

BEYOND COMPLIANCE: CHOICE ARCHITECTURE AND NUDGING AS TOOLS FOR EMBEDDING THE MÉNDEZ PRINCIPLES IN TURKISH CRIMINAL PROCEDURE

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Lütfiye Kaya CICALI

Abstract

This article examines the alignment between Türkiye's legal framework and the Méndez Principles on Effective Interviewing, highlighting strong normative protections already in Turkish constitutional, criminal procedure, and human rights law. Drawing on constitutional provisions, the Criminal Procedure Code, the Penal Code, and Türkiye's obligations under the European Convention on Human Rights (ECHR), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and International Covenant on Civil and Political Rights (ICCPR), the article demonstrates that most safeguards required for ethical, non-coercive, and scientifically grounded interviewing are formally guaranteed in Turkish law. These safeguards include the rights to silence, legal counsel, interpretation, medical examination, custody registration, judicial oversight, exclusion of coerced statements, and protections for vulnerable persons. Despite this legal robustness, gaps remain in implementation. These gaps are driven not by legislative deficiencies but by organizational, cultural, and behavioral barriers within policing and judicial institutions. The article argues that behavioral public-administration tools, particularly nudging and choice architecture, offer an evidence-based way to reduce cognitive overload, simplify procedures, and support frontline compliance. By integrating behavioral insights with the Méndez Principles, the article outlines pathways for improving investigative interviewing in Türkiye and for translating legal commitments into professional practice.

Keywords

Méndez Principles; investigative interviewing; legal safeguards; nudging; choice architecture

1. INTRODUCTION

Investigative interviewing sits at the intersection of criminal procedure, human rights law, and behavioural science. Over the past two decades, empirical research has shown that coercive and confession-driven interrogation practices are common in many legal systems. These practices produce unreliable information, increase the risk of false confessions, and heighten the likelihood of torture and ill-treatment (Kassin et al., 2010; Moore & Fitzsimmons, 2011; Meissner et al., 2012; Brimbal et al., 2020). In response, international experts developed the Méndez Principles on Effective Interviewing (Méndez Principles Steering Committee of Experts on Effective Interviewing, 2021) marking the first global standard for evidence-based, non-coercive interviewing aligned with the absolute prohibition of torture. While a growing number of jurisdictions have begun adapting these principles, scholarly attention has focused largely on conceptual foundations, psychological mechanisms, and broad implementation challenges (Walsh et al., 2011; Chin et al., 2022; May et al., 2025). Far less work has explored how these principles can be operationalised within a specific national criminal procedure framework, or how behavioural public-administration tools such as “nudging” and “choice architecture” might support police and prosecutors in practising ethical interviewing under real-world conditions.

The Turkish context presents a particularly important and underexplored case. Türkiye possesses a robust set of legal safeguards governing custodial processes and investigative interviewing, many of which mirror the core requirements of the Méndez Principles. Yet decades of reports from domestic and international monitoring bodies point to persistent implementation gaps, especially in cases involving political offences, counter-terrorism operations, or periods of emergency rule (European Committee for the Prevention of Torture [CPT], 2020; Office of the United Nations High Commissioner for Human Rights [OHCHR], 2022; European Court of Human Rights [ECtHR], 2019). Existing scholarship on Türkiye has primarily examined legislative reforms, ECtHR case law, or structural problems in police oversight, but has rarely addressed why legally codified safeguards fail in day-to-day practice or how behavioural insights might help mitigate these failures. To date, no study has examined the intersection of the Méndez Principles, Turkish criminal procedure, and behavioural design tools such as nudges or choice architecture.

The present article addresses this gap. First, it demonstrates that Türkiye’s normative framework already provides nearly all safeguards required by the Méndez Principles, suggesting that the central challenge is not legal deficiency but behavioural and organisational frictions that impede consistent compliance. Second, the article analyses documented breaches of the Istanbul Protocol (i.e., the global standard for the investigation and documentation of torture) to illustrate how failures in interviewing, custody procedures, medical documentation, and forensic independence emerge in practice. Third, drawing on insights from behavioural science, public administration, and criminology, the article evaluates how “nudges” and “choice architecture” can be used to redesign custodial processes in ways that make lawful, ethical interviewing the easiest and most natural default for frontline actors. Finally, the article proposes behaviourally informed institutional interventions to strengthen Türkiye’s compliance with both the Méndez Principles and the Istanbul Protocol.

The analysis proceeds in four parts. Section 2 outlines the Méndez Principles. Section 3 maps Türkiye’s existing safeguards and demonstrates substantial normative overlap. Section 4

uses Istanbul Protocol breaches to show how safeguards unravel in practice. Section 5 then develops the article’s central contribution by showing how choice architecture and nudging can embed Méndez-compatible practice in daily custodial workflows. Together, these sections offer a novel, interdisciplinary approach to strengthening investigative interviewing in Türkiye by linking legal norms, empirical evidence, and behavioural design.

2. THE MÉNDEZ PRINCIPLES AND THEIR IMPLICATIONS FOR INVESTIGATIVE INTERVIEWING

In June 2021, the six Méndez Principles on Effective Interviewing were published as the outcome of a coordinated four-year process led by an international Steering Committee of 15 experts and an Advisory Council of more than 80 specialists from over 40 countries (Bernath, 2021). These principles were developed to guide law enforcement, intelligence, military and other authorities in conducting interviews with suspects, witnesses, victims and other persons of interest in a manner that is both empirically effective (i.e. capable of producing accurate and reliable information) and consistent with international human rights obligations, in particular the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (Bernath, 2021; Barela & Fallon, 2021; Méndez & Drummond, 2021; United Nations, 1984, 1966). Taken together, these six principles are designed to be mutually reinforcing with the aim to shift criminal justice systems away from coercion-driven, confession-focused interrogation towards rapport-based, non-coercive, rights-respecting interviewing that produces accurate and usable information while minimizing the risk of torture and other ill-treatment (Bernath, 2021; Méndez & Drummond, 2021; United Nations Office on Drugs and Crime [UNODC] et al., 2024). A summary of each principle, together with brief commentary, is presented in Table 1:

Table 1. Overview of the Méndez Principles on Effective Interviewing and Their Core Requirements

Principle	Name	Definition and Key Content
Principle 1	Foundations	Interviewing methods should be grounded in empirical scientific research, including findings from psychology, memory, and cognition. They must operate within domestic and international legal standards and be guided by professional ethics that emphasize dignity, integrity, and fairness.
Principle 2	Practice	Interviewing should be understood as a comprehensive process that spans from first contact through planning, conduct, and post-interview assessment. At every stage, legal and procedural safeguards such as the right to silence, access to legal counsel, and medical examination must be fully integrated.
Principle 3	Vulnerability	All interviewees are in a position of vulnerability due to inherent power imbalances. Some individuals face heightened vulnerability because of age, disability, mental health conditions, language barriers, or minority status. Interviewers must identify these vulnerabilities and adapt their approach by providing additional protections or accommodations.

Principle	Name	Definition and Key Content
Principle 4	Training	Effective interviewing is a professional activity that requires specialized initial training and continuous professional development. Interviewers and related personnel must be proficient in scientific interviewing methods and the applicable legal and ethical framework and be subject to regular evaluation.
Principle 5	Accountability	Effective interviewing requires transparent and accountable institutions. Oversight mechanisms must include independent monitoring, record keeping, complaint and remedy procedures, audits, and appropriate disciplinary or corrective measures in cases of misconduct.
Principle 6	Implementation	States should adopt robust legal, policy, administrative, and institutional measures to embed effective interviewing in practice. These measures may include legislative mandates, resource allocation, national standards, monitoring bodies, dissemination strategies, and alignment with judicial oversight.

Note. Adapted from the Méndez Principles on Effective Interviewing (Méndez Principles Steering Committee, 2021).

A core component of implementing the Méndez Principles, particularly Principle 2 on practice, is the consistent application of legal and procedural safeguards that protect persons in custody and safeguard the integrity, reliability and fairness of the interview process (Bernath, 2021; Méndez Principles Steering Committee, 2021). Although there is no single universally agreed list, international treaties, soft-law instruments and expert guidance converge on a consolidated set of widely recognized safeguards. These safeguards are consistently reflected across authoritative sources (Méndez Principles Steering Committee, 2021 OHCHR, 2022; UNODC et al., 2024; United Nations, 1966, 1984):

- Information rights: Informing the person of their rights and the reasons for arrest or any charges, in a language they understand.
- Protection against self-incrimination: The right to remain silent.
- Legal assistance: Access to legal counsel (including legal aid) and the ability to communicate privately with a lawyer.
- Medical safeguards: Prompt medical examination and independent health assessments.
- Notification rights: The ability to notify a relative, lawyer, or trusted third party of one's detention and to maintain contact with the outside world.
- Language assistance: Access to interpretation or translation services.
- Custody registration: Prompt and accurate registration of all detained persons in custody records.
- Recording of interviews: Full audio-video recording of interviews, along with the right of the interviewee to review and sign—or comment on—the record.
- Judicial oversight: Prompt presentation before a judge or other judicial authority.
- External scrutiny: Independent monitoring and effective complaint mechanisms.
- Exclusionary rule: Exclusion of statements obtained through torture, coercion, or ill-treatment.
- Time-related safeguards: Reasonable limits on the duration of detention and interviews, including provision of rest breaks.

- Vulnerability protections: Heightened safeguards for persons in situations of vulnerability, such as children, persons with disabilities, and individuals with mental-health needs.

Recognizing the centrality of these safeguards to effective, ethical interviewing, recent international initiatives have sought not only to articulate the principles but also to build the institutional and professional capacity needed to implement them in practice. One such initiative is ImpleMéndez project, a European Cooperation in Science and Technology (COST Action CA22128, 2023) action running from October 2023 to October 2027, formally titled Establishing Networks to Implement the Principles on Effective Interviewing for Investigations. The Action brings together researchers, practitioners, and policymakers from a wide range of countries with the aim of transforming the Méndez Principles (i.e., science-based, non-coercive interviewing guidelines) into practical law, policy, training, and monitoring tools in participating jurisdictions. Among its activities are training schools, capacity-building initiatives, the development of national and regional networks, the establishment of “Méndez Centres of Interviewing Excellence,” and the adaptation of investigative interviewing models to different legal traditions and cultural contexts, all aimed at replacing coercive, confession-oriented practices with ethical, evidence-based interviewing (COST Action CA22128, 2023).

3. TÜRKİYE’S EXISTING NORMATIVE FRAMEWORK AND ITS OVERLAP WITH THE MÉNDEZ PRINCIPLES

A striking feature of Türkiye’s criminal justice landscape is that the vast majority of safeguards articulated in the Méndez Principles already exist in Turkish law. Türkiye’s Constitution (Law No. 2709, 1982), the Criminal Procedure Code (Ceza Muhakemesi Kanunu [CMK], Law No. 5271, 2004), the Turkish Penal Code (Türk Ceza Kanunu [TCK], Law No. 5237, 2004), and Türkiye’s binding international human-rights obligations, including the European Convention on Human Rights (ECHR, 1950), the Convention Against Torture (CAT, 1984), and the International Covenant on Civil and Political Rights (ICCPR, 1966), contain norms that mirror nearly all legal and procedural protections central to effective, ethical, and scientifically grounded interviewing.

Article 17 of the Turkish Constitution explicitly prohibits torture, ill-treatment, and conduct incompatible with human dignity, directly paralleling Méndez Principle 1 on lawfulness and ethics. Article 19 guarantees personal liberty, requires that individuals be informed promptly of the reasons for arrest, and mandates judicial review of detention, aligning closely with Méndez Principles 2 (practice) and 5 (accountability). These constitutional guarantees are elaborated through detailed procedural safeguards in the CMK. In particular, CMK art. 147 requires that suspects be informed of the right to silence, access to legal counsel, and the privilege against self-incrimination. Such provisions map directly onto evidence-based interviewing standards that emphasize non-coercive rapport building and the avoidance of inducements or psychological pressure (Meissner et al., 2014). In addition, CMK art. 202 guarantees access to an interpreter for individuals with language barriers or hearing impairments, reflecting Méndez Principle 3 on vulnerability and accommodation.

The Turkish Penal Code criminalizes torture (TCK art. 94), aggravated torture (art. 95), and ill-treatment by public officials (art. 96), consistent with Türkiye’s obligations under the Convention Against Torture, which requires the criminalization and effective prosecution of torture and related abuses. Empirical analyses of Turkish case law indicate that courts frequently rely on

these provisions when addressing allegations of custodial abuse, even though conviction rates remain comparatively low (Human Rights Watch, 2018). Moreover, CMK art. 148 excludes statements obtained through torture, violence, or other unlawful methods, corresponding precisely to Méndez Principle 2's requirement that interviews yield reliable information free from coercion. The ECHR has repeatedly held that statements obtained through torture or ill-treatment cannot be relied upon as evidence, as their use undermines both the absolute prohibition of torture and the fairness of criminal proceedings (e.g., *Batı and Others v. Turkey*, 2004; *Salduz v. Turkey*, 2008).

The right to medical examination, an essential safeguard within the Méndez framework, is provided for in CMK art. 75 and further specified in the Regulation on Apprehension, Custody, and Interrogation (2005). In addition, the Istanbul Protocol (United Nations, 1999/2004), formally adopted and applied in Türkiye, establishes internationally recognized standards for the effective investigation and documentation of torture and ill-treatment. Research indicates that Turkish forensic physicians apply Istanbul Protocol criteria with methodological rigor, including structured psychological assessments designed to distinguish trauma-related symptoms from alternative explanations. This medico-legal infrastructure is highly compatible with Méndez Principle 3 on vulnerability and Méndez Principle 5 on accountability.

Türkiye is also bound by the ECHR, whose Article 5 guarantees prompt judicial control of detention and whose Article 6 secures fair-trial rights, including access to legal counsel. The ECtHR's landmark judgment in *Salduz v. Türkiye* (2008) established the requirement of access to a lawyer from the first police interrogation—one of the cornerstones of the Méndez Principles. Following *Salduz*, Türkiye amended the CMK to strengthen early access to counsel. Taken together, these constitutional, statutory, and treaty-based norms reveal a high degree of normative overlap with the Méndez Principles. The central challenge, therefore, lies not in the absence of safeguards but in the persistent gap between Türkiye's robust legal framework and its uneven implementation (Amnesty International, 2007; Soyaslan, 2020; Güney, 2022; The Arrested Lawyers Initiative, 2025). This gap appears to stem less from legislative deficiencies than from organizational, cultural, and behavioral barriers within policing, prosecution, and judicial institutions—conditions for which behavioural public-administration tools, including choice architecture, may be particularly well suited.

4. THE ISTANBUL PROTOCOL AND ITS RELEVANCE TO INVESTIGATIVE INTERVIEWING

The Istanbul Protocol is the globally recognized standard guiding how states identify, document, and investigate allegations of torture and other forms of ill-treatment (OHCHR, 2022). Formally titled *The United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, it was adopted by the United Nations in 1999 and most recently updated in 2022. Although the Istanbul Protocol is not a binding treaty, its standards provide authoritative guidance for interpreting Türkiye's binding obligations under the Convention Against Torture, the International Covenant on Civil and Political Rights, and the European Convention on Human Rights (see OHCHR, 2022).

The Istanbul Protocol is most commonly associated with medical documentation and forensic investigation. However, its underlying purpose closely aligns with the aims of ethical investigative interviewing as articulated in the Méndez Principles. Both frameworks emphasize the protection of individuals in custody, the prevention of coercion, the accuracy and reliability

of evidence, and institutional accountability (Méndez Principles Steering Committee, 2021; Méndez & Drummond, 2021; OHCHR, 2022; UNODC et al., 2024).

The Méndez Principles focus on how investigative interviews should be conducted. They emphasize rapport building, non-coercion, and evidence-based questioning. The Istanbul Protocol addresses what must occur when these standards are not met. In this sense, the Protocol functions as a downstream safeguard that becomes critical when frontline interviewing practices fail. Its effective implementation depends on procedural protections such as early access to legal counsel, independent medical examinations, prompt judicial oversight, and systematic documentation of injuries and detention conditions.

For Türkiye, this relationship is particularly significant. As demonstrated in the analysis of the national normative framework, domestic law already incorporates many of the procedural rights required by both the Méndez Principles and the Istanbul Protocol. The persistent difficulty lies not in the absence of legal provisions but in their uneven operational application. This problem is especially visible in contexts involving political protests, counter-terrorism policing, or periods of emergency rule. In such settings, failures in investigative interviewing frequently coincide with deficiencies in medical documentation, evidence preservation, and independent oversight.

For this reason, examining concrete instances of Istanbul Protocol violations offers critical insight into how breakdowns in interviewing practices, custody safeguards, and forensic processes interact. The case studies that follow illustrate how procedural protections that exist on paper can unravel in practice. They also reveal the structural vulnerabilities that the Méndez Principles, together with the behavioural design solutions discussed later, seek to address.

4.1 Istanbul Protocol Breaches in Custody: Illustrative Cases and Systemic Patterns from Türkiye

A series of high-profile cases and documented patterns from Türkiye over the past two decades illustrate persistent failures to comply with the Istanbul Protocol's core requirements. These failures concern the independence, promptness, and comprehensiveness of medical and legal documentation of torture and ill-treatment. Considered together, the cases arise from different political contexts, including public protest, anti-terror operations, and periods of emergency rule. Despite these differences, they reveal strikingly similar procedural breakdowns.

One of the most emblematic cases is that of Engin Çeber, a 29-year-old political activist who died in October 2008 following severe beatings during detention in Istanbul's Metris Prison (Tait, 2008). Subsequent investigations showed that medical examinations were delayed and conducted under custodial supervision (HRW, 2010). The resulting reports were incomplete and failed to meet Istanbul Protocol standards. Although the case ultimately led to an unusually robust prosecution, several prison officers were convicted in 2012. Despite these convictions, broader systemic deficiencies remained. These included the absence of standardized forensic reporting practices, weaknesses in chain-of-custody safeguards, and pressure on medical professionals who attempted to document abuse independently (Amnesty International, 2009).

Comparable procedural failures were evident in the case of Ali İsmail Korkmaz, a 19-year-old university student who was assaulted during the Gezi Park protests in Eskişehir in June 2013.

He died 38 days later from severe head injuries. Early medical and forensic assessments did not comply with the Istanbul Protocol's requirements of independence and thoroughness. The initial examination minimized the severity of his injuries, and no independent verification was carried out at a critical stage. In addition, CCTV footage capturing the assault was erased or withheld for several days. This failure undermined the preservation of evidence. Although criminal convictions were later secured against several perpetrators, the case demonstrates how early-stage forensic and evidentiary failures can compromise accountability even when courts later acknowledge unlawful violence (BBC News, 2015; CPT, 2017).

Beyond individual cases, human rights organisations documented broader patterns of custodial ill-treatment in 2015, particularly in southeastern Türkiye. Reports from treatment and rehabilitation centres recorded cases referred from provinces in southeast including Şırnak and Diyarbakır. These cases were accompanied by recurring deficiencies in access to independent and confidential medical examinations (Human Rights Foundation of Turkey [TİHV], 2016; 2022). These practices occurred within a wider context of intensified police repression linked to anti-terror measures, as documented by the Human Rights Association (IHD, 2017). At the national level, similar shortcomings have been identified by the European Committee for the Prevention of Torture. The Committee has repeatedly highlighted failures relating to medical independence, injury recording, and effective follow-up investigations in police custody and security-related contexts (CPT, 2017).

Systemic weaknesses in forensic documentation were further underscored by the case of Gökhan Açıkkollu, a 42-year-old history teacher detained during post-coup operations under the 2016 state of emergency. He was held in police custody at the Istanbul Police Department's Security Branch for 13 days. He died in August 2016 while still in custody. Official statements attributed his death to natural causes. Subsequent disclosures, including photographic evidence, indicated extensive bruising. The autopsy report lacked the level of detail and methodological rigor required by the Istanbul Protocol. The Turkish Medical Association (TTB, 2016) publicly criticized the failure to ensure an independent forensic examination. Further concerns arose from the denial of timely medical care, restrictions on family access to the body, and the initial public stigmatization of the deceased. His posthumous acquittal of all charges reinforced the conclusion that custodial and forensic failures contributed to a profound miscarriage of justice (Justice Square [StJ], 2024).

Documentation from Van province illustrates how similar patterns have persisted at the regional level. Human rights monitoring recorded cases in which detainees held in the Anti-Terror Branch reported severe ill-treatment. In these cases, forensic examinations were either not conducted independently or were carried out by physicians working within police facilities. As a result, injury documentation was inadequate (TİHV, 2016, 2022). Complaints submitted to prosecutorial authorities were dismissed without effective investigation. Human rights organisations also noted sustained pressure on forensic doctors not to record signs of torture. Comparable deficiencies in forensic independence and investigative follow-up have been observed by the CPT in its assessments of policing and detention practices in Türkiye (CPT, 2020).

Taken together, these cases point to enduring institutional patterns rather than isolated misconduct. These patterns undermine the Istanbul Protocol's foundational principles of independence, promptness, and comprehensiveness in the documentation and investigation of torture and ill-treatment. Despite Türkiye's central role in the development and international

endorsement of the Protocol, these examples show how difficult it remains to translate normative commitments into consistent operational practice. As the following sections argue, the Méndez Principles offer a framework for addressing these gaps. When combined with behavioral and institutional design approaches, they provide tools to align professional conduct, organizational incentives, and legal obligations.

5. BEHAVIORAL DESIGN AND CHOICE ARCHITECTURE AND NUDGING MÉNDEZ PRINCIPLES

Behavioral design refers to the systematic application of insights from behavioral science to the design of policies, procedures, and institutional environments, with the aim of shaping decision-making without relying exclusively on formal rules or sanctions. Within this broader framework, choice architecture describes how options are structured, presented, and sequenced in a decision environment, acknowledging that seemingly minor design features can influence behavior. Nudging constitutes a specific subset of choice architecture and refers to interventions that steer behavior by altering the decision context while preserving formal freedom of choice and without imposing material incentives or penalties (Thaler & Sunstein, 2008; Hansen & Jespersen, 2013).

Research in behavioral public administration demonstrates that nudges operate differently in settings characterized by authority, discretion, and hierarchical control, where frontline behavior is shaped by institutional incentives, power relations, and professional norms (Grimmelikhuijsen et al., 2017). In such contexts, behavioral interventions do not function in isolation but interact with organizational cultures and supervisory signals, which can amplify or undermine their intended effects.

Empirical studies applying nudging and choice-architecture interventions in law-enforcement and criminal-justice settings further illustrate these dynamics. Field experiments show that nudges implemented by police institutions can influence citizen behavior, for example by reducing theft or burglary through changes in information framing and option presentation (Roach et al., 2017; Roach et al., 2020; Crowe et al., 2024). At the same time, evidence from criminal-justice contexts indicates that nudging interventions may have limited or uneven effects when they are poorly aligned with institutional context or implementation conditions (Cumberbatch & Barnes, 2018). Although these studies focus primarily on the behavior of members of the public rather than on police decision-making itself, they highlight the sensitivity of nudging interventions to authority structures and institutional signals. These insights are directly relevant for investigative interviewing, where choice architecture is embedded within highly asymmetric power relations and strong organizational pressures. In such environments, poorly aligned behavioral design may unintentionally reinforce expedience or coercive shortcuts rather than procedurally compliant practice. Accordingly, the application of nudges in investigative interviewing must be carefully calibrated to legal safeguards, supervisory practices, and professional standards to ensure that behavioral interventions support, rather than undermine, non-coercive interviewing norms.

Given that Türkiye's formal legal framework already contains nearly all safeguards required by the Méndez Principles, the central issue is not normative deficiency but behavioral compliance. Decades of research in psychology, criminology, and public administration show that top-down, coercive, or punitive reforms rarely translate into durable behavioral change

among frontline practitioners (Kelman, 1958; Lipsky, 1980; March & Olsen, 1989; Sherman, 1993; Tyler & Huo, 2002). In this context, “nudging” refers to the use of subtle changes in how choices are presented—without changing the law or restricting options—to make it easier for people to act in ways that align with existing rules and goals. A familiar example outside policing would be placing healthier food at eye level in a cafeteria: the options stay the same, but the environment gently steers people toward better decisions. Recent experimental evidence confirms this pattern in policing: even when new oversight mechanisms are introduced, police executives’ support and behavioral compliance do not automatically increase (Adams et al., 2025). Instead, sustainable change emerges when institutions redesign their choice environments so that desirable behaviors become easier, more natural, and more rewarding (Thaler & Sunstein, 2008; Sunstein, 2015). This redesign of decision environments is known as “choice architecture.” It refers to the way systems, procedures, and workflows are structured—forms, defaults, reminders, interview templates, digital tools, or the physical layout of an interview room—all of which can influence behavior without altering legal obligations. In policing, empirical studies demonstrate that coercive interviewing practices persist not because safeguards are absent, but because situational pressures such as time scarcity, hierarchical demands, actual or perceived cognitive overload, and heavy caseloads push officers toward expedient shortcuts (Kassin et al., 2013). These pressures are what behavioral science terms “frictions,” predictable cognitive and organizational obstacles that undermine consistent adherence to rights-based procedures. Under such frictions, people tend to rely on “heuristics”—mental shortcuts or quick rules of thumb that help them make fast decisions but can sometimes lead to errors. For example, an officer under stress may default to familiar but flawed interrogation habits, even when better, legally compliant alternatives exist. Behavioral research shows that under high cognitive load or authority pressure, practitioners tend to rely more on heuristics and less on deliberative, rights-respecting decision-making (Vohs et al., 2008; Nieuwenhuys & Oudejans, 2011; Dawson, 2015; Shortland, 2023). This helps explain why safeguards on paper often fail in practice: even well-intentioned officers struggle to implement complex protocols under stressful, time-constrained, and ambiguity-rich conditions.

In response, a growing body of evidence demonstrates that well-designed nudges—including simplified forms, default procedural options, prompts, environmental cues, and real-time feedback loops—can reduce cognitive and administrative burdens, increase decision consistency, and promote rule-adherence in public administration (Benartzi et al., 2017; Hallsworth et al., 2016). These techniques operate by gently guiding decision-makers toward a particular action without restricting their legal choices. A nudge does not change the law; it simply makes the desired behavior—such as following a safeguard—easier or more obvious in the moment. Although work in policing is comparatively newer, emerging findings indicate similar effects in criminal justice contexts. For example, default activation of body-worn cameras can increase procedural compliance and reduce coercive behavior (Ariel et al., 2015), while structured communication scripts and procedural-justice cues lead to more consistent, non-coercive officer behavior (Mazerolle et al., 2013). These are practical illustrations of how small changes in procedure or presentation can meaningfully influence frontline behavior. Behavioral insights have also been applied to police recruitment and communication, demonstrating that simplified, behaviorally informed information design reduces cognitive load and improves decision quality (Linos, 2018).

Taken together, these insights suggest that nudging and choice architecture offer promising tools for bridging the gap between Türkiye's strong legal framework and its uneven practical implementation. Choice architecture refers to the way processes, physical environments, and administrative systems are designed—for example, the layout of an interview room, the structure of an electronic form, or the order in which officers are prompted to record safeguards. When these structures are designed thoughtfully, they make correct legal practice the path of least resistance. By redesigning the interviewing environment to make rights-respecting conduct the easiest, most natural default option, institutions can promote ethical, reliable, and scientifically grounded investigative practices without relying solely on punitive enforcement or top-down directives. Importantly, nudging avoids the political defensiveness of punitive reform. Legal commands in highly centralized political systems often trigger resistance or symbolic compliance—where institutions adopt formal changes, but internal behavior remains unchanged (Hertwig & Grüne-Yanoff, 2017). Nudges, by contrast, modify the context around decision-making, not the autonomy of professionals. In other words, nudges support officers in doing what the law already requires, rather than imposing new constraints or punishments. They can promote rapport-building, adherence to procedural safeguards, and accurate documentation without being perceived as externally imposed control or paternalism. This is particularly suitable in Türkiye's political climate, where law enforcement agencies operate under paternalistic, hierarchical and sometimes politically charged pressures. Research also shows that procedural reforms in criminal justice systems succeed when aligned with professional identity and internal motivations (Tyler, 2006). Nudges can harness these motivations by making rights-respecting interviewing practices the default format—for example, by embedding structured interview templates, automatic reminders for legal safeguards, or intuitive digital tools that guide officers through non-coercive interviewing sequences. Evidence from recent field research confirms that humane interviewing strategies—precisely the kinds of practices nudges aim to promote—produce better operational outcomes. Bettens et al. (2024) found that respectful, rapport-based interviewing was significantly associated with higher levels of cooperation, disclosure, and confession among incarcerated individuals. This reinforces the practical value of designing choice environments that make such behaviors the default. These design features improve performance not through punishment but through user-centered design, reducing errors and increasing compliance with CMK Article 147 safeguards.

A key ethical debate concerns whether nudges are paternalistic. However, scholars highlight that public-sector nudges aimed at improving legal compliance differ fundamentally from paternalistic nudges targeting civilians (Sunstein, 2016). The aim in the public-sector context is not to influence citizens' lifestyle choices but to support state officials in following the legal and human-rights standards they are already obligated to uphold. Here, nudging enhances state actors' adherence to existing human-rights duties rather than shaping private citizens' preferences. This form of "pro-social choice architecture" is widely recognized as legitimate, especially when used to enforce rights-based norms (Hansen & Jespersen, 2013; OECD, 2019). In Türkiye, where laws on access to counsel, medical examination, and non-coercive interrogation already exist, nudges serve as internal compliance tools—not as substitutes for rights, but as mechanisms to realize them in practice. Finally, nudging aligns with the Turkish state's existing commitments under the ECHR, CAT, and Istanbul Protocol. International bodies—including the Council of Europe's Committee for the Prevention of Torture—have emphasized that Türkiye's failures are operational, not legal. Choice-architecture reforms directly target operational

weaknesses: documentation quality, monitoring consistency, and day-to-day interviewing behavior. Put simply, nudges strengthen the “how” of implementation rather than the “what” of law. Building systems that make correct practice the path of least resistance is consistent with evidence from behavioral governance showing that institutional nudging can significantly improve public-sector performance even in challenging political environments (Linos & Riesch, 2020; OECD, 2017, 2019).

In sum, because Türkiye already possesses a strong normative backbone for rights-respecting interviewing, the most promising path forward lies not in additional legislation but in behaviorally informed institutional design. Nudging and choice architecture can reduce friction, align incentives, and embed Méndez-compatible practices within the daily routines of police and prosecutors—thereby transforming existing legal commitments into lived reality.

6. DISCUSSION

This Discussion interprets recurring Istanbul Protocol breaches in Türkiye not only as legal or procedural violations, but as predictable outcomes of real-world decision environments. In custodial settings, frontline actors operate under time scarcity, hierarchical pressure, reputational risk, and cognitive overload. These conditions make shortcut-taking, deference to authority, perfunctory performance, and “paper compliance” more likely even when the legal framework is robust. The central claim of this article is therefore behavioral. The primary gap is not the absence of safeguards, but the absence of choice architecture that reliably activates those safeguards in daily practice. Nudging is not proposed as a substitute for law or accountability. It is proposed as a practical implementation technology that makes Méndez-compatible conduct the default, visible, and difficult to bypass. However, nudges are not normatively neutral. In high power-asymmetry contexts such as police interviews, default structures may just as easily normalize coercive practices as promote rights-respecting ones, unless they are deliberately aligned with legal and ethical constraints.

This concern is well recognized within the behavioral ethics literature. Hansen and Jespersen (2013) demonstrate that nudges vary in their ethical acceptability depending on whether they operate through automatic (Type 1) or reflective (Type 2) cognitive processes, and whether their influence is transparent to the person being nudged. In particular, non-transparent Type 1 nudges—those that exploit cognitive biases without the individual’s awareness—are normatively problematic, especially in contexts characterized by power asymmetries and constrained choice. Custodial police interviews represent precisely such a context. Accordingly, this article treats choice architecture as ethically permissible only insofar as it is transparent, rights-constraining, and explicitly aligned with the Istanbul Protocol and the Méndez Principles, thereby excluding manipulative or coercion-facilitating nudges by design.

Under the Istanbul Protocol, Engin Çeber should have been examined by an independent forensic physician immediately upon detention and again following any sign of injury. The examination should have been private, detailed, and fully documented, including photographic evidence. The prosecutor was obliged to order an independent investigation the moment signs of ill-treatment appeared. Instead, the first medical reports were cursory and prepared under police supervision. According to the Méndez Principles, investigators must ensure accountability and transparency at every stage. Ethical interviewing standards prohibit intimidation and emphasize accurate, voluntary information gathering. In this case, full adherence would have

included audio-visual recording of interrogations, the immediate presence of a lawyer, and medical certification independent of law-enforcement authority. Failure to ensure these steps led to a preventable death. While the later convictions of several officers represented progress, the absence of systemic reform meant the lesson was not institutionalized. From a choice-architecture perspective, the key failure was that independent medical documentation and escalation to prosecutorial oversight were discretionary rather than structurally enforced. Default scheduling of private examinations, mandatory digital independence attestations, and automatic escalation triggers would convert “should” into “must” at the workflow level.

As for Ali İsmail Korkmaz, the Istanbul Protocol demands that all potential evidence of torture or excessive force be preserved. Yet in Korkmaz’s case, local prosecutors failed to secure CCTV footage and did not immediately order a forensic reconstruction. Under the ECHR, Article 2 (right to life) and Article 3 (prohibition of torture), authorities have a procedural duty to conduct effective, independent, and prompt investigations. Ethical investigative interviewing under the Méndez framework would have prohibited any coercive interrogation of witnesses, required early disclosure of evidence to the defense, and emphasized transparency with the victim’s family. Instead, evidence tampering and institutional solidarity shielded perpetrators. The result was not only a violation of individual rights but also erosion of public trust in law enforcement. Here, the vulnerability point is evidentiary. When evidence preservation depends on individual diligence or institutional goodwill, incentives tilt toward delay and loss. A custody–evidence protocol designed around automatic preservation defaults, audit trails, and immediate access logs would reduce opportunities for tampering and normalize transparency.

In terrorism-related cases in 2015, the Istanbul Protocol still applies in full. Each detainee must receive an immediate medical examination and judicial oversight within 24 hours.

The absence of independent documentation and the conduct of medical exams in the presence of police violated both the Protocol and UNCAT Article 12, which obliges states to investigate ex officio. According to the Méndez Principles, investigators should prioritize rapport-building and respect for human dignity even in national security cases, ensuring interviews aim at truth, not confession. Instead, coercive interrogation and prolonged incommunicado detention fostered impunity. The CPT’s 2017 report described this as a pattern of structural neglect. In security-sensitive contexts, behavioral frictions intensify. The practical implication is that safeguards must be embedded as non-optional defaults (private exams, time-stamped custody records, prompt judicial review), because reliance on discretion is least reliable precisely when stakes and pressure are highest.

The Açıkkollu case represents a multi-level breach. Under emergency decrees, police custody was unlawfully prolonged to 30 days, directly conflicting with ECHR Article 5(3), which guarantees prompt judicial review. The Istanbul Protocol would have required that, by the third day, a medical evaluation be performed privately and recorded; all injuries be photographed; and an independent pathologist review the autopsy. None of these occurred. The Méndez Principles emphasize the interviewer’s obligation to “create a safe environment free from threat or coercion.” Yet Açıkkollu was held under extreme psychological pressure, denied medication, and deprived of rest. The state’s refusal to acknowledge or investigate his death violated UNCAT Articles 12–14 (investigation and redress) and ECHR Article 3. His later exoneration underscores how unlawful detention corrodes justice. Had these safeguards been respected, his death could have been prevented, and his innocence established in life, not posthumously.

This case illustrates “emergency drift,” where extraordinary powers become operational routine. Choice architecture can counteract drift by building hard stops into custody systems (time-limit locks, compulsory judicial-review scheduling, and mandatory medical intervals) that prevent prolonged detention from becoming a normalized default.

The Istanbul Protocol requires that medical examinations be carried out in facilities independent of law enforcement, with detailed documentation of both physical and psychological findings. In Van province case, medical assessments were performed by doctors within the police compound, creating an obvious conflict of interest. Under Méndez Principle 5 (Transparency and Accountability), all interviews should be audio-visually recorded, and detainees must have immediate access to a lawyer and interpreter. The absence of these procedural safeguards turned the investigation into a coercive exercise, violating both the Istanbul Protocol and Türkiye’s obligations under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT; United Nations, 2002), which mandates independent monitoring. When doctors operate inside police facilities, the environment itself is the conflict of interest. Structural redesign (e.g., independent examination sites, private-room requirements, and automatic external visibility of reports) targets the decision context rather than assuming individual resistance to institutional pressure.

6.1 What Nudging the Ethical Methods through Choice Architecture Could Achieve

Adherence to the Méndez Principles and ethical investigative interviewing could reverse this trajectory. Had investigators in each of the five cases used rapport-based methods (e.g., open questions, transparent recording, and corroboration through evidence rather than confession) the risk of abuse would have been negligible. Medical professionals applying the Istanbul Protocol would have ensured prompt, credible documentation, creating an unbroken chain of accountability from the moment of detention. Such alignment would not only prevent violations but would also enhance investigative quality: accurate information, reliable testimony, and higher conviction rates for genuine offenders. The convergence of law, medicine, and behavioral insight offers a practical route forward. Embedding nudges (e.g., automatic reminders, recording defaults, independent checklists) could make compliance habitual rather than heroic. In this sense, full implementation of the Istanbul and Méndez frameworks is not merely a human rights ideal; it is a rational policy for effective policing.

Building on critical behavioral-ethics scholarship emphasizing the risks of nudging in power-asymmetric decision environments (Hansen & Jespersen, 2013), this article does not treat choice architecture as a monolithic intervention. Depending on its alignment with legal safeguards, it may either entrench coercive practices or actively promote compliance with the Istanbul Protocol and the Méndez Principles. The sections that follow examine how these mechanisms can be deliberately constrained and repurposed to embed ethical investigative interviewing into everyday institutional practice

6.1.1 Nudge-Based Mechanisms to Embed the Méndez and Istanbul Protocols in Practice

Even where law and training exist, implementation often falters because systems rely on perfect human behavior. Police officers, doctors, and prosecutors operate under fatigue, hierarchy, and fear of blame. Nudge theory, first articulated by Thaler and Sunstein (2008), recognizes that people rarely make purely rational choices (i.e., they respond to defaults, cues,

and feedback). Embedding ethical behavior into daily routines therefore requires institutional design that makes the right thing the easy thing to do. The following categories of nudges translate the Méndez Principles and the Istanbul Protocol into everyday practice for Türkiye’s criminal-justice institutions.

6.1.1.1 Behavioral Insight for Early Rights Notification and Legal Counsel

In several cases suspects were denied prompt access to counsel or were not properly informed of their rights. This results from workflow habits such as officers’ focusing on paperwork and overlooking the mandatory “rights warning.”

Table 2 . Rights Notification and Legal Counsel Nudges

Type of nudge	Implementation	Expected Effect
Digital Default Systems	Custody intake software prevents progression to the next screen until confirmation that rights have been read aloud is recorded and an audio file is attached.	Makes rights notification a mandatory and non-skippable step in the workflow.
Handcuff Tags or Rights Wristbands	Disposable wristbands or tags display basic custody rights and remain visible during detention.	Provides a continuous visual reminder for both officers and detainees.
Body-worn Camera Overlay Prompts	Recording software displays a mandatory prompt requiring confirmation that rights have been explained before recording can proceed.	Creates an accountability trail and reduces the risk of omission.
Plain-language Posters in Interview Rooms	Infographics summarizing basic rights are displayed in Turkish, Kurdish, English, and Arabic in interview rooms.	Reinforces rights awareness and reduces reliance on memory under pressure.

Note. These nudges operationalize early-stage legal safeguards by embedding rights notification into digital systems, physical environments, and recording practices, thereby supporting compliance with the Méndez Principles and domestic procedural law.

Together these make ethical compliance the default, not a choice.

6.1.1.2 Behavioral Insight for Medical Examination and Forensic Independence Problem

In cases like Çeber (2008) and Açikkollu (2016), the Istanbul Protocol’s forensic steps (i.e., independent, private medical exams) were ignored or delayed. Often, doctors fear retaliation or simply follow bureaucratic shortcuts.

Table 3. Medical Examination and Forensic Independence Nudges

Type of nudge	Implementation	Expected Effect
Automatic Medical Examination Scheduling	Custody management software automatically schedules medical examinations at fixed intervals (0 h, 24 h, 72 h). Supervisors receive alerts if examinations are missed.	Removes discretion to delay or omit medical examinations.
Custody Dashboard Alerts	Visual dashboards in police stations and prosecution offices display alerts when medical or judicial reviews are overdue.	Encourages timely corrective action and procedural compliance.
Doctor Independence Sign-off	Digital medical forms require physicians to confirm that the examination was conducted in private and without police presence.	Creates behavioral accountability through formal attestation.
Forensic Audit Trail	Each medical report is automatically uploaded to a secure national registry accessible to independent oversight bodies such as the Ombudsman or TIHV.	Enhances transparency and reduces the risk of data tampering.

Note. These nudges operationalize the Istanbul Protocol's requirements for independence, promptness, and documentation by embedding forensic safeguards directly into custodial workflows.

Such procedural nudges institutionalize independence by design, even in hierarchical systems.

6.1.1.3 Behavioral Insight for Transparency and Recording Problem

Investigations often depend on confessions, and documentation is incomplete or manipulated, as in Korkmaz (2013). Without visible oversight, coercive methods persist.

Table 4. Transparency and Recording Nudges

Type of Nudge	Implementation	Expected Effect
Mandatory Audio-visual Recording Default	Interview rooms are equipped with systems that automatically begin recording when the door is locked. Officers must provide written justification for any manual override.	Discourages coercion and strengthens transparency.
QR code Access for Lawyers	Lawyers can scan a QR code to access custody logs and medical reports in real time.	Empowers oversight through procedural convenience.
Rights Cards with QR Codes	Detainees receive cards linking to digital copies of their custodial rights.	Reinforces transparency and informed consent.
Public Oversight Board Dashboards	Anonymized compliance data, including rights notification, audio-visual recording, and medical examinations, are published quarterly.	Creates a social norm effect by motivating institutions to improve performance.

Note. These nudges operationalize transparency and accountability by making documentation and recording the default condition of custodial interviewing, consistent with the Méndez Principles and the Istanbul Protocol.

These measures harness transparency as a behavioral driver rather than a punitive tool.

6.1.1.4 Behavioral Insight for Accountability and Feedback Problem

Post-incident impunity is common. Officers rarely face consequences unless a scandal erupts. Institutional incentives reward speed and confessions, not ethical compliance.

Table 5. Accountability and Feedback Nudges

Type of Nudge	Implementation	Expected Effect
Recognition Badges	Digital commendations or minor benefits, such as preferred shifts, awarded to officers with consistent safeguard compliance.	Positive reinforcement for ethical conduct.
Custody Feedback Kiosks	Anonymous tablets at custody exit allow detainees to report whether rights were explained or harm occurred.	Creates expectation of external review and accountability.
Supervisor Alerts	Automatic audit triggered when three feedback reports flag the same officer.	Early warning mechanism for supervisory intervention.
Annual Compliance League Tables	Regional rankings of police stations based on adherence to custodial safeguards.	Harnesses reputational motivation to improve compliance.

Note. These nudges operationalize Méndez Principle 5 on accountability by embedding feedback, oversight, and reputational incentives into routine custodial practice

Behavioral insights show that recognition and comparison often change conduct faster than punishment.

6.1.1.5 Behavioral Insight for Vulnerable Groups and Empathy

Minors, persons with disabilities, and migrants face disproportionate abuse. Frontline staff often lack training or reminders to adjust their approach.

Table 6 . Vulnerable Groups and Empathy Nudges

Type of Nudge	Implementation	Expected Effect
Colored File Folders or Digital Flags	Red or blue indicators signal vulnerable detainee status in both paper and electronic files.	Triggers activation of special-care protocols.
Empathy Wall Displays	Curated messages from victims or human rights organizations displayed in interview areas.	Re-primers moral awareness and humanizes detainees.
Short Daily Reminders (Screen Savers)	Police computer log-in screens display one safeguard principle daily.	Subconscious cue promoting mindfulness and ethical attention.

Note. These nudges illustrate how vulnerability-sensitive safeguards required by the Méndez Principles and the Istanbul Protocol can be embedded into routine custodial practice.

Such subtle cues restore the human element within routine bureaucracy.

6.1.1.6 Behavioral Insight for Leadership and Institutional Learning Problem

Reforms often fail because leadership doesn't experience the behavioral barriers that front-line officers do. Without feedback loops, mistakes recur.

Table 7. Leadership and Institutional Learning Nudges

Type of Nudge	Implementation	Expected Effect
Monthly Safeguard Pulse Reports	Automatic emails summarizing compliance statistics to senior commanders.	Keeps issues visible at decision-maker level.
Leadership Commitment Boards	Publicly displayed statements affirming zero coercion and full rights compliance, signed by unit heads.	Commitment device that reinforces reputational incentives.
Case-based Reflection Sessions	After each proven rights violation, structured team reflection guided by a trained facilitator.	Encourages learning instead of denial.

Beyond technical design, leadership plays a decisive role in determining whether nudges promote ethical or coercive practices. Ethical leadership research consistently shows that leaders influence behavior not only through formal authority, but through role modeling, norm signaling, and the reinforcement of shared values (Brown & Treviño, 2006). Empirical research in policing and organizational behavior shows that frontline officers take powerful behavioral cues from supervisors and senior commanders, particularly in high-pressure, power-asymmetric environments. Leaders who model procedurally just conduct, visibly prioritize legal safeguards, and frame ethical practice as a professional value shape organizational norms more effectively than formal rules alone (Tyler, 2006; Bradford et al., 2013). Conversely, when leadership implicitly rewards speed, confession rates, or political loyalty, these signals can normalize coercive shortcuts even where safeguards formally exist. Ethical leadership therefore functions as a meta-nudge, shaping how other nudges are interpreted and enacted in practice. Experimental and field research further demonstrates that ethical leadership reduces rule-bending and misconduct by influencing officers' moral cognition and decision-making under pressure (Moore et al., 2019). In the Turkish context, strengthening investigative interviewing thus requires not only redesigning custodial workflows, but also cultivating leadership practices that consistently model, reinforce, and legitimate non-coercive, rights-respecting interviewing as the professional norm.

7. CONCLUSION

The genius of behavioral design lies in its complementarity to law. While the ECHR and UNCAT impose legal obligations, and the Istanbul Protocol prescribes medical and procedural standards, nudges target the cognitive and cultural barriers that block compliance: Inertia, fear, conformity, and moral disengagement. A "nudge-based system" doesn't replace punishment or regulation; it reduces the need for constant top-down enforcement by creating self-executing norms. In a Turkish context where executive centralization and procedural fatigue are chronic, small environmental redesigns can shift institutional culture faster than yet another circular or decree. The cumulative impact would be, reduced incidents of ill-treatment through early alerts and oversight; faster response times for medical and judicial reviews; improved evidence integrity via automatic recording; enhanced public legitimacy of policing and justice

institutions; sustainable compliance with international human rights obligations. Had these behavioral mechanisms been embedded, Açıkkollu would have received timely medical checks (dashboard alerts), Çeber's abuse would have triggered automatic forensic reporting, Korkmaz's evidence would have been preserved via audiovisual default, and torture claims would have been independently documented. Supervisors would have seen patterns and intervened early. These changes require minimal cost but a major mindset shift: From reactive punishment to proactive prevention. That shift, making ethics part of institutional design, is the most powerful lesson of behavioral governance. And it is the Sixth Méndez Principle.

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About the Author

Lütfiye Kaya Cicerali, Associate Professor of Forensic Psychology, Istanbul Galata University, Psychology Department, e-mail: lutfiye.cicerali@galata.edu.tr