⁴ ECofHR, *Moreira Ferreira v. Portugal (no. 2)*, Application No: 19867/12, <http://hudoc.echr.coe.int/eng?i=001-175646>, §84.

⁴⁵ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §271.

⁴⁶ AİHM, *Tierce et al. v. San Marino*, Application No: 24954/94, 24971/94 and 24972/94, <http://hudoc.echr.coe.int/eng?i=001-58765>, §93.

⁴⁷ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §300.

⁴⁸ *Ibid*, §312.

he is not brought before a judge or if a judgment is not made for/against him within a reasonable time.⁴⁹ However, as it is understood from the wording of the provision of the article 6, EConHR has not regulated the right to trial within a reasonable time in a manner limited to the detention of the suspect and thus provided a broader protection.

It is not possible to define a reasonable time which will be valid for all cases. While making an assessment related to the length of the trial time, the conditions of the case are taken into consideration.⁵⁰ While a study of reasonable time is carried out by ECofHR, the three basic criteria used may be listed as follows: complexity of the case, behaviours of the applicant and behaviours of the competent administrative authority and the judiciary authorities.⁵¹ Even if these criteria constitute a reference for a court, they would not point out that a trial which lasts for a long time is in compliance with the “reasonable time” standard at all times. For instance, even if a case is of complex nature in an objective manner, the fact that the case file is held and processed by the judiciary authority for a long time without any reasonable reason may not be explained by the complexity of the case only. Therefore, even though the case displays a complex structure, ECofHR will adjudge that the reasonable time has been exceeded in such cases.⁵² Likewise, a decision is made about the reasonable time by carrying out a detailed study with respect to other criteria.

X. ACCESS TO JUSTICE

As it is explained above, fair trial is a basic right comprised of multiple components which is in an intricate relationship with the other guarantees. In this context, the right to access to justice (court) constitutes one of the important aspects of fair trial.

When we review the article 6 of EConHR, we can see that the right to access to justice is pointed out as one of the aspects of the right to fair trial: “*Everyone is entitled to fair and public hearing ... by an independent and impartial tribunal established by law.*” If we are to consider it by the categorical distinction made by ECofHR, access to justice constitutes a view of the “institutional requirement” aspect of the right to fair trial. However, CC defines the right to access to court as “*being capable of bringing a dispute before a court and requiring such dispute to be resolved in an effective manner*”.⁵³ The court as referred to in this definition made by CC points out an independent and impartial court established by law.

- **Court Established by Law:** As it is provided in the first paragraph of the article 6 of EConHR, the court which will hear the case must be established by law. In a

⁴⁹ Criminal Procedures Act No. 5271, <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf>

⁵⁰ ECofHR, *Boddaert v. Belgium*, Application No: 12919/87, <http://hudoc.echr.coe.int/eng?i=001-57768>, §36.

⁵¹ ECofHR, *König v. Germany*, Application No: 6232/73, <http://hudoc.echr.coe.int/eng?i=001-57512>, §99.

⁵² ECofHR, *Adiletta et al. v. Italy*, Application No: 13978/88, 14236/88 and 14237/88, <http://hudoc.echr.coe.int/eng?i=001-57671>, §17.

⁵³ Çelik, Abdullah, *Constitutional Court's Guide to the Right of Legal Remedy*, 2014, https://www.anayasa.gov.tr/media/3503/adil_yargilanma.pdf, 33.

democratic constitutional State, the jurisdiction must be authorised to try and adjudge by law. Judiciary power draws its strength from law. The phrase “*established by law*” as contained in the wording of the article 6 of EConHR in fact means that the court should present an establishment compliant with the law of establishment regulating such court.⁵⁴

- **Independent and Impartial Court:** In order to be able to mention that the right to fair trial is secured in the strictest sense, there must not be any doubt about the independence and impartiality of the court which will hear the case. These two criteria are usually considered together by ECofHR.⁵⁵

Independence represents the ability of the jurisdiction to take action independent of both the legislative and executive powers. We can mention four criteria which EConHR refers to in assessing the independence of the jurisdiction:

- **Method of appointing the member:** Even if the method of appointing the members is not sufficient to reach a conclusion by itself, it is still an important criterion of assessment. In this context, for instance, members of the court may be appointed by the executive body. However, in order to be able to mention an independent judicial authority, it should be determined that the members of the court are not under the influence of the executive power during their judicial activities.⁵⁶
- **Office periods:** While there is not any *de facto* minimum period with respect the office period of judges, it is important for their independence to have a guarantee of irremovability.⁵⁷
- **Guarantees against external pressure:** Judicial independence necessitates the protection of judges from judicial and non-judicial effects. Such independence is ensured by the guarantee of judges in the modern legal systems. In this context, a judge must be protected from both the authorities within the judiciary power and the superior authorities within the judiciary power.⁵⁸
- **Impression of independence:** Finally, the court should be able to create a belief in the public and, more significantly, in the parties to the criminal trial as to the fact that it is independent so that the jurisdiction may satisfy the independence criteria.⁵⁹ In this context, the outputs of a study carried out in 2007, which examines the

⁵⁴ ECofHR, *Sokurenko and Strygun v. Ukraine*, Application No: 29458/04 and 29465/04, <http://hudoc.echr.coe.int/eng?i=001-76467>, §24.

⁵⁵ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §87; ECofHR, *Findlay v. United Kingdom*, Application No: 22107/93, <http://hudoc.echr.coe.int/eng?i=001-58016>, §73; *Ramos Nunes De Carvalho E Sa v. Portugal*, Application No: 55391/13, 57728/13 and 74041/13, <http://hudoc.echr.coe.int/eng?i=001-187507>, §153.

⁵⁶ ECofHR, *Campbell and Fell v. United Kingdom*, Application No: 7819/77, 7878/77, <http://hudoc.echr.coe.int/eng?i=001-57456>, §79.

⁵⁷ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §95.

⁵⁸ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, §97.

⁵⁹ *Ibid.* 24.

differences of mentality in judiciary power are worrisome in terms of the cases in which the police have used excessive force. According to this study, 24% of the judges believe that the judges should take an attitude in favour of the public officials in the crimes committed by civil servants.⁶⁰

And impartiality means that the judges carrying out the trial would not have any prejudice against the subject of the case and the suspect and would not display a discriminatory attitude. ECofHR has developed two assessment methods for this purpose, one being subjective and the other objective:

- in the subjective approach, it is examined whether or not the judge displays any personal prejudice or partiality against the parties to the case in a case which he hears; and
- in the objective approach, it is examined whether or not the court provides the parties with the sufficient legal guarantee in a manner which will eliminate any and all legitimate suspicion on the court.⁶¹

In the ECofHR's *Kyprianou - Cyprus* decision, it is stated that any problems which will arise from functional distinction are an important issue which may bring forward the impartiality of a court.⁶² When we study the Turkish police organisation from this perspective, the blurring of the distinction between the administrative forces aiming at ensuring public order and the judicial forces assigned with finding any and all evidence about the actions defined as crimes and the offenders thereof may appear before us as a factor which injures the independence and impartiality of the court. As a matter of fact, the fact that public officials carrying out the activities of administrative forces and the judicial forces are contained in the same organisation makes it harder to make such distinction.

XI. INTERNATIONAL DOCUMENTS CONCERNING POLICE'S USE OF FORCE AND WEAPONS

A. United Nations Code of Conduct for Law Enforcement Officials

UN General Assembly's decision no. 34/169 adopted on 17th December 1979⁶³ is important in that it contains some professional rules for the law enforcement officials. As a matter of fact, the domestic rules of law if the member States of the United Nations must be regulated in line with the principles set forth herein. However, if the domestic rules of law stipulate a heavier regulation, the application of the domestic rules of law should be given priority.

⁶⁰ Sancar, Mithat - Ümit, Eylem, *Patterns of Perception and Mentality in Judiciaries*, November 2007, <http://www.insanhaklarisavunuculari.org/dokumantasyon/files/original/dce233d88a51b398af86057e20670cf9.pdf>, 11.

⁶¹ ECofHR, *Guide to the Article 6 of the European Convention on Human Rights (Criminal Law Aspect)*, 31st August 2021, https://www.echr.coe.int/documents/guide_art_6_criminal_eng.pdf, 26.

⁶² ECofHR, *Kyprianou v. Cyprus*, Application No: 73797/01, <http://hudoc.echr.coe.int/eng?i=001-71671>, §121.

⁶³ United Nations General Assembly, *Code of Conduct for Law Enforcement Officials*, 17th December 1979, <https://www.ohchr.org/Documents/ProfessionalInterest/codeofconduct.pdf>.

Article 3 of the Decision expressly states that law enforcement officials may use force only in exceptional situations and absolutely necessary. A firearm is an unusual measure; any possible alternative must be tried before it is used. A firearm may be used in order to control someone who resists the police with a weapon or who endangers the lives of other people and in cases where slighter measures remain insufficient. Each situation in which firearms are used must be immediately reported to the competent authority.

Further, it is underlines in this Decision that law enforcement officials may not torture or have any other inhuman, degrading treatment in accordance with the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment and not encourage or tolerate such conduct.

UN General Assembly Decision No. 34/164 aims at controlling the law enforcement officials who are authorised to use force through internal auditing. As per the article 8 of the decision, the public official who encounters any practices violating the principles as contained in this decision should report the matter to their superior authorities and to other controlling bodies where necessary.

B. European Council Parliamentary Assembly - Declaration on Police #690⁶⁴

Another noteworthy text concerning the police's power to use force is the European Council Declaration No. 690 adopted in 1979. While this text displays parallelism with the UN General Assembly Decision No. 34/169, it accommodates different sensitivities. For instance, it is not sufficient to get professional training for a person to be a policeman according to the European Council Declaration. He must also be sufficiently trained on social problems, democratic rights, human rights and specifically on EConHR.⁶⁵

Article 4 of the Declaration is important in that it regulates the prohibition of complying with an illegal order without anticipating any exceptions. It is possible to see that a parallel regulation in the domestic law is contained in the subparagraph (B) of the first paragraph of the article 2 of PDPA. However, we see that police's fulfilling any illegal orders is exceptionally allowed in the domestic law. Accordingly, the police are obligated to report any relevant illegality to his superior. However, in case the superior insists on the fulfilment of such illegal order and repeats the order in a written form, the police fulfil such order and are not held responsible for the implementation of such illegal order.⁶⁶ Any similar exception is not contained in the said declaration.

Articles 11, 12 and 13 of the Declaration draw the legal boundaries of the police activities and specifically introduce responsibilities for the police officials at the upper levels of the chain of command. These public officials assigned with planning the police activities must

⁶⁴ European Council Parliamentary Assembly, *Declaration on Police No. 690*, 01.02.1979, <https://pace.coe.int/pdf/b665278876aaf96f6c0da9ef97f75b4d5e6facb095940fd07465d1ce5c673c34/resolution%20690.pdf>.

⁶⁵ Ibid. 3.

⁶⁶ Police Duties and Powers Act No. 2559, <https://www.mevzuat.gov.tr/MevzuatMetin/1.3.2559.pdf>.

both fastidiously identify the means to be used to achieve the legal purpose in a concrete event and provide the police with clear and express orders on the use of such means.⁶⁷ However, this assessment is not only the responsibility of the police superiors. As a matter of fact, the police have been made obligated to consider whether or not the order given to him is legal.

C. United Nations Basic Principles on Use of Force and Fire Arms by Law Enforcement Officials⁶⁸

United Nations Basic Principles on Use of Force and Fire Arms by Law Enforcement Officials adopted in the 8th United Nations Congress on 7th September 1990 introduces some general and special rules on the use of force and firearms to the member States. Member States are expected to harmonise their domestic laws to the international standards prescribed herein.

In the article 2 of the text, a dual assessment is made between the means of force and protective equipment in order to ensure the proportionality of the police activities and it is stated that provision of protective equipment should be prioritised instead of equipping the police with means of force. Thus, the probability of the police to use lethal force will reduce. In the article 3, careful use of the non-lethal means is provided for, thus seeking to minimise the harm to be given and to prevent any individuals not involved in the event from being harmed.

Just as it is provided in the article 16 of PDPA, the cases in which the police may use firearms are restrictively listed in the article 9 of the principles which UN has identified for the law enforcement officials. While the scopes of the two regulations tally to a great extent, it should be noted that the principles prepared by UN are of guiding nature and that such regulations of domestic law as PDPA should be more comprehensive.

It is only possible to use firearms in cases where less dangerous methods fail or where it is not possible to achieve the desired outcome with such methods.⁶⁹ If the use of firearms is inevitable;

- This means should be resorted to if it is compliant with the seriousness of the offense.
- Damage to be given to the involved individual while using a firearm should be minimised.
- In case of injury, one should make sure that the individual gets medical attention as soon as possible.

⁶⁷ European Council Parliamentary Assembly, *Declaration on Police No. 690*, 1 Şubat 1979, <https://pace.coe.int/pdf/b665278876aaf96f6c0da9ef97f75b4d5e6facb095940fd07465d1ce5c673c34/resolution%20690.pdf>, 2.

⁶⁸ United Nations Basic Principles on Use of Force and Fire Arms by Law Enforcement Officials, 7th September 1990, <https://www.un.org/ruleoflaw/files/BASICP~3.PDF>.

⁶⁹ *Ibid.* article 4.

- Family or close friends of the injured person should be immediately notified.⁷⁰

Cases where it is possible to use firearms are the following:

- Police's using legitimate defence,
- Another one's life being under the danger of death or serious injury,
- Aiming at the prevention of a serious offence which threatens right to life of the police,
- Prevention of the escape of a criminal.

At this point, it is useful to look into the article 11 of the listing the qualifications which must be found in the legal regulations related to the use of firearms of the UN principles. To the contrary what is stated herein, it is possible to see that PDPA

- does not contain any provisions as to what policeman can carry what kinds of weapons;
- does not regulate the subjects related to the control, storage and security of firearms nor expressly hold the policeman accountable for the firearms delivered to him;
- has not established an internal auditing mechanism to which a policeman may report the situation in cases where firearms are used.

D. United Nations Manual on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions - Minnesota Protocol⁷¹

This text finally revised in 2016 and also known as the Minnesota Protocol is of an important nature for the investigating authorities in that it identifies detailed standards for the autopsy and evidence-collecting processes. The protocol further presents examples of good practice for all actors involved in the investigation process including but not limited to lawyers, police and other investigating units.

If we are to review the scope of the protocol, we find out that any illegal, arbitrary and summary executions are identified as

- unlawful deaths potentially committed by the State, State bodies or State agents;
- deaths resulting from the violation of the protection of the right to life by the State;
- all doubtful deaths even if there is not any sign demonstrating that the State has violated this obligation; and
- deaths occurring under detention or arrest.⁷²

⁷⁰ Ibid. article 5.

⁷¹ United Nations Manual on Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions - Minnesota Protocol, 2016, <https://www.ohchr.org/Documents/Publications/MinnesotaProtocol.pdf>

⁷² Ibid. 1.

The Guide differs from the other international documents reviewed in this section in that it introduces a protection specific to the illegal cases of death which concern the fragile and marginalised groups. Accordingly, if a pattern may be observed in terms of the gender, sexual orientation, social gender identity, political thoughts, religious belief, race and ethnic origin and social status of the victim with respect to the deaths as covered by the protocol, or, in other words, if systematic summary executions occur to the individuals belonging to a particular group, then the State must enhance its sensitivity on its obligation to protect the right to life.⁷³

Scope of the State's obligation to investigate which is one of the basic topics which ECofHR reviews in the allegations of the violation of the right to life is also regulated in this text. As per the Protocol, any reasonable allegations related to unlawful death bring about the State's obligation to investigate. Investigation must be immediately initiated; however, the start of the investigation phase is not sufficient alone. Investigation must be conducted effectively, comprehensively, independently, impartially and transparently.

The issue of inclusion of superiors into the investigation which is one of the subjects which ECofHR frequently underlines in its decisions in which it reviews the unlawful deaths is regulated in the article 7 of the Protocol. Accordingly, it is not sufficient to identify the person who has committed the action only, but the chain of command must also be followed and all people who may have been involved in the unlawful death must be identified and included into the file.

Yet another issue which distinguishes the Minnesota Protocol from the other international documents in this area is the article 6 related to the State's burden of proof. As per this provision, in some specific cases, the State is responsible for any unlawful death unless and until proven otherwise. To give an example of such specific cases, the State must prove that it is faultless in such cases where the dead person is a human rights activist or anti-government, experiences problems concerning his mental health and has been physically damaged under detention. Briefly, we see that the burden of proof is reversed in such specific cases.

E. 10 Basic Human Rights Standards for Law Enforcement Officials⁷⁴

Even if this text issued by the Amnesty International does not have any binding power, the standards it sets forth with respect to the use of firearms especially constitute an important point of reference for the examples of good practice.

According to the standards which the Amnesty International sets forth in the articles 7 and 8, it is not sufficient to identify the situations in which firearms may be used in a legal system which respects human rights. Legal regulations related to the use of such weapons must determine the situations in which the police are authorised to carry firearms, the

⁷³ Ibid. article 3.

⁷⁴ Amnesty International, *10 Basic Human Rights Standards for Law Enforcement Officials*, 01.12.1998, <https://www.amnesty.org/en/documents/pol30/004/1998/en/>.

types of firearms and amount of ammunition they may carry. Further, an effective reporting/inspection system must be established so that those policemen who have used firearms during their duties present a report and an investigation may be conducted on the event.⁷⁵

F. Principles of Procedurally Just Policing⁷⁶

In the text issued by the “*Justice Collaboratory*” organised under the Yale University School of Law, some basic principles are identified in order to eliminate any violations of rights which may arise from the actions of the police officials who are obligated and authorised to enforce the rules of law by using the public power. Even if this guide authored by professors from different disciplines including but not limited to law is not of a binding nature, put forward a noteworthy perspective for both law enforcement officials and the legislators. As a matter of fact, one of the most important objectives of the text is to guide the police departments that want to create a policy document or to renew their current policies.⁷⁷

According to the guide, the security units should not only establish policy documents but also keep such texts open to the public along with any general and special orders. Any information related to the police activities and procedures which may be possibly shared must be open to online access.⁷⁸

Another issue emphasised in the Guide is that any and all legal/administrative regulation concerning the police’s power to use force must contain a specific and detailed list of instructions.⁷⁹ A general legal regulation anticipating to increase the force to be used by the police incrementally will not be sufficient to establish control in this area. Therefore, for instance, what means of force the police may use under what specific condition and how to carry out documentation and reporting after such use of force and what should be taken into consideration at the planning phase before the use of force must be stated in detail. Also, according to the Guide, each and every case of use of force worth reporting should be immediately and regularly documented, but one should not wait for the occurrence of a violation or rights in order to carry out documentation.⁸⁰

Transparency is importance to ensure the confidence of the people on the police. In this context, police departments must arrange the data related to the use of force and make them available for online access. It is possible to see that successful examples of this practice as suggested in the Guide are accomplished by the civilian society. An independent investigative society organised in USA, the *Mapping Police Violence* maps

⁷⁵Ibid. 7-8.

⁷⁶ Yale University, *Principles of Procedurally Just Policing*, 2018, https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf.

⁷⁷ Ibid, 8.

⁷⁸ Ibid, 8.

⁷⁹ Ibid. 12.

⁸⁰ Ibid. 17.

the data which they retrieve from official and from non-official but highly credible resources and combine the police violence cases in a systematic data repository.⁸¹ Implementation of these and other similar efforts in the civilian society with official and objective data presented by the police departments and security units themselves will be quite a serious step towards ensuring transparency. Except their functionality in establishing confidence in the police, these data will have a critical importance in terms of the operation of the internal inspection mechanisms. Accordingly, each police department should review the use of force statistics of its own officials and take non-punitive measures and develop early warning systems. Such inspections should be repeated annually or, if applicable, at more frequent intervals.⁸²

An important requirement mentioned in this guide is the body-worn and vehicle-mounted cameras. In what situations these cameras with critical importance to inspect the lawfulness of the police activities will be activated should be entered in the policy documentation with clear and specific instructions.⁸³ The clearer such instructions are the easier to determine whether or not the policemen conduct in compliance with law in activating the body-worn and vehicle-mounted cameras.

And finally, criticisms as contained in the report entitled “*Race, Arrests, and Police Use of Force*” which was issued by academicians from different disciplines who came together and prepared on regulations concerning the police’s obligation to give information which is also insistently underlines in this guide⁸⁴ are worth mentioning. According to this report, some conceptual problems are encountered in measuring the police’s use of force. According to the criticisms, too much focus on the aspect of the use of disproportionate force getting at exploitation limits the working area to the extreme and relatively rarely seen cases of violence only. Secondly, such issues as what means the police choose while using force and at what extent they use force, etc. may create a great difference with respect to its impact on an individual. Therefore, an investigation only focusing on whether or not the “force is used” will be insufficient. An important reason why this dichotomous investigation method is frequently resorted to is that we have insufficient data in hand about the cases where the police has used force due to the fact that the security units fail to carry out detailed reporting on the use of force.⁸⁵ Reporting of the cases in which force is used by the police departments is essential so that we can deepen the discussion we are implementing on the unlawful deaths.

XII. ECoFHR DECISIONS WITHIN THE FRAMEWORK OF EConHR

⁸¹ <https://mappingpoliceviolence.org>.

⁸² Yale University, *Principles of Procedurally Just Policing*, 2018, https://law.yale.edu/sites/default/files/area/center/justice/principles_of_procedurally_just_policing_report.pdf, 8.

⁸³ *Ibid.* 20.

⁸⁴ Center for Policing Equity, *The Science of Justice: Race, Arrests, and Police Use of Force*, 2016, https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf.

⁸⁵ Center for Policing Equity, *The Science of Justice: Race, Arrests, and Police Use of Force*, 2016, https://policingequity.org/images/pdfs-doc/CPE_SoJ_Race-Arrests-UoF_2016-07-08-1130.pdf, 7.

Article 2 regulating the right to life and the article 3 regulating the prohibition of torture of EConHR should be considered together with the article 15 regulating the suspension of obligations in extraordinary cases. Particularly, as part of the police violence cases which do not result in death are considered within the context of prohibition of torture, this regulation also has importance in terms of the allegations of the violations of right to life.

However, at this point, it should be noted that all police violence cases will not be included in the prohibition of torture. As the Court has underlined in many of its decisions, any actions which violate the right to life of the applicant may be exceptionally considered to be a violation of the right to life even if they do not result in death. The Court considers the extent and type of the force used and the nature of the injuries in its assessments and may exceptionally consider such actions under the article 2 in case of the use of force by the law enforcing State officials without causing death.⁸⁶ Other than this exception, the use of force and ill-treatment by the State officials are examined within the scope of prohibition of torture.⁸⁷

A. Bektaş and Özalp – Turkey Decision

In its *Bektaş and Özalp - Turkey* decision, the Court found it unnecessary to further investigate in terms of violation of the right to life once it had determined that the policeman had taken aim at Murat Bektaş's head instead of shooting at such areas as feet or legs which will not cause life-threatening danger. In the Court's opinion, police officials expressly and unlawfully take action to terminate the person's life. In this case, it is not necessary to make an assessment as to whether or not the use of force is absolutely necessary.⁸⁸ Under the article 2, the positive obligation of the State requires to establish effective criminal law regulations and prevent the State officials from causing unlawful deaths. Prevention, investigation and trial of the unlawful activities of the police authorised to use weapons are necessary to maintain the confidence in the State organs in the society.⁸⁹

Another important subject which the Court repeats in its *Bektaş and Özalp - Turkey* decision is the scope of the subject of investigation in allegations of the right to life committed by the police. While investigating the deaths caused by the police, it does not only review whether or not the force used is absolutely necessary, but to assess whether or not the operation carried out has been planned in a manner which will keep the probability of endangering the right to life of individuals at the lowest level constitutes another important phase of the investigation.⁹⁰ In the application filed by Bektaş and

⁸⁶ ECofHR, *Makaratzis v. Greece*, Application No: 50385/99, <http://hudoc.echr.coe.int/eng?i=001-67820>, §55; *Soare et al. v. Romania*, Application No: 24329/02, <http://hudoc.echr.coe.int/eng?i=001-103591>, § 108-109; *Trévalec v. Belgium*, Application No: 30812/07, <http://hudoc.echr.coe.int/eng?i=001-121768>, § 55-61.

⁸⁷ ECofHR, *Guide to Article 2 of the European Convention on Human Rights*, https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, §4.

⁸⁸ ECofHR, *Bektaş and Özalp v. Turkey*, Application No: 10036/03, <http://hudoc.echr.coe.int/eng?i=001-98353>, §48.

⁸⁹ *Ibid.* §50.

⁹⁰ *Ibid.* §57.

Özalp, the police failed to carry out the necessary and sufficient investigation related to the incoming notice and caused the death of a person who was not involved in the suspected actions. The Court concluded that this operation had not been planned with necessary care and that the compulsory investigation had not been carried out for the identification of the suspects, that the police had gone to the address given in the notice had gone there ready to use force and that any other option of intervention had not been designed.⁹¹ Briefly, the care taken at the planning phase of the police may be of a determinative nature with respect to the allegations of the violation of the right to life.

Committee of Ministers of the European Council used to investigate a great part of the decisions which it made against Turkey regarding the violations of the right to life and ill-treatment caused by the police and other security forces, including the *Bektaş and Özalp - Turkey* decision, by combining them under the **Aksoy group**.⁹² However, it is seen that the Committee concluded this investigation in 2019, that the Turkish government took steps in compliance with the advices presented to them and that the decisions contained in this group were enforced at individual and national level.⁹³ However, at this point, it should be noted that a great part of the applications in the Aksoy group is about the cases of unlawful death which occurred during the anti-terrorism operations between 1987 and 2002. Since then, some guarantees in compliance with the universal standards including the individual application with CC mechanism have been made part of our legal system. However, serious problems regarding the implementation and inspection of these regulations still survive.

In this respect, the Committee has recently issued an important interlocutory decision concerning the **Batı et al. group**⁹⁴ in which it joins the cases regarding the investigation of the death, torture and ill-treatment cases where the police and other security units are allegedly offenders.⁹⁵ According to this decision, although such developments as the entry into force of the Turkish Criminal Code and the Criminal Procedures Act have vital importance, such significant problems as the uncertainty on the administrative permission required for the investigation on public officials, tolerant attitude of judges and prosecutors towards the public officials insufficient scope of the investigations and prosecutions and

⁹¹ Ibid. §61.

⁹² European Council's unit responsible for the enforcement of the ECofHR decisions combines the cases related to similar subjects in the same group and follows up the enforcement of such decisions altogether in order to facilitate the investigation. Here, similarity is especially about the steps which the State must take in accordance with the State's positive obligation for the remedy of the violation. The Aksoy group in which the *Bektaş and Özalp - Turkey* decision is contained is comprised of the cases of unlawful death, maltreatment and forced disappearance a great majority of which were caused between 1987 and 2002 by the Turkish security forces. *For detailed information, see <https://www.coe.int/en/web/execution>*

⁹³ Committee of Ministers of the European Council, decision no. *CM/ResDH(2019)51 of 14.03.2019*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680934004.

⁹⁴ Decisions investigated in the *Batı et al.* group are about the effective criminal and disciplinary investigations in the death, torture and maltreatment cases where the Turkish security forces are allegedly offenders, and the European Council has imposed a positive obligations on Turkey for the introduction of good practices on the investigation and prosecution of the torture, maltreatment and death cases where the police are offenders.

⁹⁵ Committee of Ministers of the European Council, interlocutory decision no. *CM/ResDH(2021)195 of 16th September 2021*, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=0900001680a3d685.

failure to conduct disciplinary investigations still survive. In this context, in order to be able to settle the abovementioned problems, the Committee has presented a set of advices containing the following issues:

- eliminating the uncertainty in the Act on the Trial of Civil Servants and Other Public Officials No. 4483 and removing the administrative permission condition for investigation in the allegations of the violation of the right to life and prohibition of torture;
- taking concrete steps in order for the Public Prosecutors to fulfil their obligations of effective investigation;
- imposing result-oriented concrete solutions in order to prevent judges from making tolerant sentences in case of the allegations of torture and ill-treatment committed by governmental officials; and
- taking concrete steps for the implementation of the Human Rights Action Plan⁹⁶ issued in April 2021 by the Presidency in a manner which will respond to the problems identified by the Committee.

B. Gongadze - Ukraine Decision⁹⁷

In this file brought before the Court with the allegation of the violation of the article 2, a case of forced disappearance committed by the governmental officials is involved. As it did not stand for the local court or investigating authorities nor collect evidence, ECofHR most probably opined that the event of forced disappearance had been caused by the governmental officials by looking into the evidence and allegations presented in the file. The Court's primary subject of investigation is to what extent the State fulfils its positive obligations regarding the protection of the right to life.⁹⁸ ECofHR found out that sufficient and necessary investigation was not conducted despite the local investigating authorities were provided with sufficient evidence as to the fact that the governmental official had caused the event of forced disappearance and death which is the subject of the case. Despite the involvement of the police in this event was heard and spoken of by the Ukrainian people, the investigating and prosecuting authorities failed to take action.⁹⁹

Yet another issue which the Court has emphasised in this decision is that the victim is a journalist makes news on sensitive matters in the event which is the subject of the case. According to ECofHR, the fact that someone at this position may disturb some people who have authority and that he is in a vulnerable position has been ignored by the investigating authorities.¹⁰⁰ Therefore, the State failed to effectively investigate the allegation of the

⁹⁶ <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep02-03-202115-14.pdf>.

⁹⁷ ECofHR, *Bektaş and Özalp v. Turkey*, Application No: 10036/03, <http://hudoc.echr.coe.int/eng?i=001-98353>, §61.

⁹⁸ ECofHR, *Gongadze v. Ukraine*, Application No: 34056/02, <http://hudoc.echr.coe.int/eng?i=001-70853>, §166.

⁹⁹ *Ibid.*, §166.

¹⁰⁰ *Ibid.*, §168.

violation of the right to life and violated its positive obligation related to the article 2 of the Convention.

C. Cases of Death and Ill-treatment Occurring under Detention

In the *Gayeva - Russia* application regarding the event of death which occurred under detention¹⁰¹, ECofHR states that civilians are disadvantageous in terms of collecting evidence in case of the violations of rights committed in the areas under the control of the State authority and differentiates the criterion of proof adopted by the Court in this type of cases. In the events of death and injury occurring under detention room and other similar spaces, the Court may consider the allegations basing on strong probabilities to be evidence on which the judgment will be based, by derogating from the principle “*doubt beyond reasonable*”. In such a case, the State will be obligated to confute the allegation of violation of rights.¹⁰² The Court has repeated this opinion in the applications related to the cases of death and injury occurring under similar conditions.¹⁰³ Another issue which is important in terms of this heading is the conclusive force of the documents signed under detention. A person’s signing a document when he is under detention as to the fact that he has not made his statement under coercion and threat and that what is written in his statement is entirely based on his own statements would not constitute evidence as to the fact that he has not been ill-treated under detention. As matter of fact, the person has signed the document at the police station when he is under police control. There must be sufficient evidence available as to the fact that the document reflects the person’s own free will so that it may bear a conclusive force.¹⁰⁴

ECofHR applies a different criterion of proof with respect to the events of death occurring under detention. Accordingly, the burden of proof lies on the part of the competent public authority in case the events which are the subject of the application brought before the ECofHR with the allegation of the violation of the right to life and ill-treatment have (entirely or partly) only occurred within the knowledge of such public authorities.¹⁰⁵ Cases of detention and arrest constitute the best known examples of the events entirely occurring within the knowledge of the public authority. As a matter of fact, a person’s freedom of action is restricted in such cases and all records are kept under the control of the State authorities. Therefore, the State claiming that the right to life has not been violated is obligated to prove this claim with convincing evidence.

¹⁰¹ ECofHR, *Gayeva v. Russia*, Application No: 688/11, <http://hudoc.echr.coe.int/eng?i=001-203183>.

¹⁰² ECofHR, *Gayeva v. Russia*, Application No: 688/11, <http://hudoc.echr.coe.int/eng?i=001-203183>, §52.

¹⁰³ Ayrıca bakınız: AİHM, *Anguelova v. Bulgaria*, Application No: 38361/97, <http://hudoc.echr.coe.int/eng?i=001-60505>, §109 et seq.

¹⁰⁴ ECofHR, *Violation of Contract in Police Violence Cases (press release)*, 16.04.2019, <https://hudoc.echr.coe.int/app/conversion/pdf?library=ECHR&id=003-6384715-8372258&filename=Judgment%20Csonka%20v.%20Hungary%20-%20ill-treatment%20during%20police%20questioning.pdf>, 2.

¹⁰⁵ ECofHR, *Guide to the Enforcement of the Article 2 of the European Convention on Human Rights*, Date Updated: 31st August 2021, https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, §82.

Even if there is not any clear evidence as to the detention of a person, the same burden of proof is valid for the State if the person has entered a place which is under the control of the public officials upon their call and then no one has heard from him afterwards. That is to say, with respect to the burden of proof, these cases are treated just as in the cases of detention, arrest and conviction.

In fact, as it is emphasised in different decisions of the Court, in all cases where any conclusive evidence which may be objectively attributed to the State authorities cannot be obtained, the defending government is obligated to prove the allegations of the applicant to the contrary with strong and convincing evidence. The fact that the security cameras are not in operation in cases of deaths under detention is one of the most explicit examples of this situation. When we look into the regulations of domestic law related to this obligation of the State, the State takes any necessary measures to protect the right to life of the person under detention as per the subparagraph (g) of the second paragraph of the article 2 of the Seizure, Detention and Interrogation Regulation. In this context, it may watch him and record him within the bounds of its technical means if necessary.¹⁰⁶

“People taken under detention may be watched for the protection of their right to life by taking any necessary measures for this purpose. Watching procedure may be recorded within the bounds of technical means.”

This wording of the regulatory provision may be in fact said to impose an obligation for the protection of the right to life of individuals even if it seems to provide the police implementing the detention procedure with a discretionary power in recording. Also, the article 92 of CPA regulating the detention procedures expressly obligates the chief public prosecutors or public prosecutors assigned by the former to inspect the detention rooms, where the detained people are kept, the condition of such people and recording processes related to detention.¹⁰⁷ Therefore, as the watching of the places where the people under detention are kept by means of security cameras directly secures the right to life of such people, the police must take any necessary measures and keep such recordings and the chief public prosecutor’s office must inspect whether or not such records are kept. Otherwise, in terms of the event of death under detention which may be charged to the State authorities, the State must present strong and conclusive evidence in its defensive statement which it will present to ECofHR and thus prove that it does not have any negligence in the violation of the right to life.

As it is stated in the *Mansuroglu - Turkey* decision, ECofHR considers it sufficient if the applicant has done anything which may be done to support his *prima facie* complaints in

¹⁰⁶ Seizure, Detention and Interrogation Regulation, <https://www.resmigazete.gov.tr/eskiler/2005/06/20050601-10.htm>, article 11.

¹⁰⁷ Criminal Procedures Act No. 5271, <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5271&MevzuatTur=1&MevzuatTertip=5>, article 92.

case the evidence is entirely under the State's control.¹⁰⁸ This opinion has a critical important in terms of the events occurring at police stations.

XIII. TURKISH JUDICIAL DECISIONS UNDER EConHR

It may be said that the CC decisions are compliant with the ECofHR opinions to a great extent in terms of the allegations of the violation of the right to life regarding the events of death experienced as a result of the unlawful activities of the police. The Court forming its opinion on the State's obligation of protection of the right to life with the *Serpil Kerimoğlu et al.* application¹⁰⁹ within the context of the violation of the right to life repeats its similar opinion in terms of the violations committed by State officials.

In the *İpek Deniz et al.* decision¹¹⁰ in which it investigates the event of death occurring as a result of the police's use of force during the response to public event, the negative and positive obligations of the State in terms of the violations of the right to life caused by the police forces that use force on the basis of their public power. Police officials who exercise the public power have a negative obligation within the context of not causing wilful and unlawful deaths. Further, the State must protect the right to life of all individuals against any risks and damages which may arise from the activities of the State officials whom the State authorises to use force. Such protection covers both the discouraging and comprehensive legal regulations and the administrative measures.¹¹¹ In the context of the right to life, the procedural aspect of the State's positive obligation means that the responsible ones are to be identified and punished through a criminal investigation.¹¹²

CC first seeks whether or not the investigating authorities take action ex officio and then whether or not all evidence which may cast a light on the event of death has been collected while examining whether or not an investigation is effective. Any issues not considered and investigated at all are further assessed while the evidence in the case file is examined.¹¹³ If any issue which must be mandatorily investigated for the clarification of an event of death has not been investigated at all by the investigating and prosecuting authorities and if any discussions have not been made on such evidence in the case, then the Court concludes that the procedural aspect of the right to life has been violated in such a case. As it is stated in the *Devrim Zengin et al.* decision, it is mandatory that the public prosecutor will ask the imagery records (if any) related to the intervention in the right to life from the competent Security Department so that the investigation may be deemed to be effective and comprehensive. As a matter of fact, as it is emphasised by CC, the greatest material evidence to be used in assessing the lawfulness of the police's use of force is

¹⁰⁸ ECofHR, *Mansuroğlu v. Turkey*, Application No: 43443/98, <http://hudoc.echr.coe.int/eng?i=001-85251>.

¹⁰⁹ CC, *Serpil Kerimoğlu et al.*, Application No: 2012/752, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2012/752>.

¹¹⁰ CC, *İpek Deniz et al.*, Application No: 2013/1595, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2013/1595>.

¹¹¹ *Ibid.*, §149.

¹¹² *Ibid.*, §151.

¹¹³ *Ibid.*, §168.

these imagery records.¹¹⁴ Further, if there is any allegation as to the fact that the police have not used the means in hand in compliance with the instructions, the investigating authority must cause criminal investigation to be carried out with regard to the use of such means. Otherwise, the procedural obligation which is an aspect of the State's positive obligation has been violated.¹¹⁵

CC pays attention to two basic points while investigating whether or not intervention is absolutely necessary and proportionate in the cases where force is used on the basis of a public mandate: it is not sufficient to assess the lawfulness of the activity of a public official only; the events including the planning and control phases of the relevant police procedure and activity must be investigated in their entirety.¹¹⁶

And concerning the lachrymatory chemicals and pepper gas frequently used in a disproportionate manner in responding to public events, CC has decided that improper uses of such weapons may cause death and serious injuries although they are not of lethal nature alone and that it is therefore required to apply the criteria concerning the firearms to the extent as deemed appropriate.¹¹⁷

XIV. OBLIGATIONS OF STATES ON RIGHT TO LIFE UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS

As it is clearly stated in the article 1 of the EConHR, the Contracting States are obligated to protect the rights of everyone within their jurisdiction secured in the section I of this Convention and secure the freedoms recognised by the Convention.¹¹⁸ In the modern human rights theory shaped by the criteria developed by international human rights authorities, it is agreed that this obligation has difference aspects.

A. Negative Obligations

Negative obligation for the right to life appears before us as the State's obligation of avoiding the violation of this right secured in the article 2 of EconHR. The State that unlawfully impedes or restricts the effective use of the right has violated its negative obligation. The international principles as to the fact that force may not be used unless "absolutely" necessary in terms of the cases of death caused by the police exercising the public power is an aspect of the State's negative obligation within the context of the protection of the right to life. Even in cases where use of force is absolutely necessary, the police is obligated to incrementally increase the force which they will use but may not choose any means/degree of force beyond what is necessary. ECofHR has emphasised

¹¹⁴ CC, *Devrim Zengin et al.*, Application No: 2017/26413, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/26413>, §65.

¹¹⁵ *Ibid.*, § 63.

¹¹⁶ AYM, *Okan Göçer*, Application No: 2017/29596, <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2017/29596>, §52.

¹¹⁷ *Ibid.*, § 55.

¹¹⁸ European Council, *European Convention on Human Rights*, 1950, https://www.echr.coe.int/documents/convention_eng.pdf.

that the Contracting States' negative obligation within the scope of the protection of the right to life is much heavier and stricter as compared to its positive obligation.¹¹⁹

B. Positive Obligations

With respect to the applications filed under the article 2 of EConHR, the *McCann et al.-United Kingdom* decision¹²⁰ is important in that the Court agreed that the State has a positive obligation within the context of the protection of the right to life for the first time. This opinion which started with the *McCann* decision and imposed on the States the obligation of effective investigation of the violations of the right to life is an important turning point in terms of the investigations related to the police officials who cause unlawful deaths by exercising the public power. The State's positive obligation in terms of the article 2 means that the State must take any necessary steps order to protect the lives of the individuals within its jurisdiction in order to ensure the right provided in the Convention to materialise.¹²¹

The State's positive obligation in the cases of death experienced as a result of the police's use of force requires the State to take compulsory actions in order to protect the people against the disproportionate and unlawful force used by the State officials. Accordingly, the State's two responsibilities are mentioned: to draw a legal framework eligible for the protection of the right to life and respectful of human rights¹²² and to provide the State agents whom it will authorise to use force with qualified training.¹²³

C. Procedural Obligations

And another important distinction appears before us as the "procedural obligation" and the "meritorious obligation" which constitute two aspects of the positive obligation. This distinction originates from the differentiation in the type and nature of the action expected of the State. Meritorious obligations require that the State should take some basic measures in order to effectively protect the right, for instance, to prohibit torture and ill-treatment or impose rules which attach the police's power to use firearms to clear and foreseeable standards. And procedural obligations mean the activation of the procedures of domestic law and the application of effective sanctions in case of the violation of rights in order to protect the right in a more effective manner.¹²⁴

¹¹⁹ ECoFHR, *Ribcheva et al. v. Bulgaria*, Application No: 37801/16, <http://hudoc.echr.coe.int/eng?i=001-208877>, §165.

¹²⁰ ECoFHR, *McCann et al. v. United Kingdom*, Application No: 18984/91, <http://hudoc.echr.coe.int/eng?i=001-57943>.

¹²¹ Akandji-Kombe, Jean-François, *Positive Obligations under European Convention on Human Rights*, 2007, <https://rm.coe.int/168007ff4d>, 11.

¹²² ECoFHR, *Guide to the Enforcement of the Article 2 of the European Convention on Human Rights*, Date Updated: 31st August 2021, Access: https://www.echr.coe.int/Documents/Guide_Art_2_ENG.pdf, §87.

¹²³ *Ibid.*, §90.

¹²⁴ Akandji-Kombe, Jean-François, *Positive Obligations under European Convention on Human Rights*, 2007, <https://rm.coe.int/168007ff4d>, 16.

As it will be understood from this categorical distinction, the State's positive obligation does not end with the prohibition of torture and violations of the right to life, but the meritorious obligations make it necessary to take some measures in order to protect the right in a more effective manner. Particularly, in order to prevent the violations of prohibition of torture and right to life committed by State officials, the legal order must provide some guarantees. Such protective regulations may be listed as follows: the detained person's

- right to inform a third party,
- right to access to an attorney,
- right to require a medical examination to be carried out on him by a doctor whom he will designate by himself.¹²⁵

European Council notes that a great part of the cases of ill-treatment occur at the police stations within the initial few hours following the seizure and detention procedures for access cannot be usually achieved to an attorney in this period of time.¹²⁶ In this context, effective provision of the right to access to an attorney, right to telephone and right to medical examination has a critical importance in terms of the protection of the rights to life of the detained people.

XV. POLICE VIOLENCE AND SUMMARY EXECUTIONS IN TURKEY AS THEY APPEAR IN UNITED NATIONS MECHANISMS

When we look into the matter specifically from the standpoint of the United Nations bodies watching and reporting human rights violations of the Member States and making decisions on such violations, it is seen that the framework drawn and criteria put forward by ECofHR are agreed upon to a great extent by UN and that the Republic of Turkey is given some advices accordingly.

In its 2nd Universal Periodic Review Concluding Report which it issued in 2016¹²⁷, the UN Committee against Torture noted that when the sufferers took legal actions with the allegation of torture and ill-treatment against the law enforcement officials, they encountered counter-actions for such reasons as "resistance" or "defamation" and that the State failed to reply this worrisome situation presented by the Committee. Further, it is emphasised that the advices of the Committee have not been complied with and that any independent body which will investigate the allegations of torture and ill-treatment has not yet been established.

There is remarkable information reported by the special rapporteur of the UN Committee against Torture in the 3rd Universal Periodic Review Report of 2020 presented to the UN General Assembly by the Office of the United Nations High Commissioner for Human

¹²⁵ Ibid., 25.

¹²⁶ Ibid., 47.

¹²⁷ UN Committee against Torture, *Concluding observations on 4th periodic watch*, 2nd June 2016, <https://bit.ly/3AI5R3g>

Rights¹²⁸. The special rapporteur states that there are reliable allegations as to the fact that the law enforcement officials applied torture and ill-treatment to the people under detention in the operations conducted with the claims of security threat in the Southeast of Turkey.¹²⁹ According to the Committee, there is concern about the fact that the armed State forces caused the death of civilians during the operations in the Southeast and therefore the Turkish State was warned to carry out the military operations in compliance with the international human rights principles. It was further found out that the bodies of the civilians who lost their lives during those clashes were not delivered to their kinsmen.¹³⁰

For such allegations, the Committee advises to investigate any cases of unlawful death, torture, ill-treatment and use of excessive force committed by the law enforcement officials in an urgent, impartial and effective manner and to identify the offenders and hold them responsible.¹³¹ According to the Committee, failure to follow the existing allegations or failure to hold the offenders responsible creates an actual impression of impunity regarding the cases of torture and ill-treatment.¹³²

Another advice of the Committee is to harmonise the article 94 entitled “*Torture*” of the Turkish Criminal Code (TCC) with the article 1 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment and to emphasise the principle of penal responsibility in the cases of torture and ill-treatment in a manner which will leave no room for doubt. Moreover, emphasising that any impartial and effective investigation may not be conducted unless the law enforcement officials who are suspects are immediately moved away from the investigation process, the Committee advises that Turkey must take any necessary steps in the matter.¹³³

It is emphasised in the report that Turkey has not developed any proactive and comprehensive policy regarding the forced disappearance cases and that it is passive in replying and investigating the allegations of forced disappearance. According to the Committee, the fact that the forced disappearance has not been regulated as a substantive offence constitutes a serious problem in terms of the capability of such cases to be investigated.¹³⁴

Further, the Committee note that the police’s use of disproportionate force during the intervention with the demonstrations has dramatically increased.¹³⁵

¹²⁸ United Nations Human Rights Committee, *Universal Periodic Review Report Presented to United Nations General Assembly*, 12th November 2019, https://www.upr-info.org/sites/default/files/document/turkey/session_35_-_january_2020/a_hrc_wg.6_35_tur_2_e.pdf.

¹²⁹ *Ibid.*, §19.

¹³⁰ *Ibid.*, §18.

¹³¹ *Ibid.*, §18.

¹³² *Ibid.*, §26.

¹³³ *Ibid.*, §20.

¹³⁴ *Ibid.*, §22.

¹³⁵ *Ibid.*, §18.

Finally, the advices contained in the letter written as a result of the last periodic review by the UN Human Right High Commissioner are also noteworthy. The Office of the Commissioner has called Turkey

- to investigate all allegations of torture and ill-treatment and punish the offenders;
- to establish an effective mechanism for the prevention of torture and degrading treatment;
- to investigate all unlawful death and forced disappearance cases and make sure that the responsible ones are brought before a competent court;
- to establish an **independent mechanism** which will report and investigate all allegations of unlawful detention, torture and ill-treatment alleged to have been committed by the police and other security units;
- to extensively investigate any allegations regarding arbitrary detention practices; and
- to intensify the pursuit at detention and arrestment centres.¹³⁶

And the Turkish State stated in the country report which it presented in the 35th session held in January 2020 that the action force responsible for using military equipment and lachrymatory bombs had been provided with training in January 2019.¹³⁷ It was further stated that the General Directorate of Security provides 36770 police officials had been provided with 1408 in-house training sessions on the use of lachrymatory bombs, intervention with mass demonstrations, human rights and use of proportionate force between 2018 and October 2019.¹³⁸ In the same country report, Turkey stated that it placed utmost importance on the upgrading of the consciousness and awareness of law enforcement officials on human rights through training. It was stated that, in this context, 106710 candidate judges and prosecutors were provided with training on EConHR, ECofHR practices and human rights law between 2015 and 2019. Having been said that such courses were included into the in-house training of all police officials, 54295 and 103126 law enforcement officials were provided with training in 2017 and 2018 respectively.¹³⁹

On the other hand, when we look into the individual complaints filed on the matter from Turkey via the United Nations Human Rights Committee' databank, we only encounter one decision. The decision made in March 2019 by the United Nations Human Rights Committee concerns the application filed with the allegation of the violation of the articles

¹³⁶ United Nations Office of Human Rights High Commissioner, Monitoring of Application Letter, 4th December 2020, https://www.upr-info.org/sites/default/files/document/turkey/session_35_-_january_2020/letter_for_implementation_3rd_upr_tur_e.pdf, 4-5.

¹³⁷ United Nations Human Rights Committee, *Turkey Country Report Presented to United Nations General Assembly*, 14th November 2019, https://www.upr-info.org/sites/default/files/document/turkey/session_35_-_january_2020/a_hrc_wg.6_35_tur_1_e.pdf &91

¹³⁸ *Ibid*, &92.

¹³⁹ United Nations Human Rights Committee, *Turkey Country Report Presented to United Nations General Assembly*, 14th November 2019, https://www.upr-info.org/sites/default/files/document/turkey/session_35_-_january_2020/a_hrc_wg.6_35_tur_1_e.pdf &123.

6, 7, 9, 10 and 14 of the Covenant on Civil and Political Rights in May 2017. Attorneys of the applicants alleged that the applicants had been arbitrarily kept in solitary confinement in an unknown location in Turkey and had a risk of torture. In the review the Committee made, it considered that the fact that the applicants were brought before the judge 11 days after the actual beginning of detention was a violation of the article 9 thereof. In addition, the fact that the applicants were not provided with any clear explanation about the reasons for detention procedure and that the police did not have any written documents about the detention procedure is the other issue which constitutes a basis for the Committee's arbitrary detention decision. Once the Committee had opined that the detention procedure was not lawful, it did not deem it necessary to further review the allegations of torture and violation of the right to life. Reference was also made to the subparagraph (a) of the third paragraph of the article 2 of the Covenant and it was emphasised that the States were obligated to ensure the effective application right. Accordingly, the Contracting States are obligated to both eliminate the aggrievement of the people whose rights secured by the Covenant on Civil and Political Rights are violated and take any necessary measures to prevent the recurrence of similar violations in the future.¹⁴⁰

And finally, we think it is important to include the special procedures contained in the UN mechanisms within the context of summary executions and police violence. The report issued after his visit to Turkey in 2012 by the special rapporteur on summary and arbitrary executions underlines the fact that ambiguous provisions in PDPA are not compatible with the international human rights standards.¹⁴¹ The fact that the power to use lethal force has been attached to open-ended rules makes it possible that the police make an erroneous judgment and exceed their sphere of power and cause violations of the right to life. For these reasons, the special rapporteur advises that both the article 17 of the Constitution and the relevant articles of PDPA and other laws should be revised accordingly.¹⁴² It is among the findings of the special rapporteur that there is not political will to hold the State officials accountable and that the legal procedure progresses rather slowly in the investigation files related to the use of force by the State officials.¹⁴³ Information given to the special rapporteur by the advocates of rights in Turkey is about the fact that a great number of unlawful deaths cannot be followed up because the condition for the administrative permission required for the investigation of public officials cannot be satisfied. The special rapporteur has found out that the police officials have *de facto* immunity.¹⁴⁴

XVI. SOCIAL GENDER INEQUALITY

Individuals' experience concerning security perception is in direct relationship with the

¹⁴⁰ United Nations Human Rights Committee, Application No: 2980/2017, <https://juris.ohchr.org/Search/Details/2918>.

¹⁴¹ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mission to Turkey, <https://undocs.org/A/HRC/23/47/Add.2>, 4.

¹⁴² *Ibid*, 17.

¹⁴³ *Ibid*, 12.

¹⁴⁴ *Ibid*, 13.

social gender norms. Sexual violence, domestic violence, genital mutilation, forced/early marriages, discrimination and violence against vulnerable and marginalised constitute the most apparent examples of this unequal social dynamics.¹⁴⁵ According to the global data disclosed by the World Health Organisation, 30% of women have physical and/or sexual violence history.¹⁴⁶

This unequal picture which is common in the society necessitates that a possible police reform should contain concrete steps intended to ensure social gender equality. Accordingly, a perspective sensitive to social gender must be mainstreamed in all public organisations and institutions including but not limited to the area of security. The guide issued by the Organisation for Security and Cooperation in Europe and the UN Entity for Gender Equality and Empowerment of Women¹⁴⁷ states that the settlement of this consciousness will be for the benefit of the public security as well as that of women and marginalised groups. Public-police cooperation and thereby reporting/prevention rate of crimes will also increase if different groups of the society are ensured to equally communicate with the police.¹⁴⁸

Violence directed to vulnerable and marginalised groups substantially originates from the unhealthy and haphazard relationship established with the authority. In this respect, domestic violence in which the man who declares himself the authority due to social gender roles is the offender and the disproportionate force applied to the vulnerable groups by the police that are legally authorised to use public power in fact constitute two different aspects of a similar unlawfulness pattern.

In its *İzci - Turkey* decision¹⁴⁹, ECofHR reviewed that allegations of violation related to the prohibition of ill-treatment as contained in the article 3 and to the freedom of peaceful demonstration as contained in the article 11 which were filed by the applicant who was exposed to the use of unlawful and disproportionate force by the police during the march on 8th March. As it is also emphasised in the decision, use of disproportionate force in intervening with the social events and demonstrations by law enforcement officials has become a chronic issue. Therefore, the State must make a general and comprehensive regulation in compliance with the article 46 and particularly prevent the vulnerable groups from being a victim of this systemic problem.

¹⁴⁵ Denney, Lisa, *Toolkit for Policing and Gender*, 2019, <https://www.osce.org/files/f/documents/e/9/442519.pdf>, 7.

¹⁴⁶ <https://www.who.int/news-room/fact-sheets/detail/violence-against-women>.

¹⁴⁷ Denney, Lisa, *Toolkit for Policing and Gender*, 2019, <https://www.osce.org/files/f/documents/e/9/442519.pdf>, 10.

¹⁴⁸ Ibid.

¹⁴⁹ ECofHR, *İzci v. Turkey*, Application No: 42606/05, <http://hudoc.echr.coe.int/eng?i=001-122885>.



XVIII. CONCLUSION AND ADVICES

Right to life is the most important of the basic rights and freedoms which individuals have. So much so that, in the systems where this right is not secured, recognition and securing of any other rights will not mean anything at all. In this context, the only responsibility lies on the part of the Turkish State in the prevention of the summary executions resulting from the police's use of disproportionate force and the performance of their duty in a poor or incomplete manner.

In case the State power and the legislators comply with our advices in the regulation of the article 16 of PDPA which regulates the police's power to use weapons, there will be significant reduction in the violations of the right to life. And this output will cause Turkey and the Turkish police force to gain good reputation with the national and international public opinion.

IN THIS CONTEXT, OUR ADVICES ARE THE FOLLOWING:

Advices to Decision Makers:

1- Such concepts as "reasonable suspicion, foresight and discretion" added to the article 4 of PDPA (to the article 16 of the Act No. 2559) are abstract concepts. The fact that lethal power may only be used as a last option and when absolutely necessary in order to save life should be expressly represented with concrete concepts but not with abstract ones in the relevant article and the relevant article should be made compatible with the international standards.

2- What the phases of the 'proportionate or incremental use of force' which is frequently pronounced in use of force are and the limits thereof must be clearly and frankly stated in

the relevant regulations and be made compatible with the international standards. The legal framework of the police's use of weapons should be clear and strict in a manner which will not cause any confusion or arbitrary considerations. Lethal and vital lines should be re-identified in a manner which will not cause any confusion.

3- When an investigation is under way about an assigned policeman regarding a violation of the right to life, the policeman in question should not be allowed to stay in active duty and should not be promoted.

4- As it is also advised by the UN Summary and Arbitrary Executions Rapporteur, administrative permission procedure should not be operated in any files regarding the violation of the right to life in which a policeman is the suspect.

5- Allegations of arbitrary detention practices should be comprehensively investigated and public prosecutors should always file lawsuits for killing/murder instead of petty offences in cases of unlawful killings.

6- In the cases where the police are a party and the right to life is violated, the duty of performing any and all procedures and processes including but not limited to the collection and maintenance of evidence as well as the inspection of the crime scene on which the investigation will be based should be taken away from the police but assigned to the gendarmerie.

7- Follow-up at the detention and arrest centres should be intensified. Continuous operation of the video and audio recorders at each and every point in a police station should be secured during the time when the detained suspects stay at the police station. Such records should not be tampered with nor deleted but immediately and regularly delivered to the public prosecutor's office to be used in the investigation of the allegations of violation of human rights under detention.

8- Steps should be taken not to retaliate against the people who have lost their kinsmen and who have filed complaints. Those who apply any kinds of threats and pressure on the people who are exposed to human rights violations and their families, witnesses, attorneys-at-law and non-governmental organisations should be immediately investigated and accountability should be ensured. 'Retaliating investigation and accusation' practices used to discourage the complaining families should be terminated.

9- Implementation of stronger and more effective programmes which will ensure the witnesses, survivors, victims' families and third parties who say that they are under threat will feel secure should be taken as a priority.

10- An independent and reliable watching mechanism including but not limited to non-governmental organisations which will watch and assess how PDPA, including without limitation the power to stop, search and use force, is enforced and any and all unlawful

detentions, tortures and ill-treatments alleged to have been committed by the police and other security units should be established.

11- Data should be kept and reported about the offences committed during their duty by the police including the offences related to discrimination based on social gender, and such data should be made publicly accessible.

In-service/vocational trainings should continue to be provided to all law enforcement officials including but not limited to the police on human rights law, enforcement of the ECofHR practices, etc. Moreover, the police should be provided with training on the international standards regarding the use of the firearms including but not limited to lachrymatory bombs.

Advices on Empowerment of NGOs:

NGOs in Turkey have a dual structure which has a deep gap between them. While part of them is just like average western NGOs in terms of both financing and achievement of the goals of establishment, the other part which is higher in number is so far away from the western examples in terms of both financing and achievement of the goals. While a majority of NGOs which experience financial problems cannot generate alternative solutions to the social issues, they are also too far away from being a controlling and discouraging power on decision-makers.

12- Financial assets or initial capital required of the new foundations as a prerequisite is TRY 50.000,00. This amount has an adverse effect on such activities as generating services, providing social benefits and moulding public opinion, etc. and prevents the development of a foundation which will be established recently. The power to determine the amount of the assets or capitals to be allocated of the foundations to be established recently should be taken away from the Assembly of Foundations and granted to the Board of Governors of the Foundation which is established recently.

13- Distribution of the funds transferred for the consolidation of NGOs is not fair. And this has an adverse effect on the development of NGOs and their undertaking of effective roles for the benefit of the public. In order to overcome such adversity, fund-raising activities of NGOs should be excluded from the fund-raising law and must only be subject to declaration.

14- NGOs reaching a reasonable number of members should be provided with public support just like the Treasury grants with which the political parties are provided by their political weights and votes they obtain. For instance, a certain percentage of the taxes collected should be transferred to NGOs.

15- As in the case of the foundations established recently, number of the compulsory bodies required to be present in the charters of the recently established associations should be reduced.

16- One of the obstacles before the establishment of an association is the notification of address. The condition of 'approval' by the condominium holders should be ruled out in address notification.

17- Public benefit status and tax exemption create significant confusion in terms of public support for associations and foundations respectively. For associations, the definition of public benefit is so broad and that for foundations is limited. A common public benefit definition should be made for both associations and foundations.

18- Regular round table meetings should be held by and between the law enforcing public officials and the NGOs including those working on women, LGBTI+, refugee rights and activities and procedures of the police should be discussed.

Advices to Media:

19- More room should be given to the events in which the police are the offenders or use disproportionate force, thus creating awareness about police violence and summary executions.

20- Media should use a language accusing the victim in the news in which the police are offenders and carefully avoid criminalising the victim or his family while the investigation process is still in progress.

21- Media should follow up the summary execution files and provide the public opinion with information about how the criminal cases have been concluded.

22- Using such methods as interviews with specialists, interviews with families, etc., awareness should be created in the public opinion in order to prevent the recurrence of summary and arbitrary executions.

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