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**HUMAN RIGHTS
VIOLATIONS
IN TURKEY RISING
TO THE LEVEL OF
CRIMES AGAINST
HUMANITY**

**CASE OF
GÜLEN GROUP**

**REPORT BY
INSTITUTE FOR DIPLOMACY AND ECONOMY
AUGUST 2021**



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INSTITUTE FOR DIPLOMACY AND ECONOMY
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Executive Summary

This report aims to elicit and analyze the outrageous acts and/or omissions of the Turkish authorities against individuals –whom they claim are affiliated with, connected to, or members of the Gülen Group– within the legal purview of crime against humanity. Given the scattered settings of crimes against humanity, the report first compiles the treaty law, case law and customary practice with regard to those crimes in order to reveal the elements of crimes. Thereupon, it applies those elements within a context in which individuals allegedly related to the Gülen Group have been persecuted through various acts or omissions imputed to the Turkish authorities. The report also examines the contextual element and scrutinizes whether the associated crimes have been committed ‘as part of a widespread or systematic attack’ directed against the Gülen Group.

The scope of the report covering merely the human rights violations in relation to the Gülen Group is by no means meant to deny, disacknowledge or downplay the predicaments suffered by other social fractions in Turkey. By contrast, the existing limited scope is the necessity and corollary of the contextual element of crimes against humanity being ‘taking a particular civilian population as a target’.

Crimes against humanity have come to be defined as offenses whose commission shocks the conscience of the international community and demeans all members of the human race, regardless of where they live or which culture or creed they belong to. That it can never be forgiven strips crimes against humanity of statutory limitations, which means, it is prosecutable and punishable irrespective of time. That it deeply hurts the conscience of the international community entitles and/or obliges each member of the international community to hold perpetrators to account. It is a crime so outrageous that it demands immediate action in the form of cessation of its commission and punishment of its perpetrators, no matter when or where it is committed.

Article 7(1) of Rome Statute states that the attack constituting crimes against humanity against the civilian population must be ‘widespread’ or ‘systematic’. The ‘widespread’ element/requirement/standard is determined by the scale of the acts (such as the number of the victims) whereas the ‘systematic’ element/requirement/standard connotes a pattern of control, direction or intensity by the de facto and de jure authorities of a certain state or other organizations. The term ‘population’ suggests that the attack is directed against a relatively large group of people who share distinctive features which identify them as targets of the attack. A prototypical example of a civilian population would be a particular national, ethnic or religious group.

That being said, what underpins the systematic character of the attack and thereby contributes to its legal qualification as crimes against humanity is the recurring, unabated and continuous nature of the associated illegal acts which ostensibly establish a dangerous pattern, as pointed out in the opinion of the UN Working Group on Arbitrary Detention.¹ The number of Gülenists or alleged Gülenists suffering/having suffered human rights violations across the years appear to follow a repetitive, recurring and unceasing course, rather than being individual or isolated incidents. This repetition and continuation form a pattern that points out to the commission of inhumane acts within a preconceived policy being systematically executed by means of public resources.

As for the widespread criteria, the massive and frequent violations carried out collectively by public authorities with considerable seriousness and directed against a large number and

¹ WGAD Opinion No. A/HRC/WGAD/2020/47 and WGAD Opinion No. A/HRC/WGAD/2020/51

multiplicity of individuals who are allegedly affiliated with the Gülen Group can fairly be asserted to have met this requirement. It is here worthwhile to note that the targeted Gülenists are victimized not because of their individual attributes but rather due to their alleged affiliation with the Gülen Group. The widespread character of the violations against the Gülen Group can be demonstrated with factors such as the geographical scope of the illegal acts being the whole Turkish territory – even the whole world as the practice of the Turkish government to extraterritorially kidnap “Gülenists” suggests– the large number of violations that shows no signs of ceasing, and the practice of profiling individuals as “Gülenists” using arbitrary and illegal criteria such as “Fetömeter” or “the Bylock app usage”. As pointed out in the opinion of the UN Working Group on Arbitrary Detention,² the aforementioned features of the illegal acts, and their considerable consequences on a large number and variety of individuals establish a dangerous pattern which underpins the widespread character of the illegal acts and thereby leads to their legal qualification as crimes against humanity.

It is worthwhile in this context to note that specific crimes constituting crimes against humanity targeting the Group involve imprisonment and other serious deprivation of liberty, enforced disappearance including extrajudicial renditions, torture and sexual offences as well as persecution and other inhumane acts.

All in all, the scale, scope, gravity, intensity and prevalence of the human rights violations against individuals allegedly affiliated to the Gülen Group in Turkey have risen to such an outrageous level as to constitute crimes against humanity. The prevalent and all-encompassing characteristics of those violations indicate that the corresponding crimes have been committed as a part of systematic and widespread attacks directed against the Gülen Group. The fact that a large number and multiplicity of individuals who have the slightest link to the Group face judicial and/or executive measures and endure the grave consequences of some or all of the above-enumerated violations points out to the widespread character of such attack. The systematic character thereof manifests itself in the fact that the crimes have been committed within the framework of a preconceived policy adopted by the official security mechanisms and executed in an identical manner.

In sum, the human rights violations and offenses which the individuals suffer merely for bearing alleged links to the Gülen Group should be considered as having shocked the conscience of the international community and risen to the level of international concern. The legally pertinent characterization of those offenses would insinuate the perpetrators that their offenses are prosecutable and punishable irrespective of time and place and thereby help alleviate the ongoing culture of impunity in Turkey.

Key words: Crimes against humanity, widespread, systematic, attack, Turkish authorities, inhumane acts, violations, illegal acts, victims, Gülen Group, persecution, Rome Statute, case-law, international law, human rights law, elements of crime, perpetrators.

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² *Id.*

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HUMAN RIGHTS VIOLATIONS IN TURKEY RISING TO THE LEVEL OF CRIMES AGAINST HUMANITY

1. Introduction

Crimes against humanity have come to be defined as offenses whose commission shocks the conscience of the international community and demeans all members of the human race, regardless of where they live or which culture or creed they belong to.³ That it can never be forgiven strips crimes against humanity of statutory limitations, which means, it is prosecutable and punishable irrespective of time. That it deeply hurts the conscience of the international community entitles and/or obliges each member of the international community to hold perpetrators to account. It is a crime so outrageous that it demands immediate action in the form of cessation of its commission and punishment of its perpetrators, no matter when or where it is committed.

As the Gülen Group is one of the largest communities that has been systematically targeted, persecuted and aggrieved by the incumbent Turkish government, the unlawful and arbitrary treatments endured by this Group merit particular consideration, aside from the persecutions targeting other social fractions like Kurds and Alevis. Moreover, the grievance stories of the alleged members of the Gülen Group which are relatively better documented in scholarly, journalistic and/or official/judicial sources enable researchers to delve deep into the elements of illegal acts forming the subject matter of this report and examine them in a thorough and categorical manner.

The Gülen Group is an international faith-based civic group that developed a multi-sectoral network both in Turkey and abroad in pursuance of the ideals and aims defined by scholar and preacher Fethullah Gülen. The core values promoted by the Group are tolerance, peace, intercultural dialogue and altruism.⁴ The group is known with its hundreds of schools and other educational institutions all over the world and has possibly millions of followers who are being severely persecuted in Turkey and also abroad by the incumbent Turkish government blaming the Group for orchestrating the controversial July 15 coup attempt.

That said, the scope of the report covering merely the human rights violations in relation to the Gülen Group is by no means meant to deny, disacknowledge or downplay the predicaments suffered by other social fractions in Turkey. By contrast, the existing limited scope is the necessity

³ Geoffrey Robertson, *Crimes against humanity: The struggle for global justice*. The New Press, 4th Ed., 2012.

⁴ Ebaugh, Helen Rose. *The Gülen movement: A sociological analysis of a civic movement rooted in moderate Islam*. Springer Science & Business Media, p.111.



and corollary of the contextual element of crimes against humanity being ‘taking a particular civilian population as a target’.

Against this backdrop, this report aims to elicit and analyze the outrageous acts and/or omissions of the Turkish authorities against individuals –whom they claim are affiliated with, connected to, or members of the Gülen Group– within the legal purview of crime against humanity. Given the scattered settings of crimes against humanity, the report first compiles the treaty law, case law and customary practice with regard to those crimes in order to reveal the elements of crimes. Thereupon, it applies those elements within a context in which individuals allegedly related to the Gülen Group have been persecuted through various acts or omissions imputed to the Turkish authorities. The report also examines the contextual element and scrutinizes whether the associated crimes have been committed ‘as part of a widespread or systematic attack’ directed against the Gülen Group.

Lastly, the use of acronym of ‘FETÖ’ in lieu of the Gülen Group, followers of which call themselves ‘Gülen Movement’ or ‘Hizmet Movement’, has not been adopted in this report due to being derogatory, stigmatizing, and against the principle of presumption of innocence. It is an expression that was coined by the Turkish government not only to summarily accuse and convict the individuals allegedly affiliated with the Gülen Group of crime of terrorism, but also to justify numerous inhumane acts and violations, which constitute the subject matter of this report.

2. Elements of Crimes against Humanity in the Rome Statute

Some scholars suggest that the term of crimes against humanity was used for the first time by the Allied governments in 1915 to condemn the massacre that was brought about by Ottomans against Armenian people.⁵ The first legal document which defined crimes against humanity was the London Charter (art. 6(c)). This was the text that laid down the rules and procedures to be applied during the Nuremberg Trials after the Second World War. Since then, these crimes have been prescribed in various international instruments and mechanisms, but there is still no international treaty that exclusively addresses these crimes.⁶

The Statutes of International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Court for Rwanda (ICTR), established by the UN Security Council respectively in 1993 and 1994, also encompassed the crime against humanity though having divergent definitions and/or elements in comparison to the Rome Statute of the ICC.

International scholars keep emphasizing the need for such a treaty.⁷ In 2008, Washington University School of Law launched the Crimes Against Humanity Initiative. The Initiative presented the model text of a Proposed International Convention for the Prevention and Punishment of Crimes Against Humanity. Eventually, in August 2019, the International Law Commission (ILC) presented the final text of Draft Articles and its commentary for this important new (draft) treaty.⁸

In the light of the abovementioned explanations, we can conclude that the international community has agreed on the severity of the crimes against humanity and on the need to prosecute and punish the perpetrators.

Noting that since the Nuremberg Tribunal, various definitions of crimes against humanity were employed by different international judicial bodies. We will base the present study on the article 7(2)(a) of the Rome Statute of the International Criminal Court which gives a definition of attack in terms of crime against humanity.

⁵ M. Cherif Bassiouni, *Crimes Against Humanity in International Criminal Law*, Martinus Nijhoff Publishers, 1999, p.62.

⁶ Madaline George, *Prospects for a Convention on the Prevention and Punishment of Crimes against Humanity*, 2019, <http://opiniojuris.org/2019/10/08/prospects-for-a-convention-on-the-prevention-and-punishment-of-crimes-against-humanity/#:~:text=The%20Draft%20Articles%20define%20crimes,another%20crime%20against%20humanity%2C%20and>. (Retrieved 23 January 2021)

⁷ Cherif Bassiouni, *Crimes Against Humanity: The Case for a Specialized Convention*, 9(4) Washington University Global Studies Law Review 575 (2010), https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1057&context=law_globalstudies (Retrieved 22 January 2021).

⁸ ILC, 2019, <https://legal.un.org/ilc/reports/2019/english/chp4.pdf> (Retrieved 23 January 2021).

Rome Statute art. 7(2)(a) states: “*Attack directed against any civilian population*” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;’.

This definition includes the following elements⁹:

- a. These crimes can occur in times of peace.¹⁰
- b. Target of the crime can be any civilian population.
- c. The perpetrators of these crimes can be anyone, including a head of state.
- d. Conduct of crime must involve the multiple commission of the acts referred in the first paragraph of the same article.
- e. These acts must be pursuant to or in furtherance of a State or organizational policy to commit such attack.

The essence of the inquiry here boils down to the question as to whether the acts that can amount to crimes against humanity are of such a level of scale or seriousness as to shock the conscience of the international community and rise to the level of international concern (e.g. ethnic or sectarian violence that risks destabilising a region and displacing thousands of people or a deliberate massacre carried out directly by a head of state).

While the abovementioned article of the Rome Treaty does not require the establishment of the ‘widespread’ or ‘systematic’ character of the crime, the preceding article 7(1) of Rome Statute states that the attack against the civilian population must be ‘widespread’ or ‘systematic’. However, the requirement of ‘multiple commission of acts’ envisaged in art. 7(2)(a) reflects the scale and seriousness of the crime.¹¹ This is of particular importance for cases which do not take place in the context of an armed conflict.¹²

The ‘widespread’ element/requirement/standard is determined by the scale of the acts (such as the number of the victims) whereas the ‘systematic’ element/requirement/standard connotes a pattern of control, direction or intensity by the de facto and de jure authorities of a certain state or other

⁹ Dubler & Kalyk, 638-639 (2018).

¹⁰ In the Tadić case, the ICTY Trial Chamber determined that the war nexus no longer existed under customary international law as at 1 January 1991. (icty) Prosecutor v Tadić (Trial Chamber Judgment), Case No IT-94-1-T (7 May 1997) (‘Tadić – Trial’), [654].

¹¹ Robert Dubler SC & Matthew Kalyk, *Crimes against Humanity in the 21st Century: Law, Practice and Threats to International Peace and Security* 599 (2018).

¹² (ICTY) Prosecutor v Erdemović (Separate Opinion of Judges Kirk McDonald and Vohrah), Case No IT-96-22-A (7 October 1997), [21]; (ICTY) Prosecutor v Kupreškić (Trial Chamber Judgment), Case No IT-95-16-T (14 January 2000) (‘Kupreškić – Trial’), [543].

organizations.¹³ The ‘policy’ need not be explicit and can be made out by mere sponsorship, toleration, acquiescence or even manifest indifference by a state.

There are cases where small scale attacks were accepted as fulfilling the ‘widespread’ requirement in relation to their results.¹⁴ In various cases, the International Criminal Court (ICC) found that acts which go beyond (violent) suppression of protests may constitute crimes against humanity.¹⁵ In cases where small scale attacks are involved, the courts focussed on the (potential) impacts of the acts that victimized a large number of people or that constituted a pattern of control. At the national level, a Dutch Court of Appeal in *Wijngaarde et al v Bouterse* considered that the torture and summary execution of 15 prominent political opponents in Suriname by the former leader of Suriname could constitute a crime against humanity and ordered the prosecutor to launch a prosecution.¹⁶

The decision of ICTY Trial Chamber in *Tadic* case, in which it stated that the acts must be the result of a policy of a state or a group, was argued by participants that this reflected the correct position as a matter of customary law. In addition, prominent scholars in this field agree upon the necessity of this requirement.¹⁷ Potential acts of crimes against humanity must be directly related to this policy. An attack should be carried out in furtherance of the state policy to commit such an attack or where the perpetrators gain support from a state’s toleration, sponsorship or acquiescence.

The term ‘population’ suggests that the attack is directed against a relatively large group of people who share distinctive features which identify them as targets of the attack. A prototypical example of a civilian population would be a particular national, ethnic or religious group.¹⁸ Provided the elements of scale and seriousness are satisfied, a state’s attacks on, for example, demonstrators, political dissidents, members of a political party, members of a trade union or even the inmates of a prison camp can be an attack against a ‘population’.¹⁹

¹³ Dubler & Kalyk, 699-708 (2018). Antonio Cassese, *Cassese’s International Criminal Law* 92–93 (3rd ed., Oxford University Press: Oxford, 2013).

¹⁴ In respect of Galić, for instance, the Tribunal made it clear that the shelling and sniping of Sarajevo was part of a sustained and deliberate ‘campaign’ to terrorise the civilians of Sarajevo. (ICTY) Prosecutor v Stanislav Galić (Trial Chamber Judgment), Case No IT-98-29-T (5 December 2003) (‘Galić – Trial’), [208].

¹⁵ (ICC) Prosecutor v Laurent Gbagbo (Pre-Trial Chamber Confirmation Decision), ICC-02/11-01/11-656-Red (12 June 2014) (‘Laurent Gbagbo-Confirmation’), [34]–[35].

¹⁶ Dubler & Kalyk, 450-452 (2018).

¹⁷ Cherif Bassiouni, *Crimes Against Humanity-Historical Evolution and Contemporary Application* (Cambridge University Press: New York, 2011), 41; William Schabas, ‘State Policy as an Element of International Crimes’ (2008) 98 *Journal of Criminal Law & Criminology* 953, 972; Claus Kreß, ‘On the Outer Limits of Crimes against Humanity – The Concept of Organization within the Policy Requirement: Some Reflections on the March 2010 ICC Kenya Decision’ (2010) 23 *Leiden Journal of International Law* 855, 869, 873.

¹⁸ (Canada) *Mugesera v Canada* (Minister of Citizenship and Immigration) [2005] 2 s.c.r. 100 (‘Mugesera – Supreme Court’), [161].

¹⁹ Dubler & Kalyk, 617 (2018).



In the absence of an international trial or prosecution, the perpetrators will most likely go unpunished. The international community is supposed to be outraged and rattled when large scale atrocities are carried out by perpetrators who enjoy impunity by reason of their executive privileges of a state or a de facto power. It is at this point that any argument in favour of state sovereignty cannot be upheld. The state has forfeited its right to resist an international criminal prosecution because in such a case, the perpetrators of the attack are either still wielding sovereign powers and benefiting from immunities against criminal charges or the state is unable to respond effectively to such an attack.²⁰

²⁰ David Luban, 'A Theory of Crimes Against Humanity' (2004) 29 Yale Journal of International Law 85, 90.

3. The Systematic and Widespread Character of the Acts of Turkish Authorities

The primary test of whether the level of aggregate harm stemming from the inhumane acts and violations endured by individuals allegedly affiliated with the Gülen Group is sufficient to constitute crimes against humanity hinges on the question whether the violations under scrutiny are *systematic* or *widespread*.²¹ It is here worthwhile to note, that the fulfillment of only one of these requirements suffices to make such a determination.²²

Having drawn attention to the ways in which the illegal acts are being committed by Turkish authorities, the UN Working Group on Arbitrary Detention “expresses[ed] grave concern about the pattern established by [the illegal acts under scrutiny against the Gülenist individuals] and recall[ed] that, under certain circumstances, widespread or systematic [commission of those acts] in violation of the rules of international law may constitute crimes against humanity”.²³

Against this backdrop, the *systematic* and *widespread* character of the inhumane acts and violations of Turkish authorities against individuals allegedly linked to the Gülen Group have been scrutinized under this section, with a particular focus on the scale, scope, gravity, intensity and prevalence of those illegal acts.

3.1. The *systematic* character

The *systematic* character refers to the commission of illegal acts in accordance with a predetermined plan or policy, as well as “the organised nature of the acts of violence and the improbability of their random occurrence”.²⁴ That the acts concerned were perpetrated in line with a plan may also be derived from them displaying a recurring or continuous nature. That means, the existence of a plan or policy or the acts having committed in line with a policy can also be proved by reference to other matters.²⁵

²¹ ICTY, Prosecutor v. *Kordić* and Cerkez, "Judgement", IT-95-14/2-T, 26 February 2001, para. 178. See also ICTY, [Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement", IT-96-23-T and IT-96-23/1-A](#), 12 June 2001, para. 427; ICTY, Prosecutor v. Krnojelac, "Judgement", IT-97-25-T, 15 March 2002, para. 57; ICTY, [Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement", IT-96-23-T and IT-96-23/1-A](#), 12 June 2001, para. 97; ICTR, Prosecutor v. Ntakirutimana, "Judgement", ICTR-96-10/ICTR-96-17-T, 21 February 2003, para. 439.

²² ICTY, Prosecutor v. *Kunarac*, Kovac and Vukovic, "Appeals Judgement", IT-69-23/IT-96-23-1, 12 June 2002, para. 85.

²³ WGAD Opinion No. A/HRC/WGAD/2020/47 & WGAD Opinion No. A/HRC/WGAD/2020/51

²⁴ Prosecutor v. Radovan Karadžić, Case No. IT-95-5/18-T, Public Redacted Version of Judgement Issued on 24 March 2016 – Volume I of IV (TC), 24 March 2016, para. 477

²⁵ Report of the International Law Commission on the work of its forty-eighth session, 6 May - 26 July 1996, Official Records of the General Assembly, Fifty-first session, Supplement No.10
http://legal.un.org/docs/?path=../ilc/documentation/english/reports/a_51_10.pdf&lang=EFSXP

ICTY rules in that regard in the *Kunarac* Appeal Judgement as follows:

“The Blaskic Trial Chamber clarified the meaning of the 'systematic' requirement. It held that this requirement refers to the following four elements: (1) the existence of a political objective, that is, to destroy, persecute or weaken a community; (2) the perpetration of a criminal act on a very large scale against a group of civilians or the repeated and continuous commission of inhumane acts linked to one another; (3) the preparation and use of significant public or private resources, whether military or other; (4) the implication of high-level political and/or military authorities in the definition and establishment of the methodical plan. Moreover, a crime may be widespread or committed on a large scale by the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude".”²⁶

In its *Akayesu* Judgment, ICTR endorses this in stating that

“[t]he concept of systematic may be defined as thoroughly organized and following a regular pattern on the basis of a common policy involving substantial public or private resources. There is no requirement that this policy must be adopted formally as the policy of a state. There must however be some kind of preconceived plan or policy.”

In a similar vein, ICTY reiterates below that the systematic nature of the acts of violence can be deduced from the repeated pattern within which the acts concerned are committed:

“The adjective 'systematic' signifies the organised nature of the acts of violence and the improbability of their random occurrence. Patterns of crimes - that is the non-accidental repetition of similar criminal conduct on a regular basis - are a common expression of such systematic occurrence.”²⁷

In light of the aforementioned case-law around the description of the criteria *systematic*, the roots and foundation of the preconceived policy against the Gülen Group as well as the implementation of that policy within an aforethought plan can be derived from the following official documents, incidents as well as statements.

Initial roots of the preconceived policy against the Gülen Group could be found in the official 2004 resolution of the National Security Council of Turkey entitled “Measures against the activities of the Fethullah Gülen Group”.²⁸ Among the signatories were several members of the incumbent

²⁶ ICTY, Prosecutor v. *Kordić* and Cerkez, "Judgement", IT-95-14/2-T, 26 February 2001, para. 179.

²⁷ ICTY, Prosecutor v. *Kunarac*, Kovac and Vukovic, "Judgement", IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 429 (footnote omitted), ICTY; *Prosecutor v. Kunarac, Kovac and Vukovic, "Appeals Judgement", IT-96-23-T and IT-96-23/1-A*, 12 June 2001, para. 94.

²⁸ "Gülen'i bitirme kararı 2004'te MGK'da alındı", CNN Türk, 28.11.2013
<https://www.cnnturk.com/2013/guncel/11/28/Guleni-bitirme-karari-2004te-mgkda-alindi/732469.0/index.html>
(Retrieved 3 August 2021)

Erdogan government, including himself. The resolution envisaged the adoption of legal instruments which pave the way for a number of serious sanctions as well as an action plan against the group.

The preconceived policy captured then in one of the national security documents was first embodied in a statement of the then Prime Minister Erdogan, which goes as “I can declare them (referring to the Gülen Group) as a terrorist organization with a police officer and two prosecutors”.²⁹ This statement then pointed out how the preconceived policy would be put into practice within a plan, which has turned out to be an exact match with what has been actually executed against the Gülen Group. Arguably, President Erdogan’s plan to “uproot” the Gülen Group dates back to 2010 as he claimed in an official press statement that he had been warning against the threat allegedly posed by the Group since then.³⁰ According to this statement, he also gave the first hints of how the evidence of membership might look like, as early as in 2010, citing newspaper subscriptions, school registrations or bank accounts.

In response to the criticism³¹ that President Erdogan himself appeared then in events organized by the Gülen Group and even took one step further and yearningly called Mr. Gülen back to Turkey, the then Prime Minister Ahmet Davutoglu advanced that this appeal was extended to Mr. Gülen as part of the execution of a strategy to bring him back to Turkey, subsequently arrest him and eventually initiate further measures against the Group.³² This was also substantiated by Aydin Unal, one of the top former aides of the President Erdogan. Mr. Davutoglu even confessed having travelled to the compound where Mr. Gülen currently lives in the USA in order to talk him into returning back to Turkey.³³

Last but not the least, the attempts to lay the statutory and administrative foundation for persecuting individuals affiliated with the Gülen Group culminated in the resolution which was adopted by the Turkish National Security Council on 20 May 2016 (also endorsed by the council of ministers).³⁴ Thus, the Gülen Group has been designated as a terrorist organization by the incumbent government with this resolution that obviously lacked as of its signature any underlying court decision. Illegal acts, which had by then already been performed by the agents of Turkey against

²⁹ „Gülen Cemaati'ne dava 'uzak ihtimal değil”, BBC News Türkçe, 20.11.2013,

https://www.bbc.com/turkce/haberler/2013/12/131220_rengin_analiz (Retrieved 3 August 2021)

³⁰ “Erdogan '2010'dan beri uyarıyorum' dedi ama arşiv öyle söylemiyor”, Cumhuriyet, 09.11.2017

<https://www.cumhuriyet.com.tr/haber/erdogan-2010dan-beri-uyariyorum-dedi-ama-arsiv-oyle-soylemiyor-862946>

(Retrieved 3 August 2021)

³¹ *Id.*

³² “Davutoğlu, Fethullah Gülen’e kumpas kurduklarını 8 yıl sonra itiraf etti”, TR724, 20.05.2021,

<https://www.tr724.com/davutoglu-fethullah-gulene-kumpas-kurduklarini-8-yil-sonra-itaraf-etti/> (Retrieved 3 August 2021)

³³ *Id.*

³⁴ MGK, 26 Mayıs 2016 Tarihli Toplantı, <https://www.mgk.gov.tr/index.php/26-mayis-2016-tarihli-toplantı>

(Retrieved 3 August 2021)

a negligible number of individuals allegedly linked to the Gülen Group, have considerably intensified, extended to almost all members of the Group, real or perceived, and thereby reached to a very large scale. Finally, Religious Affairs Directorate of Turkey, in its report³⁵ released in July 2017, depicted the Gülen Group as a congregation that has gone astray and fundamentally deviated from the core Islamic principles. One can suggest that this report ostensibly constitutes a religious motive to justify the excessive and unlawful measures of Turkish government against the Gülen Group, to gain a firm support from other social and religious communities in this respect and to expose its followers to a complete social exclusion.

The involvement of high-level political and/or military authorities in the definition and establishment of the methodical plan is also determinant for the fulfillment of the *systematic* criteria according to the *Kordić* judgment of ICTY.³⁶ That said, the tactical and operational steps to realize the foregoing resolution of the national security council can be traced within classified official documents which increasingly surface in the ongoing course of the commission of illegal acts. Among those documents are lists tagging and profiling individuals somehow affiliated with the Gülen Group, list of criteria, namely “Fetömeter”³⁷, according to which those individuals can be identified, and reports produced by Turkish Secret Service, namely MIT, dispatched to relevant public authorities.³⁸ Based on these documents, individuals allegedly linked to the Gülen Group are being dismissed from their public duties, investigated in administrative and criminal proceedings and/or arbitrarily detained, all without any regard to due process.

³⁵ Religious Affairs Directorate of Turkey, Kendi Dilinden FETÖ Örgütlü Bir Din İstismarı, 25 July 2017, available at: <https://www.aa.com.tr/uploads/TempUserFiles/haber/2017/07/KENDI-DILINDEN-FETO-20170725son.pdf> (Retrieved 3 August 2021)

³⁶ ICTY, Prosecutor v. *Kordić* and Cerkez, "Judgement", IT-95-14/2-T, 26 February 2001, para. 179.

³⁷ The algorithm, developed by deputy chief of the Naval Forces Adm. Cihat Yaycı, is referred to as the “FETÖ-meter,”.78 main criteria and 253 sub criteria form the basis of the software used in the profiling process in order to analyze in detail the individual data of the officers under scrutiny, which was provided by several ministries and other institutions. The pro-government Sabah newspaper had revealed that the data to be analyzed would pertain to the officers’ scores on several nationwide civil service-related tests, their spouses’ workplaces and the schools of the officers’ children, financial transactions at the Gülen-affiliated Bank Asya, use of the ByLock mobile messaging app and suspect and witness testimonies as well as whether or not these officers served on the interview or examination boards that confirmed the new recruits during periods when Gülen Group members were considered to be influential within the institutions. Among these criteria are also certain scandalous and abrupt items such as having disabled kids, having master’s degrees from US universities, speaking foreign languages perfectly, having relatives investigated on the ground of suspicion of the Gülen Group membership and giving a sheep decorated with gold bracelets to fiancée as a gift of Eid al-Adha. All these items have a specific but randomly identified weighted value to calculate the degree of the alleged affiliation with the Gülen Group. However, certain military officers whose names are not on readymade blacklists are deemed exempted from ‘Fetömeter’ measurement. More details are available at: <https://www.youtube.com/watch?v=eSaHQ2VAg5g> (retrieved on 8 August 2021) or <https://twitter.com/AtiiSubeTR/status/1040829416979525632> (Retrieved on 8 August 2021).

³⁸ “Turkish gov’t planned a campaign of arrest prior to coup attempt, classified document shows”, Nordic Monitor, April 29, 2021, <https://nordicmonitor.com/2019/12/turkish-government-premeditated-a-campaign-of-arrest-prior-to-coup-attempt-classified-document-shows/> (Retrieved 3 August 2021); “FETÖMETRE NASIL ÇALIŞIYOR? CİHAT YAYCI İLK KEZ ANLATIYOR”, <https://www.youtube.com/watch?v=my0keJf5png> (Retrieved 3 August 2021)

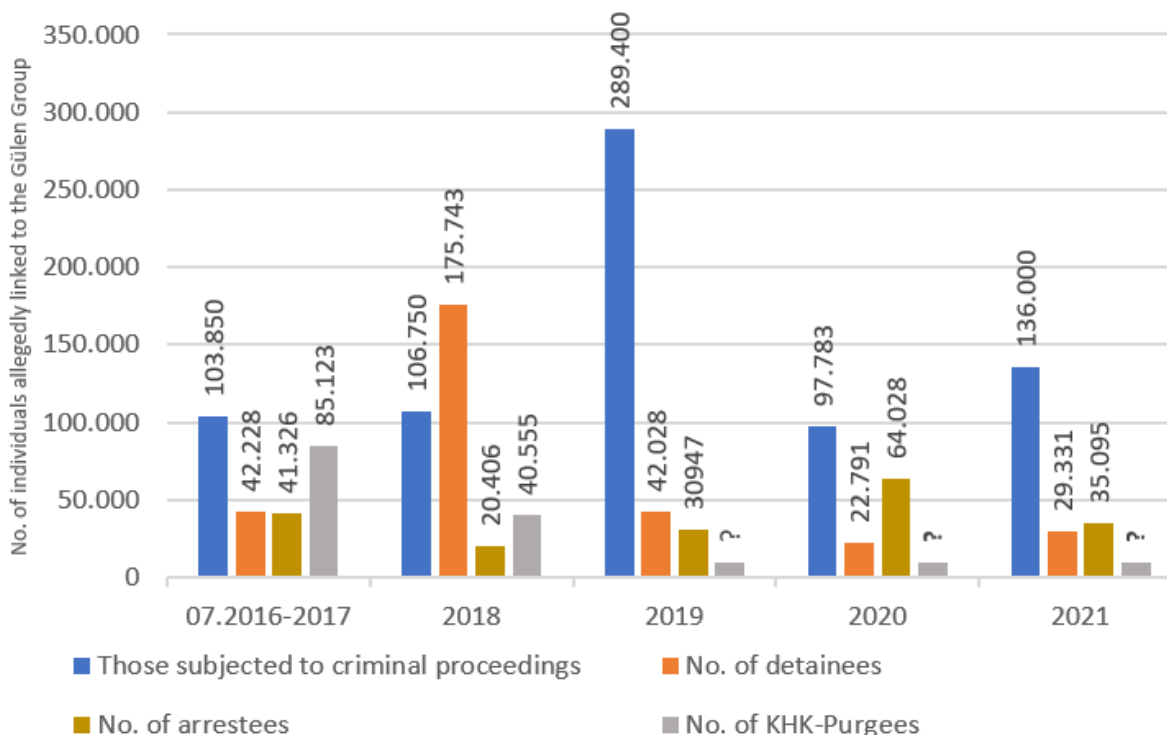


Chart 1 representing the number of individuals, who are/were subjected to different types of judicial and/or executive actions, across years between 2017 and 2021³⁹

Finally, also alluding to the persecution of individuals linked to the Gülen Group within a preconceived policy is “the repeated and continuous commission of the inhumane acts” they have been enduring.⁴⁰ As pointed out in the aforementioned opinion of the UN Working Group on Arbitrary Detention, the recurring, unabated and continuous nature of these illegal acts establish a dangerous pattern which underpins the *systematic* character of the acts and thereby leads to their legal qualification as crimes against humanity.⁴¹ Indeed, as can be observed in the Chart 1, the

³⁹ Figures in the chart are retrieved from the following sources and subsequently processed: “FETÖ’den kaç kişi tutuklandı? İşte bilanço”, TRT Haber, 03.01.2017, <https://www.trthaber.com/haber/gundem/fetoden-kac-kisi-tutuklandi-iste-bilanco-291583.html>; „2018’in Terörle Mücadele Bilançosu“, SETA, 17.11.2018, <https://www.setav.org/2018in-terorle-mucadele-bilançosu/>; 18. ayda FETÖ bilançosu, Hürriyet, 31.01.2018, <https://www.hurriyet.com.tr/gundem/18-ayda-feto-bilançosu-kamudan-net-ihrac-107-bin-174-kisi-40727687>; “İşte yargıdaki FETÖ bilançosu”, Cumhuriyet, 03.03.2019, <https://www.cumhuriyet.com.tr/haber/iste-yargidaki-feto-bilançosu-1276109>; “Bakan Soylu, FETÖ bilançosunu açıkladı: 99 bin 66 operasyon”, Sözcü, 15.07.2020, <https://www.sozcu.com.tr/2020/gundem/bakan-soylu-feto-bilançosunu-acikladi-99-bin-066-operasyon-5931900/>; “Beş yıllık Bilanço”, Diken, 14.07.2021, <https://www.diken.com.tr/bes-yillik-bilanco-15-temmuzdan-bugune-fetoye-136-bin-operasyon/>; “İşte zulmün korkunç bilançosu!”, TR24, 08.09.2020, <https://www.tr724.com/iste-zulmun-korkunc-bilançosu/> (Retrieved 3 August 2021). Number of the purgees after the abolition of the state of emergency cannot be estimated due to the lack of corresponding figures.

⁴⁰ ICTY, Prosecutor v. *Kordić* and Cerkez, "Judgement", IT-95-14/2-T, 26 February 2001, para. 179.

⁴¹ WGAD Opinion No. A/HRC/WGAD/2020/47; WGAD Opinion No. A/HRC/WGAD/2020/51.

number of individuals suffering/having suffered human rights violations across the years follows a repetitive, recurring and unceasing course, rather than being individual or isolated incidents. This repetition and continuation form a pattern that points out to the commission of inhumane acts within a preconceived policy being systematically executed by means of public resources. In other words, the way in which orders are disseminated, individual acts of crimes are committed or the victims are otherwise persecuted points out to an identical pattern which is being systematically followed and implemented by the officials.

3.2 The *widespread* character

The violations resulting from illegal and inhumane acts are considered *widespread* when

“the inhumane acts [are] committed on a large scale meaning that the acts are directed against a multiplicity of victims. . . The term “large scale” is sufficiently broad to cover various situations involving multiplicity of victims, for example, as a result of the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude.”⁴²

In its *Ruto, Kosgey and Sang* decision, ICC concretized how commission of inhumane acts on a large scale may indicate the *widespread* character of violations, as follows:

“On the basis of the material provided to the Chamber, there are substantial grounds to believe that the attack perpetrated was widespread. Viewed as a whole, the evidence shows that the attack was massive, frequent, carried out collectively with considerable seriousness and directed against a large number of civilian victims.”⁴³

In a similar vein, ICTY rules in the *Jadranko Prlić* judgment that among the factors which are to be taken into account in determining whether the violations meet the *widespread* requirement are the consequences of the violations on the civilian population targeted, the number of victims, the nature of the act of violations, the possible participation of political officials or authorities, or any identifiable pattern of crime arising from these factors.⁴⁴

As distinctive nature of the *widespread* requirement, ICTY highlights in the *Kordic and Cerkez* judgment that:

“this requirement is intended to ensure that it is crimes of a collective nature that are penalised whereby [...] an individual is 'victimised not because of his individual attributes but rather because of his membership of a targeted civilian population'. . .

⁴² International Law Commission, Rep. on the Work of its Forty-Eight Session, U.N. Doc. A/51/10, at 47 (1996); ICTY, Prosecutor v. *Tadić* (alias "Dule"), "Judgement", IT-94-1-T, 7 May 1997, para. 648.

⁴³ ICC, Prosecutor v. Ruto et al., "Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute", ICC-01/09-01/11, 23 January 2012, para. 185, <https://www.legal-tools.org/doc/96c3c2/> (Retrieved 6 August 2021)

⁴⁴ Prosecutor v. *Jadranko Prlić*, Case No. IT-04-74-T, Judgement (TC), 29 May 2013, para. 42

[A] crime may be widespread or committed on a large scale by the 'cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude'⁴⁵

Whereas “‘widespread’ means acts committed on a ‘large scale’ and ‘directed at a multiplicity of victims’⁴⁶ according to the *Blaškić* Trial Judgement, it refers to “the number of victims”⁴⁷ under the *Tadić* Trial Judgement and denotes “the large-scale nature of the attack and the number of victims”⁴⁸ under the *Kunarac* Trial Judgement. Besides, the *widespread* requirement is articulated by ICTR in the *Musema* judgment as “a massive, frequent, large scale action, carried out collectively with considerable seriousness and directed against multiple victims”.⁴⁹

Last but not the least, in the *Ruto, Kosgey and Sang* case where it demonstrates how the *widespread* character of the violations can be derived from the foregoing indicative factors, ICC refers to the breath of the geographical scope of the violations as well as the way in which the victims are profiled in the preparatory and execution phases of the violations. Moreover, the fact that the perpetrators approached the targeted individuals simultaneously, in large numbers, and from different directions played a decisive role according to ICC in determining whether the violations meet the *widespread* requirement.⁵⁰

In light of the above-cited case-law around the *widespread* requirement, the massive and frequent violations carried out collectively by public authorities with considerable seriousness and directed against a large number and multiplicity of individuals who are allegedly affiliated with the Gülen Group can fairly be asserted to have met this requirement. The fact that the targeted individuals are victimized not because of their individual attributes but rather due to their alleged affiliation with the Gülen Group reinforces the conclusion that, despite their multiplicity, those individuals have been targeted for a single attribution made by the public authorities, namely being regarded as linked to the Gülen Group. Besides, the involvement or even, in most cases, the authorship of the violations by public authorities having public resources at their disposal is a further factor that exacerbates the consequences of those violations being severely materialized on a considerably great number of people who are/were somehow related to the Gülen Group. The indicative factors, utilized by ICC in the *Ruto, Kosgey and Sang* judgment also help identify the *widespread* character of the violations against the Gülen Group. Among those factors are the geographical scope of the illegal acts being the whole Turkish territory –even the whole world as the practice of the Turkish

⁴⁵ ICTY, [Prosecutor v. Kordić and Cerkez, "Judgement", IT-95-14/2-T, 26 February 2001](#), paras. 178 and 179, citing ICTY, *Prosecutor v. Tadić*, "Judgement", IT-94-1-T, 07 May 1997, para. 644.

⁴⁶ ICTY, *Prosecutor v. Blaškić*, "Judgement", IT-95-14-T, 3 March 2000, para. 206.

⁴⁷ ICTY, *Prosecutor v. Tadić* (alias "Dule"), "Judgement", IT-94-1-T, 7 May 1997, para. 648.

⁴⁸ ICTY, *Prosecutor v. Kunarac, Kovac and Vukovic*, "Judgement", IT-96-23-T and IT-96-23/1-T, 22 February 2001, para. 428.

⁴⁹ ICTR, *Prosecutor v. Musema*, "Judgement", ICTR-96-13-T, 27 January 2000, para. 204.

⁵⁰ ICC, *Prosecutor v. Ruto, Kosgey and Sang*, "Pre-Trial Judgement", ICC-01/09-01/11, 23 January 2012, para. 179.

government to extraterritorially kidnap “Gülenists” suggests⁵¹—, the large number of violations that shows no signs of ceasing, and the practice of profiling individuals as “Gülenists” using arbitrary and illegal criteria such as “Fetömeter”⁵² or “the Bylock app usage”⁵³.

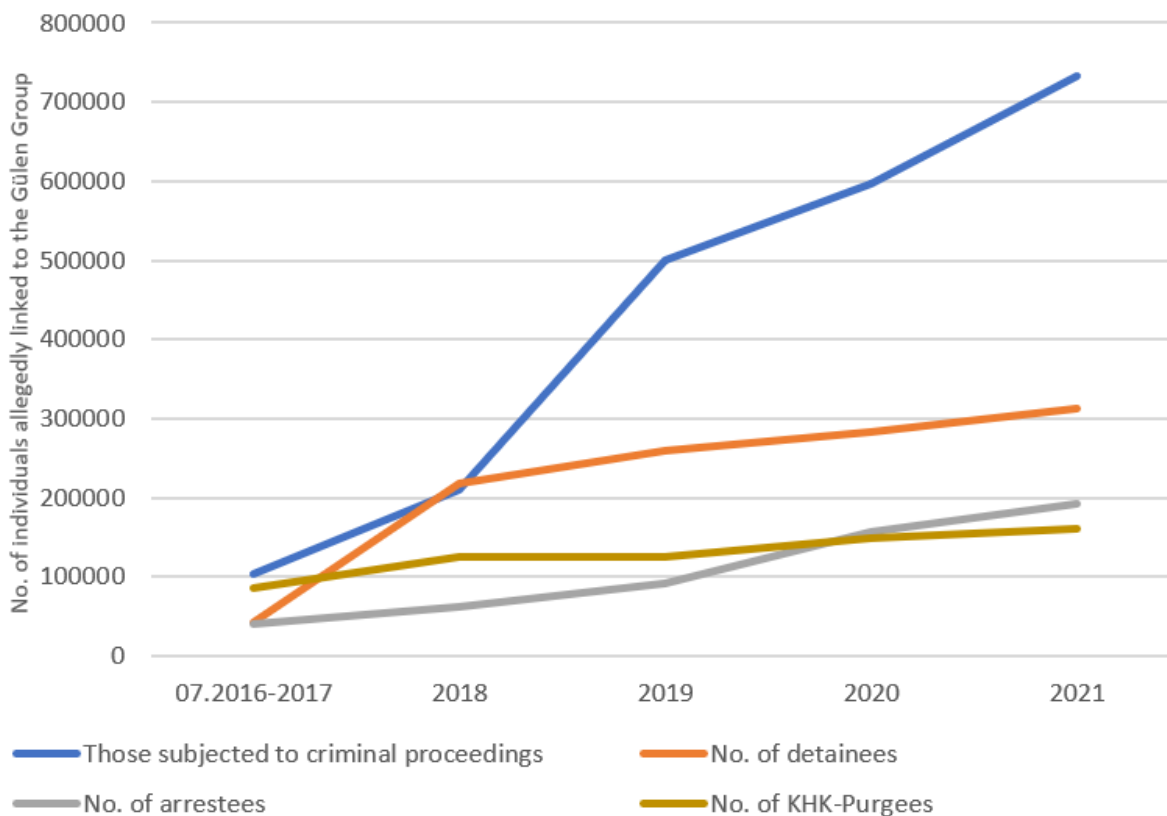


Chart 2 representing the incremental trend of the number of individuals, who are/were subjected to different types of judicial and/or executive actions, in years between 2017 and 2021⁵⁴

⁵¹ Yasir Gökce, “Turkey’s Kidnappings Abroad Defy International Law”, *Harvard Kennedy School Review*, November 25, 2018, <https://ksr.hkspublications.org/2018/11/25/turkeys-kidnappings-defy-international-law/> (Retrieved 7 August 2021)

⁵² Please see Footnote 33.

⁵³ Yasir Gökce, “The Bylock fallacy: An In-depth Analysis of the Bylock Investigations in Turkey”, *Digital Investigation*, Volume 26, 2018, Pages 81-91; also see, Yasir Gökce, “Admissibility of ByLock-related data as evidence is now under the scrutiny of the European Court”, *Strasbourg Observers*, July 7, 2021, <https://strasbourgobservers.com/2021/07/07/admissibility-of-bylock-related-data-as-evidence-is-now-under-the-scrutiny-of-the-european-court/> (Retrieved 7 August 2021)

⁵⁴ Figures in the chart are retrieved from the following sources and subsequently processed: “FETÖ'den kaç kişi tutuklandı? İşte bilanço”, TRT Haber, 03.01.2017, <https://www.trthaber.com/haber/gundem/fetoden-kac-kisi-tutuklandi-iste-bilanco-291583.html>; „2018’in Terörle Mücadele Bilançosu“, SETA, 17.11.2018, <https://www.setav.org/2018in-terorle-mucadele-bilançosu/>; 18. ayda FETÖ bilançosu, Hürriyet, 31.01.2018, <https://www.hurriyet.com.tr/gundem/18-ayda-feto-bilançosu-kamudan-net-ihrac-107-bin-174-kisi-40727687>; “İşte yargıdaki FETÖ bilançosu”, Cumhuriyet, 03.03.2019, <https://www.cumhuriyet.com.tr/haber/iste-yargidaki-feto-bilançosu-1276109>; “Bakan Soylu, FETÖ bilançosunu açıkladı: 99 bin 66 operasyon”, Sözcü, 15.07.2020, <https://www.sozcu.com.tr/2020/gundem/bakan-soylu-feto-bilançosunu-acikladi-99-bin-066-operasyon-5931900/>; “Beş yıllık Bilanço”, Diken, 14.07.2021, <https://www.diken.com.tr/bes-yillik-bilanco-15-temmuzdan-bugune-fetoye-136-bin-operasyon/>; “İşte zulmün korkunç bilançosu!”, TR24, 08.09.2020, <https://www.tr724.com/iste->

In that context, Chart 2 above offers a clear picture about the increasing number of individuals being/having been targeted as part of the policy against the Gülen Group, the involvement of public authorities, the use of public resources as well as the variety, frequency, intensity, and gravity of the violations. All in all, as pointed out in the opinion of the UN Working Group on Arbitrary Detention, the aforementioned features of the illegal acts, and their considerable consequences on a large number and variety of individuals establish a dangerous pattern which underpins the *widespread* character of the illegal acts and thereby leads to their legal qualification as crimes against humanity.⁵⁵

[zulmun-korkunc-bilancosu/](#) (Retrieved 3 August 2021). Number of the purgees after the abolition of the state of emergency cannot be estimated due to the lack of corresponding figures.

⁵⁵ WGAD Opinion No. A/HRC/WGAD/2020/47; WGAD Opinion No. A/HRC/WGAD/2020/51.

4. Specific Crimes Constituting Crimes Against Humanity

4.1. Imprisonment or other serious deprivation of liberty

In regard to this crime, the term of imprisonment is broadly construed in a way capturing not only detention in prison-like conditions but also other serious forms of confinement/incarceration. ICC Statute also includes “other severe deprivation of physical liberty” to encompass the situations like house-arrests.⁵⁶ In this context deprivation should be severe and assessed based on the length of the incarceration, conditions in which the deprivation took place, conditions of detention and number of victims.⁵⁷

To qualify an act as an act of crime against humanity, imprisonment must be arbitrary, unlawful (no legal basis) and without due process of law. Art 7(1)(e) of ICC Statute also lays down that deprivation should amount to violation of fundamental rules of international law, thus arbitrariness and unlawfulness (gravity) of the arrest should be examined further to international human rights law.⁵⁸

Arbitrariness refers to the inappropriate, unjust, unforeseeable or disproportionate nature of the detention.⁵⁹ In case the grounds for detention is illegal or the victim has not been informed of the reasons of the arrest or procedural rights of the victim have not been observed or the victim has not been brought before the judge within a reasonable amount of time, such detention/imprisonments should be deemed arbitrary. In this context, arbitrariness does not mean a minor procedural defect or insignificant failings but should be grave and serious.

The European Court of Human Rights, in its jurisprudence, ascertained that arbitrariness may arise where there is an element of bad faith or deception on the part of the authorities; where the order to detain and the execution of the detention did not genuinely conform to the purpose of the restrictions permitted by the relevant sub-paragraph of Article 5 § 1 of ECHR; where there was no connection between the ground of permitted deprivation of liberty relied on and the place and conditions of detention; and where there was no relationship of proportionality between the ground of detention relied on and the detention in question.⁶⁰

⁵⁶ Art 49 of Geneva Convention IV and art 87 of Additional Protocol to Geneva Conventions.

⁵⁷ Cryer, R., Friman, H., Robinson, D., & Wilmschurst, E. (2014). *An Introduction to International Criminal Law and Procedure*, Cambridge: Cambridge University Press, pages 248-249.

⁵⁸ *ibid.*, page 249.

⁵⁹ Trial International, What is Arbitrary Detention?, available at: <https://trialinternational.org/topics-post/arbitrary-detention/>

⁶⁰ ECtHR, *Ames, Wells, and Lee v. UK*, Applications nos. 25119/09, 57715/09 and 57877/09, 18 September 2012, para 191-195

The arbitrariness and unlawfulness of the imprisonment may be present either in the initial period of detention or in the subsequent phases in which the lawful grounds have ceased to apply.

UN Working Group on Arbitrary Detention (WGAD) specifies three categories for this sort of crime:

- absence of any legal basis for the deprivation of liberty;
- deprivation of liberty resulting from exercise of specified rights and freedoms guaranteed by human right treaties (political prisoners);
- when the total or partial non-observance of the international norms relating to the right to a fair trial is of such gravity as to give the deprivation of liberty an arbitrary character.⁶¹

4.1.1. Elements of crime

With regard to the elements of crime, it should be kept in mind that the particular legislation of states or international court will be highly relevant. Therefore, certain elements may vary in whole or part in a certain jurisdiction from another one. Based on the ICC Statute, elements of crime against humanity of imprisonment are as follows:

- a. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty;
- b. The gravity of the conduct was such that it was in violation of fundamental rules of international law or arbitrary and legally baseless;
- c. The perpetrator was aware of the factual circumstances that established the gravity of the conduct (mental element);
- d. The conduct was committed as part of a widespread or systematic attack directed against a civilian population (contextual element);
- e. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population (mental element).

⁶¹ Report of UN WGAD, UN Doc. E/CN.4/1998/44, para.8, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G97/145/54/PDF/G9714554.pdf?OpenElement> (Retrieved 23 January 2021).

4.1.2. Fulfillment of the elements of crime so as to constitute crimes against humanity

Tens of thousands of persons affiliated to the Gülen Group are being subject to imprisonments approximately for 6 years. Most of these cases are being instituted due to their alleged links to a terrorist organization and such affiliations are being explained by the AKP government and Turkish judiciary with reference to no violent acts or threats of such acts. On the contrary, most of the persons incarcerated in this context are considered as terrorists solely for using a specific encrypted messaging app (ByLock)⁶², depositing money to a particular private bank linked to the Gülen Group, studying or having kids studying at schools affiliated to the Gülen Group, attending religious advisory meetings of this community, subscribing to Zaman Daily or another periodical publication of the Group etc.⁶³ Turkish judiciary does not make elaborate assessments to reveal alleged terrorism-related ill-intentions of these persons during the deliberations but finds the enlisted circumstances solely sufficient to jail them.

In this context, it is clear that the mentioned acts, in their plain forms, have nothing to do with terrorism and are in principle done to exercise fundamental rights and freedoms. Thereby, persons, who have been charged with membership to a terrorist organization and imprisoned solely on the ground of the mentioned acts, have been deprived of their right to liberty and security without relying on reasonable suspicion or a legal basis.⁶⁴ Consequently, it can be conceived that these factual bases of imprisonment have been employed to intimidate, tame or punish political opponents of the AKP government rather than establishing violent purposes and acts of the concerned individuals. Additionally, these suspects are also deprived of procedural rules and rights including right to defense, equality of arms, right to fair trial and presumption of innocence. In some cases,⁶⁵ fabricated evidence and false witnesses have constituted the mere basis of imprisonments and even criminal convictions. It appears that this pattern of the mentioned abusive proceedings is widespread and systematic as put by WGAD⁶⁶ as well. WGAD also puts forward

⁶²UN Human Rights Committee, *Özçelik et al. v. Turkey* (CCPR/C/125/D/2980/2017), para. 9.4. “The Human Rights Committee has dismissed the mere use of ByLock as sufficient basis for the arrest and detention of an individual”. In the same vein, [Akgün judgment of ECtHR](#) (ECtHR, App. No. 19699/18, dated 20 July 2021, paragraphs 164-181) also confirms that the mere detection indicating use of Bylock cannot be regarded as a main evidence satisfying the requirements of a reasonable suspicion to accuse an individual of being member of a terrorist organisation or to place this person in pre-trial detention. For an in-depth analysis of the Bylock investigations, please see; Yasir Gökce, “The Bylock fallacy: An In-depth Analysis of the Bylock Investigations in Turkey”, *Digital Investigation*, Volume 26, 2018, Pages 81-91.

⁶³ Inside Turkey’s Purge, NYT, <https://www.nytimes.com/2017/04/13/magazine/inside-turkeys-purge.html> (retrieved on 28 January 2021)

⁶⁴ Turkut E, Garahan S. The ‘reasonable suspicion’ test of Turkey’s post-coup emergency rule under the European Convention on Human Rights. *Netherlands Quarterly of Human Rights*. 2020;38(4):264-282, p.18

⁶⁵ Political Prisoner in Turkey Locked up in a Cell with ISIS Suicide Bomber for Intimidation: Report, Stockholm Center for Freedoms, <https://stockholmcf.org/political-prisoner-in-turkey-locked-up-in-a-cell-with-isis-suicide-bomber-for-intimidation-report/> (Retrieved on 28 January 2021)

⁶⁶ WGAD, A/HRC/WGAD/2020/47, 25 September 2020, para 101; WGAD, A/HRC/WGAD/2020/51, 18 September 2020, para 102.

that it is likely that Turkish officials have committed crimes against humanity of imprisonment as a result of their crackdown against the Gülen Group.

Considering the above expunged points, imprisonment of Gülen Group followers contains all elements of the crime against humanity of imprisonment:

- Based on the official figures, a total of 292,000 people has been detained while 96,000 others have been jailed due to alleged links to the Gülen Group since a failed coup attempt in Turkey in July 2016⁶⁷ and accordingly this exposes the severity of mass deprivation of physical liberty,
- In most of the cases, the imprisonments are so grave and severe that fundamental rights and freedoms guaranteed under international law are violated and detentions are legally baseless and arbitrary⁶⁸;
- The conduct (deprivation of liberty) has been committed as part of widespread and systematic attack of the incumbent AKP government against Gülen Group⁶⁹.

4.2. Enforced disappearance

Under Article 7(2)(i) of the ICC Statute, the crime of ‘enforced disappearance’ means ‘the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.’

The offence of ‘enforced disappearance’ as a crime against humanity has been enshrined in customary international law⁷⁰ by reason of the ICC Statute as well as the 2006 Convention for the Protection of All Persons from Enforced Disappearance, which stipulates that ‘the systematic practice of the forced disappearance of persons constitutes a crime against humanity’.⁷¹ That this offence has matured into customary international law is also supported by a number of scholarly

⁶⁷ Minister: 292,000 Detained, 96,000 Arrested Over Gülen Links So Far, Turkish Minute, <https://www.turkishminute.com/2020/11/26/minister-292000-detained-96000-arrested-over-Gülen-links-so-far/> (Retrieved on 28 January 2021)

⁶⁸ WGAD Opinions that finds these imprisonments unlawful and arbitrary: No. 1/2017, No. 38/2017, No. 41/2017, No. 11/2018, No. 42/2018, No. 43/2018, No. 44/2018, No. 78/2018, No. 10/2019, No. 53/2019, No. 79/2019, No. 2/2020, No. 29/2020, No. 30/2020 No. 47/2020 and No. 51/2020.

⁶⁹ See footnotes 24 and 25.

⁷⁰ Habré – Trial, [1468]–[1471]; Robert Dubler SC, and Matthew Kalyk. Crimes against Humanity in the 21st Century: Law, Practice and Threats to International Peace and Security. Brill, 2018, p.926

⁷¹ Preamble, 2006 Convention for the Protection of All Persons from Enforced Disappearance

endeavours and judicial convictions for enforced disappearances as a crime against humanity.⁷² The relevance of this conclusion is that the obligation to prevent and/or refrain from the offence of ‘enforced disappearance’ as a crime against humanity has become binding on States and the individuals therein, regardless of the fact that those States have not enacted or ratified the international instrument, such as a treaty or convention, underlying the obligation.⁷³

4.2.1. Elements of crime

The following elements of the crime of enforced disappearance must be established as part of a widespread or systematic attack against any civilian population:

4.2.1.1. Arrest, detention or abduction

The first element of the crime is that one or more persons are arrested, detained or abducted.⁷⁴ This element of the crime is also satisfied by ‘secured detention, transfers, transportations and takings away of persons from initial detention or custody locations to other locations’.⁷⁵ Furthermore, this element may be established even in situations where the arrest, detention or abduction is lawful; that means, the element is a factual element and need not in itself be illegal.⁷⁶

4.2.1.2. Followed by a refusal to communicate whereabouts or information

The second element of the crime is that the deprivation of liberty must be followed by or accompanied by a refusal to acknowledge the arrest, detention or abduction, or to give information on the fate or whereabouts of such person or persons.⁷⁷ This element also covers the case of giving false information about the victim’s whereabouts or fate.⁷⁸

⁷² See, e.g., Brian Finucane, ‘Enforced Disappearance as a Crime under International Law: A Neglected Origin in the Laws of War’ (2010) 35 *Yale Journal of International Law* 171, 172; *Rašević and Todović* – First Instance, X-KR/06/275 pp. 97–99.

⁷³ Rauter, Thomas. *Judicial practice, customary international criminal law and nullum crimen sine lege*. Springer, 2017, pp.10-18.

⁷⁴ ICC Statute, Art 7(2)(i); ICC Elements of Crimes, Art 1(a). See also *Gotovina* – Trial, ICTY [1837]; Case 002/01 ECCC – Trial, [448]; *Rašević and Todović* – First Instance, X-KR/06/275 p.98; and 1991 Incidents Case – Summary, 104–105.

⁷⁵ *Rašević and Todović* – First Instance, X-KR/06/275 p.98.

⁷⁶ *Case of Ximenes-Lopes v. Brazil*, Order of the Inter-American Court of Human Rights of September 21, 2009; *Case of Heliodoro Portugal v Panamá*, (Preliminary Exceptions, Merits, Repairs and Costs), Inter-American Court of Human Rights, (ser. C) No 186 (12 August 2008); *Case of Heliodoro Portugal v Panamá*; and *Blanco Romero & Ors v Venezuela*, (Merits, Reparation and Costs), Inter-American Court of Human Rights, (ser. C) No 138 (28 November 2005).

⁷⁷ ICC Statute, Art 7(2)(i); ICC Elements of Crimes, Art 1(b); *Rašević and Todović* – First Instance, X-KR/06/275 p.98

⁷⁸ *Rašević and Todović* – First Instance, X-KR/06/275 p.98

4.2.1.3. Official participation

The element of *perpetrator participation* envisages that both the custody element and the refusal element be carried out with the ‘authorization, support or acquiescence of, a State or a political organization’.⁷⁹ In other words, in order for the crime of enforced disappearance to establish, it needs to be committed by ‘persons or groups of persons that act with the authorization, the help or acquiescence of the State’.⁸⁰

4.2.1.4. Perpetrator participation

The element of *perpetrator participation* requires that the perpetrator takes part in either the custody element or the refusal element.⁸¹ In that regard, the perpetrator participates either in the act of taking the victims into official custody or the act of refusing them or others (usually their family members) an official answer about their whereabouts.⁸²

4.2.1.5. Mens rea

The *mens rea* for enforced disappearance essentially contains three aspects:

- a. The intention to undertake one of either the custody or the refusal element.⁸³
- b. The knowledge that the other of the custody or refusal element is present or would occur in the ordinary course of events.⁸⁴
- c. The specific intention to remove the person from the protection of law for a prolonged period of time.⁸⁵

4.2.2. Commission of the offense ‘enforced disappearance’ as crime against humanity

Acts and/or omissions which arise from, and can probably be attributed to, Turkish authorities appear to have fulfilled the elements of the offense of ‘enforced disappearance’ as a crime against humanity by the Turkish authorities. Within the framework of the widespread and systematic attacks specified above against individuals affiliated with the Gülen Group, Turkish authorities have committed several crimes of enforced disappearance, the widespread or systematic pattern of

⁷⁹ ICC Statute, Art 7(2)(i); ICC Elements of Crimes, [4], [5]; Gotovina – Trial, ICTY [1837]; Case 002/01 ECCC – Trial, [448]; *Rašević and Todović* – First Instance, X-KR/06/275 p.98

⁸⁰ *Case of Gómez Palomino v Peru, Gómez Palomino v Peru*, Merits (IACtHR) [100]–[101]; Blanco Romero v Venezuela, (IACtHR) [105].

⁸¹ ICC Elements of Crimes, Article 7(1)(i)(1)

⁸² Robert Dubler SC, and Matthew Kalyk, *supra note 39*, p.934

⁸³ Art 30 of the ICC Statute; ICC Elements of Crimes, [3]

⁸⁴ ICC Elements of Crimes, [3]

⁸⁵ ICC Elements of Crimes, [3]; *Rašević and Todović* – First Instance, X-KR/06/275 p.98.

which indicates the fulfilment of elements required for the crimes against humanity, a conclusion that has also been confirmed by the UN Working Group on Arbitrary Detention.⁸⁶

Gokhan Turkmen, Yasin Ugan, Özgür Kaya, Erkan Irmak, Mustafa Yilmaz, Salim Zeybek, Yusuf Bilge Tunç and Hüseyin Galip Küçüközyiğit are among those individuals who went missing allegedly as a result of the operations of the Turkish security agencies.⁸⁷ Before their disappearance, they were all being prosecuted over the alleged links with the Gülen Group, having lost their jobs or had their previous employment institutions shut down by the state of emergency measures for the alleged links to terrorist organisations. As a matter of fact, the disappearance of these individuals bears all the signs of a series of kidnappings carried out by groups of men in Volkswagen vans claiming to be police officers and often witnessed by families, recordings of closed-circuit television and members of the public.⁸⁸ In other words, they all went missing under similarly suspicious circumstances. With the exception of Mr. Tunç and Mr. Küçüközyiğit (Both of them are, at the time of the publication of the present report, still unaccounted for)⁸⁹, all of them reappeared in police custody in Ankara after absences of six to nine months.⁹⁰

These cases of abductions and enforced disappearances by security or intelligence services in several provinces have not been adequately investigated.⁹¹ For instance, In July 2019, the authorities confirmed that they arrested four of the above-mentioned individuals (Salim Zeybek, Yasin Ugan, Özgür Kaya, and Erkan Irmak) who had been reported as abducted four months before the date of the arrest. The Turkish authorities, however, have failed to reveal or clarify the whereabouts of these individuals. The families of the four men were permitted to see them briefly in the presence of police officers following the arrests, but the families' lawyers have been completely barred from visitation. When the families tried to ask the men where they had been since their abduction, the men were reluctant to provide answers and the police intervened to stop further questions. The wives of the four men also reported that each of the men said, with police officers standing by, that they did not want to see a lawyer and that the wives should stop

⁸⁶ WGAD Opinion No. A/HRC/WGAD/2020/47; WGAD Opinion No. A/HRC/WGAD/2020/51.

⁸⁷ For detailed info on their background and date of disappearance, *see report of Ankara Bar Association on Abductions*, available at: https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf, *see also* Enforced disappearances in Turkey: Time to act on enforced disappearances in Turkey, SCF, available at <https://stockholmcf.org/enforced-disappearances-in-turkey-2/>

⁸⁸ Follow-up Report, A/HRC/45/13/Add.4, 28 August 2020

⁸⁹ Amnesty, Turkey: Investigate Suspected Enforced Disappearance: Hüseyin Galip Küçüközyiğit, 1 February 2021, available at <https://www.amnesty.org/en/documents/eur44/3603/2021/en/> ; .

⁹⁰ Aileler kayiplarini ve zorla kacirilan yakinlarini ariyor, Euronews, 24.10.2019, available at <https://tr.euronews.com/2019/06/13/video-aileler-kayiplari-ve-zorla-kacirilan-yakinlarini-ariyor-soru-onergelerine-yanit-yok>

⁹¹ European Commission, Turkey 2019 Report, 29 May 2019, available at <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf> accessed 02 January 2021.

campaigning for them or lodging complaints about their cases. They further asked them to withdraw existing complaints to international bodies and organizations.⁹²

Another abduction case is liable to demonstrate the certain confirmed details of enforced disappearance operations carried out by Turkey. The abductee, Gökhan Güneş, who is a follower of socialist ideology and a member of the Alevi community, exposed various striking details of the period he was missing. Returning to home at the end of the 6-day disappearance, he made a press statement and told that he was blindfolded, stripped naked, the unidentified agents gave him electricity to make him submit, his head was covered in a black bag, then he was brought into a building, doused in cold water, given more electricity and abductors tried to recruit him as an informant. He was then taken to a place called ‘grave’ and the agents torturing him were ‘the invisibles’, with the terms used by abductors. Considering that he also stated that there were other compartments, and he believed others were tortured there as well, it is understood that the place where he was held was a special torture centre and a ‘black site’⁹³

Cevheri Güven, a journalist investigating the stories of post-coup kidnapping victims, claims that abductees were taken by agents of Turkish intelligence to a specially equipped building in Ankara to torture them. That site used for the torture is specifically called ‘ranch’. Güven also states that abductees were subjected to maltreatment and forced to sign pre-written ‘confessions’.⁹⁴ In this respect European Parliament posed a question to European Commission and requested information on secret torture sites located in Turkey.⁹⁵ In response to this question, then Vice-President Federica Mogherini stated that “several credible reports from human rights organisations have alleged that the removal of crucial safeguards by emergency decrees, some of which were subsequently introduced as law, has augmented the risk of impunity for perpetrators of such crimes and has led to an increase in the number of cases of torture and ill-treatment in custody [in Turkey]. The handling of complaints is also reported to be ineffective and allegedly entails a risk of reprisals”.⁹⁶

In the light of the information presented above, it can fairly be advanced that the foregoing individuals were abducted or otherwise deprived of their liberty by gunmen with links to the Turkish security agencies with the intention to remove them from the protection of the law for a

⁹² Human Rights Watch, Turkey: Concerns for Disappeared Men Now in Police Custody, 6 August 2019, available at <https://www.hrw.org/news/2019/08/06/turkey-concerns-disappeared-men-now-police-custody>

⁹³ Ahvalnews, Turkish man alleges torture after 5 days in police custody, 27 January 2021, available at: <https://ahvalnews.com/turkey/turkish-man-alleges-torture-after-5-days-police-custody>

⁹⁴ Stockholm Center for Freedom, Turkish journalist tells horrific stories of people abducted by MIT, tortured in Ankara building, 20 August 2018, available at: <https://stockholmcf.org/turkish-journalist-tells-horrific-stories-of-people-abducted-tortured-by-mit-in-ankara-building/>

⁹⁵ European Parliament, Question for written answer E-001287-19, 11 March 2019, available at: https://www.europarl.europa.eu/doceo/document/E-8-2019-001287_EN.html

⁹⁶ European Parliament, Answer given by Vice-President Mogherini on behalf of the European Commission, 7 May 2019, available at: https://www.europarl.europa.eu/doceo/document/E-8-2019-001287-ASW_EN.html

prolonged period of time and the abductions were followed by a refusal to acknowledge the deprivation of freedom or to give information on the fate or whereabouts of these individuals. An inherent corollary of this finding is that all elements of the crime against humanity in the form of enforced disappearance have been satisfied.⁹⁷

In order to substantiate the commission of the crime, the establishment of the fact that the individuals were detained or abducted suffices. It is not required to further establish where the victims were taken.⁹⁸ In addition, the continuous refusal by the Turkish authorities to acknowledge the enforced disappearances or to give information on the fate or whereabouts of the abducted individuals fulfils the second element of the crime. It is implicit that giving false information about the victim's whereabouts or fate constitutes refusal or failure to give information and also satisfies this element.⁹⁹ Upon questions as to the whereabouts of the aforesaid individuals, the Turkish authorities insisted on claiming that they probably fled the country or were voluntarily hiding from their families.¹⁰⁰ Moreover, the authorities have persistently failed to launch adequate and effective investigations into the kidnappings and rejected or ignored parliamentary inquiries initiated by concerned MPs.¹⁰¹ The 'authorization, support or acquiescence of the State', which is the third element of the crime, is manifested in the omission of the Turkish authorities in the form of failure to launch investigations. Besides, the fact that all individuals with the exception of Mr. Tunç and Mr. Küçüközyiğit reappeared in police custody in Ankara after absences of six to nine months points out to the support or acquiescence by the State.¹⁰² Additionally, the gunmen claiming during the abduction that they were police officers reinforces the premise that the abductions were authorized and/or acquiesced by the State.¹⁰³ Last but not the least, 'the intention of removing the abducted individuals from the protection of the law for a prolonged period of time' can be deduced from that fact that, before the presence of police officers standing by, the individuals who had reappeared under police custody waived their right to see a lawyer, urged their wives to stop campaigning for them or lodging complaints about their cases and withdraw existing complaints to international bodies and organizations.¹⁰⁴

As witnessed especially in the cases of Mr. Tunç and Mr. Küçüközyiğit, involuntary disappearances were also characterized by a consistent unwillingness on the part of the police and prosecutors to investigate the allegations despite complaints lodged by concerned family members.

⁹⁷ Robert Dubler SC, and Matthew Kalyk, *supra note 39*, p.926

⁹⁸ See, for instance (BiH) Rašević and Todović

⁹⁹ (BiH) Rašević and Todović – First Instance

¹⁰⁰ Derya Okatan, Türkiye'nin 'kayıplar' utancı (2): İnanılmaz kaçırılma öyküleri, 11.07.2019, available at <https://artigercek.com/haberler/turkiye-nin-kayıplar-utanci-2-inanilmaz-kacirilma-oykuleri>

¹⁰¹ European Commission, Turkey 2019 Report.

¹⁰² Euronews, Aileler kayiplarini ve zorla kacirilan yakinlarini ariyor, <https://tr.euronews.com/2019/06/13/video-aiyeler-kayiplari-ve-zorla-kacirilan-yakinlarini-ariyor-soru-onergelerine-yanit-yok>

¹⁰³ Follow-up Report, A/HRC/45/13/Add.4, 28 August 2020

¹⁰⁴ Human Rights Watch, Turkey: Concerns for Disappeared Men Now in Police Custody, 6 August 2019.

This fact amounts to the serious problem of impunity for human rights abuses in the post-coup Turkey.

4.2.3 Extrajudicial renditions by Turkish authorities

Turkey's post-coup crackdown on the Gülen Group was not limited to suspected members inside the country. It also involved bringing back alleged Gülen followers from abroad¹⁰⁵, mostly from countries where Turkey enjoys considerable political and economic influence, through a wide range of means from official extradition to extrajudicial operations led by intelligence operatives. In most cases they circumvented legal procedures to extradite a person to Turkey and persons at issue were kidnapped through an operation of Turkish intelligence and brought to Turkey with private jets. It can be inferred from the common pattern of these incidents, that Turkish government employs a program to bring persons especially from the countries which have low human rights records and corrupt justice systems.

President Erdogan himself clearly stated in his press statements that there is no safe place for Gülenists in the world¹⁰⁶, wherever they flee his government will chase after them.¹⁰⁷ In this context, one can reasonably conceive that they conduct a worldwide plan to apprehend alleged Gülenists in any manner whatsoever no matter where they are. Besides his statements can be construed in a manner that his government's crackdown against Gülenists has a systematic and widespread feature.

Despite the fact that the exact number of individuals brought to Turkey through extraterritorial abductions is not known, it is estimated that approximately 150 individuals including children of the persons sought were transferred to Turkey in this context. Among the latest examples of such cases are renditions of Orhan İnandı and Selahaddin Gülen. On 31 May 2021, Orhan İnandı, a dual Turkish-Kyrgyz national, who lived in Kyrgyzstan for 25 years as an educationist, suspiciously went missing.¹⁰⁸ It was apparent that he was directly or indirectly abducted by Turkish intelligence. Five weeks after the disappearance of Mr. İnandı, during a press conference on 5 July 2021, Turkish President Tayyip Erdoğan himself declared that Mr. İnandı was brought back to Turkey as a result of "a genuine and patient operation by MİT"; Turkish state-owned Anatolian Agency also

¹⁰⁵ Nate Schenkkan, The Remarkable Scale of Turkey's "Global Purge", Foreign Affairs, 29 January 2018, available at: <https://www.foreignaffairs.com/articles/turkey/2018-01-29/remarkable-scale-turkeys-global-purge>

¹⁰⁶ Hurriyet Daily News, Turkish intelligence nabs top FETÖ terrorist in C Asia: Erdoğan, 6 July 2021, available at: <https://www.hurriyetdailynews.com/turkish-intelligence-nabs-top-feto-terrorist-in-c-asia-erdogan-166079>

¹⁰⁷ The World, Expulsions, pushbacks and extraditions: Turkey's war on dissent extends to Europe, 23 July 2020, available at: <https://www.pri.org/stories/2020-07-23/expulsions-pushbacks-and-extraditions-turkey-s-war-dissent-extends-europe>; Euractiv, Erdogan vows to bring back Gülenists from abroad, 10 April 2018, available at: <https://www.euractiv.com/section/global-europe/news/erdogan-vows-to-bring-back-gulenists-from-abroad/>

¹⁰⁸ Human Rights Watch, Kyrgyzstan: Missing Dual Turkish Citizen Risks Torture, Removal to Turkey, 9 June 2021, available at <https://www.hrw.org/news/2021/06/09/kyrgyzstan-missing-dual-turkish-kyrgyz-citizen-risks-torture-removal-turkey>

shared his photos taken before Turkish flags in which Mr İnandı was handcuffed, one of his hands was swollen and bruised and he looked very exhausted and anxious. Similarly,¹⁰⁹ the nephew of Fetullah Gülen, self-exiled Islamic scholar living in the US, Selahattin Gülen was brought back to Turkey by agents of Turkish intelligence service on 31 May 2021.

Among those extraterritorially abducted persons, Mesut and Meral Kaçmaz couple¹¹⁰ who were brought from Pakistan, Zabit Kişi¹¹¹ who had been brought from Kazakhstan, exposed the torture that they suffered through social media or during the court hearings.

Considering the pattern of these extraterritorial kidnappings, it can properly be inferred that these incidents have been conducted under the policies, plans and operations of the incumbent Turkish government and have already reached a quite large number. Thus, one can reasonably suggest that the renditions by Turkey of alleged Gülenists are systematic and widespread and highly likely to amount to crimes against humanity.

4.3. Torture and sexual offences

4.3.1. Torture

The prohibition of torture is a well-established international law rule and gained the status of customary law and *ius cogens* rule. The core element of torture is intentional infliction of severe pain or suffering, whether physical or mental, upon a person. In many cases torturer aims at obtaining from the victim an information or confession, punishing him for an act or intimidating or coercing him. Under international criminal law, different from international human rights law, affiliation of torturers with a state is not a requirement.

The basic difference between the torture and lesser violation like inhuman treatment is the severity of the conduct that is done for infliction of very serious and cruel suffering.

ICC Statute also requires that the victim should be in custody or control of the perpetrator. In fact, torture as a practical matter naturally entails such a control and custody.

¹⁰⁹ Daily Sabah, Turkey nabs FETÖ's Central Asia head: Erdoğan, 5 July 2021, available at: <https://www.dailysabah.com/turkey/investigations/turkey-nabs-fetos-central-asia-head-erdogan>

¹¹⁰ Turkey Tribunal, Mesut and Meral Kaçmaz Speaks up for Human Rights, <https://turkeytribunal.com/mesut-and-meral-kacmaz-speaks-up-for-humanrights/>

¹¹¹ Boldmedya, Zabit Kişi who was tortured for 108 days: I no longer find odd the ones who committed suicide, 1 July 2019, available at: <https://boldmedya.com/en/2019/07/01/zabit-kisi-who-was-tortured-for-108-days-i-no-longer-find-odd-the-ones-who-committed-suicide/>

It should also be noted that some pains and sufferings resulted from acts or treatment that are lawful under national law would amount to a torture in case these are in violation of international law.

Case law of ICC reflects that rape is a special form of torture that causes severe pain and suffering both physical and mental.

To sum up, elements of crime against humanity of torture can be enlisted as follows (save the divergences in national laws):

- a. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.
- b. Such person or persons were in custody or under the control of the perpetrator.
- c. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
- d. The conduct was committed as part of a widespread or systematic attack directed against a civilian population (contextual element).
- e. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population (mens rea).

4.3.1.1. Actual state practice of torture

Among the severest non-compliances by AKP government with domestic and international obligations is the practice of torture. What evidences this outrageous practice is the video footages of tortured top army generals.¹¹² These were disseminated by state-run news agency and pro-government TV-channels on the following days of the July 15, 2016 coup attempt, which the incumbent government attributes to the Gülen Group and which the latter denies any involvement. Apart from this, many reports¹¹³ and testimonies¹¹⁴ reveals the practice of torture commissioned or committed by law enforcement or intelligence agencies. Hence, respectable human rights activists and civil society organizations point out that torture in Turkey has become widespread and systematic in the sense of crimes against humanity.

¹¹² For video footages of torture-victim generals: <https://www.youtube.com/watch?v=FJgFlwztnio>

¹¹³ ‘Torture in Turkey Today’, Turkey Tribunal Report, <https://turkeytribunal.com/executive-summary-torture-in-turkey-today/>

¹¹⁴ Detained Turkish woman alleges horrific torture by state agents, IPA News, <https://ipa.news/2019/06/14/detained-turkish-woman-alleges-horrific-torture-by-state-agents/> (Retrieved on 28 January 2021)

Relatedly, since the coup attempt more than 30 persons were subjected to enforced disappearances and exposed to severe torture by Turkish intelligence. Some of them, including Gökhan Türkmen and Ayten Öztürk, exposed, at court hearings, the kidnappings and the torture by the secret service. Regardless of the motivation behind that, the intention to inflict severe physical or mental pain or suffering upon individuals allegedly linked to the Gülen Group uncovers the mental element of the crime.

Observations of Freedom House regarding the practice of torture in Turkey in its 2020 Turkey Report read as follows: “Torture at the hands of authorities has remained common after the 2016 coup attempt and subsequent state of emergency. Human Rights Watch has reported that security officers specifically target Kurds, Gülenists, and leftists with torture and degrading treatment, and operate in an environment of impunity. Prosecutors do not consistently investigate allegations of torture, and the government has resisted the publication of a European Committee for the Prevention of Torture report on its detention practices.”¹¹⁵

Some of the exemplary and well-documented torture cases are:

- Many former Turkish diplomats were tortured and ill-treated under detention at Ankara Police HQ in May 2019.¹¹⁶ Despite a well-documented report¹¹⁷ of the Ankara Bar Association on the issue, the Office of Ankara Chief Public Prosecutor adopted a decision of non-prosecution on 6 August 2020.
- Just after the coup attempt, Gökhan Açikkollu, a teacher, was tortured under police detention and it caused severe bruises and lesions. Stress and trauma that he suffered under these circumstances triggered a fatal heart attack and he lost his life.¹¹⁸
- Gökhan Türkmen who was abducted by state elements was severely tortured during his months-long disappearance. He also exposed the abduction and the torture before Turkish courts.¹¹⁹

¹¹⁵ For 2020 freedom status of Turkey prepared by Freedom House:

<https://freedomhouse.org/country/turkey/freedom-world/2020>

¹¹⁶ Stockholm Center for Freedoms, Documentary details torture of Turkish diplomats in police custody, 26 July 2021, available at: <https://stockholmcf.org/documentary-details-torture-of-turkish-diplomats-in-police-custody/>

¹¹⁷ For the report of Ankara Bar Association on Torture of Diplomats:

http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI&=3099

¹¹⁸ ‘Tortured to Death: Holding Gökhan Açikkollu’s Killers to Account’, Stockholm Center for Freedom, https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account_report_21.11.2017.pdf (28 January 2021)

¹¹⁹ ‘Turkey: Enforced Disappearances, Torture’, HRW,

<https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture> (retrieved on 28 January 2021)

- Erhan Doğan was tortured at a gymnasium-turned detention center during his 9-day-long detention just after the July 15 coup attempt. He is not only victim of grave tortures but also witness of rape and other tortures under detention.¹²⁰

As many human rights defenders and scholars such as Şebnem Korur Fincancı¹²¹ suggest, practice of torture by Turkish state officers follow a widespread and systematic pattern. Besides, European Committee on Prevention of Torture pointed out in its report on country visit that it considered the frequency of torture allegations in Turkey at a highly worrying level.¹²²

4.3.2. Sexual offences

Sexual offences contain various forms that are explained below shortly.

- Rape: This crime has two components: Physical invasion of sexual nature (penetration of an organ or an object) and presence of coercive circumstances or the absence of consent.
- Sexual Slavery: The perpetrator causes the victim to engage in one or more acts of sexual nature. The known example of this crime is the ‘comfort stations’ maintained by the Japanese during WW2 and ‘rape camps’ in former Yugoslavia. This is also a form of enslavement and should contain state of slavery.
- Enforced Prostitution: This crime is an attack against the honor and dignity of person. Perpetrator causes the victim to engage in one or more acts of sexual nature by force or threat of force and additionally aims to obtain or expect to obtain pecuniary or other advantages as a result of this act.
- Forced pregnancy: This crime is recognized as a particular infliction of harm on women. In former Yugoslavia, captors had tried to impregnate women and hold them until it had been too late for an abortion. This crime’s components are: Enforced confinement, forcibly impregnating a woman and the intent of affecting ethnic composition of a population.
- Enforced Sterilization: To commit this crime, the perpetrator deprives a person of reproductive biological capacity without justified medical reasons or without genuine consent. This crime may also be committed through use of chemicals for this effect and medical operation is not a requirement.

¹²⁰ Stockholm Center for Freedoms, I heard screams of women being raped at a Turkish detention center, says torture victim, 16 July 2020, available at: <https://stockholmcf.org/i-heard-screams-of-women-being-raped-at-a-turkish-detention-center-says-torture-victim/>

¹²¹ ‘Award-winning Rights Activist Says Torture Systematic in Turkey’, Ahvalnews, <https://ahvalnews.com/torture/award-winning-rights-activist-says-torture-systematic-turkey> (Retrieved on 28 January 2021)

¹²² European Committee on Prevention of Torture, CPT/Inf (2020) 24, p. 1, <https://rm.coe.int/16809f20a2>

- Other sexual violences: This category should have following elements: Commission of an act of sexual nature against person(s), employing force, threat of force or coercion and gravity of the conduct that is comparable to other sexual crimes. More specifically, this crime can be committed by forcing the victim to perform sexual acts, forcing a person to strip naked in public, mutilating a person's genitals or slicing off a woman's breasts.

It should also be kept in mind that above criminal acts should be committed as a part of widespread and systematic attack against a civilian population and perpetrator should be aware that his/her conduct is part of such an attack, to be qualified as crime against humanity.

4.3.2.1 Actual State practice of sexual offences

Despite extensive reports and testimonies on other sorts of crimes against humanity perpetrated in Turkey against alleged Gülenists, it appears that sexual offence cases are underreported due to social and psychological reasons. Thus, in this part, it is only possible to mention a small portion of the incidents.

- Amnesty International conveys in one of its reports that 'detainees said they witnessed senior military officers in detention being raped with a truncheon or finger by police officers' following the July 15 coup attempt.¹²³

- According to a media report of Nordic Monitor, a female officer who had served in the Turkish army had to have an abortion after she was raped in police custody, as told by Lt. Abdulvahap Berke to a panel of judges in an Ankara court. Berke also told that "the police stripped three or four female detainees to their underwear and forced them to mingle with the male detainees while they were constantly harassed and cursed, often with sexual slurs, by the police".¹²⁴

- Erhan Doğan, one of the torture victims, narrated that "[After being tortured for 45 minutes,] Then they took me away, but the torture of the women in the next room continued. Judging from their cries and screams, I am absolutely sure they were raped".¹²⁵

¹²³ Amnesty, Turkey: Independent monitors must be allowed to access detainees amid torture allegations, 24 July 2016, available at: <https://www.amnesty.org.uk/press-releases/turkey-independent-monitors-must-be-allowed-access-detainees-amid-torture-allegations>

¹²⁴ Nordic Monitor, Female officer in NATO's second largest army raped in detention by Turkish police had to abort pregnancy, 26 August 2020, available at: <https://nordicmonitor.com/2020/08/a-women-officer-in-natos-second-largest-army-raped-in-detention-by-turkish-police-became-pregnant/>

¹²⁵ Stockholm Center for Freedom, The Year in Review: Crackdown on the Gülen Movement, 29 January 2021, available at: <https://stockholmcf.org/the-year-in-review-crackdown-on-the-gulen-movement/>

- It is known that some former diplomats tortured in May 2019 at Ankara Police HQ were suffered from rape with police baton.¹²⁶

- The medical report issued for Gökhan Açıkollu, who passed away after being tortured, indicates that he was raped with police baton under custody.¹²⁷

- As reported by Human Rights Watch, a lawyer visiting his clients detained at Ankara Vatan Police HQ stated that his client had been beaten repeatedly, individually taken to a darkened room and stripped naked, beaten on the testicles with a baton and threatened with rape with a baton.¹²⁸

- Last but not least, a medical doctor assigned to conduct medical examinations at gymnasium-turned detention center just after the coup attempt told that she witnessed various signs of sexual abuse against detainees during her mentioned assignments.¹²⁹

Foregoing cases make the impression that the soldiers, who were detained following the coup attempt for their alleged links to Gülen Group and their alleged involvement in the coup attempt, were subjected to sexual abuses and rape with baton. Similarly, various torture cases of alleged Gülenists also contained rape with police baton. Accordingly, such cases should not be deemed isolated incidents, but a pattern seen in the proceedings of alleged Gülenists. Therefore, it should be born in mind that those cases will be subject to prosecutions of crimes against humanity as well.

4.4. Persecution and other inhumane acts

4.4.1. Persecution

Persecution involves severe deprivation of right and freedoms against an identifiable group or collectivity. Elements of this crime are as follows:

- Severe deprivation of human rights: The gross or blatant denial on discriminatory grounds of fundamental rights laid down in international customary or treaty law in a way reaching a comparable level of severity with other crimes against humanity.

-Gravity or severity

¹²⁶ İpanews, Former diplomats sexually abused with batons and tortured: Bar Association, 28 May 2019, available at: <https://ipa.news/2019/05/28/former-diplomats-sexually-abused-with-batons-and-tortured-bar-association/>

¹²⁷ İpanews, Turkey's cops use baton to rape teacher who died in custody, widow says, 2 August 2019, available at: <https://ipa.news/2019/08/03/turkeys-cops-use-baton-to-rape-teacher-who-died-in-custody-widow-says/>

¹²⁸ Human Rights Watch, A Blank Check Turkey's Post-Coup Suspension of Safeguards Against Torture, October 2016, p. 41, available at: <https://www.justice.gov/eoir/page/file/916426/download>

¹²⁹ Stockholm Center for Freedom, Doctor bears witness to torture in Turkish mass detention center: Rape with police truncheon, 19 August 2020, available at: <https://stockholmcf.org/doctor-bears-witness-to-torture-and-abuse-he-observed-in-turkish-mass-detention-center-part-1/>

-Discriminatory grounds: Prohibited discriminatory grounds listed in ICC Statute: political, racial, national, ethnic, cultural, religious or gender and other grounds that are universally recognized as impermissible under international law.

-The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

-The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

ICC Statute, for this crime, also contains an additional requirement that persecution is committed in connection with any other crime(s) within the jurisdiction of ICC as stated in art 7(1) of Rome Statute.

Examples of this sort of crime include enactment of discriminatory laws, restriction of movement and seclusion in ghettos, exclusion of members of a group from social, political or economic life, burning of homes, hate speech, attacks on property, looting and plunder of business and private properties and boycott of businesses and shops. In the context of the crackdown in Turkey against Gülen Group, following acts and treatments can be deemed as crime against humanity of persecution:

- Bans and impediments related to perform certain jobs in regards to members of Gülen Group,
- Travel bans and cancellation of passports in regards to members of Gülen Group (cases of Ahmet Burhan Ataç, Haluk Savaş and kid Furkan as well as the cancellation of decree law victims' and other alleged Gülenists' passports),
- Hate speech by AKP government against Gülen Group and its followers,
- Seizure of property rights of persons and legal personalities linked to Gülen Group (Koza Holding, Boydak Holding, Kaynak Holding, Dumankaya Construction, Zaman Daily etc.),
- Destruction and damage given to schools (Yamanlar) and other business entities (NT Book) linked to Gülen Group,
- Confiscation of over thousands of schools, including primary schools, high schools and universities, owned by the Group,
- Enactment/amendment of a law on the execution of sentences,
- Deprivation of inmates of certain rights at prisons solely for being prosecuted in the context of the persecution against Gülen Group,

- Mass dismissals from civil service etc.

4.4.2. Other inhumane acts:

Crimes against humanity of other inhumane acts should be of similar character to other prohibited acts and cause great sufferings or serious injury to physical or mental health of a person. This crime can be committed with any cruel acts which are not specified in ICC Statute or concerned national laws. These may include mutilation, bodily harms, beatings, severe physical and mental injury, inhuman and degrading treatments (under the threshold of torture) and enforced nudity.

In this regard, unnecessary strip searches in Turkey can be considered in the context of ‘other inhumane acts’. Based on the many statements of those detained or imprisoned, it is highly likely that strip searches in Turkey are performed as a standard practice. Men, women and even kids are being subject to such degrading treatments disregarding the applicable Turkish legislation and relevant case-law of the Strasbourg Court. Credible evidence suggests that security officers strip-search inmates, as well as visitors in some cases, without making any assessments to justify the existence of compelling security reasons and the necessity and the proportionality of this measure. Therefore, this practice which is unlawful and incompatible with human dignity, amounts to crime against humanity of other inhumane acts.¹³⁰

¹³⁰ ‘Scores of women tell of unlawful strip-searches in Turkey’s prisons after AKP deputy’s denial: Report’, SCF, <https://stockholmcf.org/scores-of-women-tell-of-unlawful-strip-searches-in-turkeys-prisons-after-akp-deputys-denial-report/> (retrieved on 25 January 2021)

5. Conclusion

The scale, scope, gravity, intensity and prevalence of the human rights violations against individuals allegedly affiliated to the Gülen Group in Turkey have risen to such an outrageous level as to constitute crimes against humanity. The prevalent and all-encompassing characteristics of those violations indicate that the corresponding crimes have been committed as a part of systematic and widespread attacks directed against the Gülen Group. The fact that a large number and multiplicity of individuals who have the slightest link to the Group face judicial and/or executive measures and endure the grave consequences of some or all of the above-enumerated violations points out to the widespread character of such attack. The systematic character thereof manifests itself in the fact that the crimes have been committed within the framework of a preconceived policy adopted by the official security mechanisms and executed in an identical manner. More precisely, the arbitrariness of detention and the following or preceding brutal practices in, say, Konya is practically identical with those in Manisa.

Yet another conclusion of the report is that the human rights violations endured by individuals allegedly associated with the Gülen Group fulfill the elements of crimes against humanity in the form of ‘imprisonment or other serious deprivation of liberty’, ‘enforced disappearance’, ‘torture and sexual offences’ as well as ‘persecution and other inhumane acts’. Also emboldening this conclusion is the opinions of the UN Working Group on Arbitrary Detention issued in relation to individuals somehow linked to the Gülen Group, noting that ‘the pattern established by all these cases ... [of] widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity’.¹³¹

All in all, the human rights violations and offenses which the individuals suffer merely for bearing alleged links to the Gülen Group should be considered as having shocked the conscience of the international community and risen to the level of international concern and therefore evaluated within the legal framework of crimes against humanity. The legally pertinent characterization of those offenses would insinuate the perpetrators that their offenses are prosecutable and punishable irrespective of time and place and thereby help alleviate the ongoing culture of impunity in Turkey.

¹³¹ WGAD Opinion No. A/HRC/WGAD/2020/47 & WGAD Opinion No. A/HRC/WGAD/2020/51

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