

The Arrested Lawyers Initiative



EXTRADITION
TO TURKEY:

ONE-WAY
TICKET TO
TORTURE AND
UNFAIR
TRIAL

<https://arrestedlawyers.org/>



EXTRADITION TO TURKEY: ONE-WAY TICKET TO TORTURE AND UNFAIR TRIAL

TABLE OF CONTENTS

	EXECUTIVE SUMMARY	2
I.	INTRODUCTION.....	4
II.	TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL.....	5
III.	TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY	20
IV.	PLIGHT OF INDIVIDUALS WHO WERE BROUGHT BACK TO TURKEY BY MEANS OF RENDITION OR ABDUCTION.....	33
V.	POLITICAL ATMOSPHERE	35
VI.	PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS APPLICABLE TO EXTRADITION CASES.....	36
VII.	PROVISIONS OF THE UN CONVENTION AGAINST TORTURE APPLICABLE TO EXTRADITION CASES.....	36
VIII.	THE EUROPEAN COURT OF HUMAN RIGHTS' RULINGS REGARDING EXTRADITION CASES.....	37
IX.	OPINIONS OF THE UN BODIES	40
X.	JUDGMENTS RENDERED ON TURKEY'S EXTRADITION REQUESTS	41
XI.	CONCLUSION	43
XII.	ENDNOTES	44

The Arrested Lawyers Initiative

1 February, 2020, Brussels,

**This report is an advanced update of the initial report published on 9
February, 2018.**

EXECUTIVE SUMMARY

After 2016's failed coup attempt, Turkey forsook the rule of law. The Erdoğan Regime has suspended or dismissed more than 125,000 civil servants, including judges, teachers, academics, doctors, police officers and others, since July 15, 2016. Besides this unprecedented purge, 559,064 people have been investigated, 261,700 have been detained, and 91,287 have been remanded for pretrial detention with the accusation of membership of an armed terrorist organization between July 15, 2016, and November 20, 2019.¹

Erdoğan's foes, or those who dissent politically and who live abroad, have been facing a judicial harassment risk, albeit to a lesser extent than those who are in Turkey. Getting them extradited to Turkey is at the top of the agenda of the Erdoğan Regime's international policy. Turkey has sent (at least) 570 extradition requests to 94 countries.² Although the overwhelming majority of these requests have failed, *Turkey has physically brought back 104 Turkish citizens from 21 countries, according to its own official statements. At least 30 of these were kidnapped, with citizens taken from abroad without any legal process whatsoever—in some cases, people have been pulled off the streets of foreign cities and bundled onto private jets that are linked to Turkey's intelligence agency. Dozens of others, including many registered asylum-seekers, were unlawfully deported to Turkey. In one well documented case, the kidnapping of six Turkish citizens from Kosovo, one of the men that Turkey took was the wrong person—a different Turkish citizen with a similar name. The wrong man remains imprisoned in Turkey anyway.*³

In addition to extradition requests, Turkey has also attempted to abuse Interpol's notice mechanism in order to track its dissidents, however, due to the political nature of these requests, Interpol has refused 646 red notice requests that were submitted by Turkey.⁴

Since 2016, the courts in Greece, Germany, the United Kingdom, Brazil, Romania, Bosnia, Poland, Montenegro, have refused extradition requests sent by the Turkish authorities, which are either due to the political nature of the accusations, or due to their failing to pass a dual criminality test, or the risk of being subjected to torture or ill-treatment in Turkey.

Moreover, the UN Committee Against Torture decided on three cases that were filed against Morocco: that the possible extradition of three Turkish citizens from Morocco to Turkey would violate Morocco's obligation under the UN Convention Against Torture and Other Cruel, Inhumane or Degrading Treatments or Punishment.⁵

The reports prepared by national and international institutions and credible civil society organizations, that are explained in detail below, together with the respective judgments and opinions rendered by courts in the United Kingdom, Germany, Brazil, Romania, Bosnia, Poland, Montenegro and Greece, and by the ECtHR, the UN Human Rights Committee, the UN Committee Against Torture (UNCAT) and the UN Working Group on Arbitrary Detention (WGAD) on the matter, show that anyone

(principal), particularly in cases where the principal is accused of terrorism-related offences or offences against state security, who may be extradited to Turkey,

- i. will most likely be subjected to torture and ill-treatment,
- ii. will not be able to enjoy his right to freedom in the absence of undue government approval, even when released by a competent court of law
- iii. will not be able to enjoy the right to a fair trial,
- iv. and, his right to counsel will be unlawfully hindered.

Finally, in the view of the well-established positions of the European Court of Human Rights and the UN Human Rights Committee, the UNCAT and the WGAD,

- i. The treatment the principal will receive at the hands of Turkish official bodies will constitute serious violations of Articles 3 and 6 of the European Convention on Human Rights, and would be a violation of Article 3 of the UN Convention Against Torture,
- ii. Any state which extradites an individual, particularly those who are accused of terrorism-related offences, or offences against state security, to Turkey, will be breaching its obligation under the International Covenant on Civil and Political Rights, the UN Convention Against Torture and the European Convention on Human Rights.

1 February, 2020, Brussels.

The Arrested Lawyers Initiative.

This report is an advanced update of [the initial report](#) published on 9 February, 2018.

I. INTRODUCTION

1. After 2016's failed coup attempt, the Turkish Government declared a state of emergency and, during the emergency rule, enacted 32 decrees which dramatically curtailed fundamental rights and freedoms. The Turkish Parliament approved all of these emergency decree laws, and thus all of them have become permanent laws.
2. According to official statements, during emergency rule (2016-2018), the Turkish Government enacted 32 emergency decrees, under which 125,678 individuals were dismissed from public service.⁶
3. Erdoğan's foes, or political dissenters who live abroad, have been facing judicial harassment risks, albeit to a lesser extent than those who are in Turkey. Getting them extradited to Turkey is at the top of the agenda of the Erdoğan Regime's international policy. Turkey has sent (at least) 570 extradition requests to 94 countries.⁷ Since 2016, the courts of the United Kingdom, Germany, Brazil, Romania, Bosnia, Poland, Montenegro and Greece, have dismissed extradition requests filed by Turkey.
4. Based on reports prepared by reputable international organizations, we, through this report, seek to evaluate whether individuals who might be extradited to Turkey would have the right to a fair trial and defence, and whether they would have any safeguards against torture or ill-treatment.

II. TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

a. Purge of Turkish Judges and Prosecutors

5. In the wake of July 16, when the soldiers who actually organized, or took part in, the failed coup attempt were yet to be determined, Turkey's top judicial body, the High Boards of Judges and Prosecutors, convened so as to suspend 2,745 judges/prosecutors, including its own members.⁸ As reported by the state-run Anatolian News Agency, as of 5 October, 2017, the number of judges and prosecutors dismissed had reached 4,560⁹ which, according to a human rights group named "The Free Judges" is 29.8% of the number of judges and prosecutors in the entire judiciary.
6. 3495 of the dismissed judges and prosecutors have been prosecuted and 2,431 of them were remanded to pretrial detention. ¹⁰ As of 7 September, 2019, 1344 of those prosecuted have been convicted under Art. 314 of Turkish Penal Code which stipulates membership of an armed terrorist organisation.¹¹



b. The New Formation of Turkey's Top Judicial Body (The Council of Judges and Prosecutors - CJP)

7. By a constitutional amendment, dated 16th April, 2017, Turkey's top judicial body has been reshaped by the AKP Government. The new structure of the CJP has caused serious concern, in terms of its independence and the impartiality of the judiciary as a whole.

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL



8. **The Council of Europe’s Human Rights Commissioner, Nils Muiznieks,** said on 07.06.2017, “Following the recently adopted constitutional amendments, which changed the system for its formation, Turkey’s new Council of Judges and Prosecutors (HSYK) is sworn in today. With four members appointed directly by the President of Turkey, and seven members elected by Parliament without a procedure guaranteeing the involvement of all political parties and interests, I am concerned that the new composition of the HSYK does not offer adequate safeguards for the independence of the judiciary, and it considerably increases the risk of it being subjected to political influence. To avert such risks, European standards foresee that at least half of the members of the judicial councils that are in charge of overseeing the professional conduct of judges and prosecutors (including appointments, promotions, transfers, disciplinary measures and dismissals of judges and public prosecutors) should be elected by the judiciary from within the profession. Against this background, I will follow the work of the HSYK, and the extent to which it, in practice, adheres to the rule of law and the independence of the judiciary, without which there can be no effective protection of human rights in Turkey.”¹²
9. **The Council of Europe’s Human Rights Commissioner, Dunja Mijatovic,** after a five-day official visit to Turkey, said on 21 December, 2019 **followings:** “...(T)he independence of the Turkish judiciary has been seriously eroded during this period, including through constitutional changes regarding the Council of Judges and Prosecutors which are in clear contradiction with Council of Europe standards, and the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors... **(T)he existing tendency of the Turkish judiciary to put the protection of the state above that of human rights was significantly reinforced, and the criminal process appears to often be reduced to a**

mere formality, especially in terrorism-related cases... (L)aws with an overly broad definition of terrorism and membership of a criminal organisation and the judiciary's tendency to stretch them even further is not a new problem in Turkey, as attested in numerous judgments of the European Court of Human Rights ... (T)his problem has reached unprecedented levels in recent times... these proceedings, combined with a wanton use of pre-trial detention, unjustly upend many persons' lives in Turkey, including many human rights defenders. As a result, all of Turkish society is subjected to a profound chilling effect. It is high time to ease the pressure on human rights defenders in Turkey and enable them to work freely and safely... Not only has Turkey taken measures restricting procedural defence rights and hampering lawyers' ability to defend their clients, but it has come to my attention that lawyers are also increasingly being targeted through judicial actions for bringing cases alleging human rights violations, or as guilty by association with their clients."¹³

10. "The constitutional amendment, which runs the danger of transforming the country into a one-person presidential system, is against a democratic regime that is based on the separation of powers. Considering the chronic concerns, see above, that the Turkish Judiciary is not independent, the judiciary's power to control the executive will further weaken the HSYK, almost half of whose members will be directly appointed by the President... The Commission finds that the proposed composition of the CJP is extremely problematic. Almost half of its members (4+2=6 out of 13) will be appointed by the President. It is important to stress, once again, in this respect, that the President will no longer be a *pouvoir neutre*, but will be engaged in party politics: his choice of the members of the CJP will not have to be politically neutral. The remaining 7 members would be appointed by the Grand National Assembly. If the President's party has a three-fifths majority in the Assembly, it will be able to fill all of the positions in the Council. If it has, as is almost guaranteed under the system of simultaneous elections, at least two-fifths of the seats, it will be able to obtain several seats, forming a majority with the presidential appointees. That would place the independence of the judiciary in serious jeopardy, because the CJP is the main self-governing body overseeing appointments, promotions, transfers, the disciplining and dismissal of judges and public prosecutors. Getting control over this body thus means gaining control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent, and where the transfers of judges are a common practice. In this context, it seems significant that the draft amendments provide for elections to the CJP within 30 days from the entry into force of the amendments, and that the political forces supporting the amendments control more than three-fifths of the seats in the TGNA, enabling them to fill all of the seats in the CJP." was said in the opinion of the Venice Commission dated 13 March, 2017.¹⁴
11. "From all these concrete findings, the Courts of First and Second Instances, the Court of Cassation, the Council of State and the Constitutional Court, which can be applied to under domestic law, are devoid of any of the securities of a court or tribunal that were 'previously established by law, independent and impartial' within the scope of Article 6 of the Convention. The evaluations

relating to the prevalent lack of independence and impartiality in the judiciary in Turkey, are not immaterial apprehensions, but are based on concrete evidence. This situation is reflected in numerous reports which have been published, since the beginning of 2014, by various international organizations. In the light of all these points, it should be concluded that there is not a single independent and impartial body in the Turkish judiciary, and thus no 'court', within the context of Article 6 of the ECHR. Accordingly, there is no effective domestic remedy (independent courts) which has to be exhausted in the case of a violation of civil rights, and no right of access to a court in particular.”¹⁵

c. The World Justice Project

12. According to The World Justice Project's annual report, entitled the *Rule of Law Index 2016*, Turkey is ranked 99th amongst 113 countries. Turkey is ranked 105th in terms of “fundamental rights” and 108th in terms of “constraints on government powers” amongst 113 countries.¹⁶ Turkey has fallen to the 101st position out of 113 countries in the World Justice Project's *2017-18 Rule of Law Index*, a comprehensive measure of the rule of law.¹⁷ In 2019, in the *Rule of Law Index*, Turkey ranked 109th out of 126 countries.¹⁸

d. The Home Office

13. “... there is a real risk of mistreatment simply on the basis that the person is a Gülenist/suspected Gülenist /relative or friend of a Gülenist, rather than due to any personal involvement in, or support for, the coup, this may amount to persecution on the grounds of political opinion. Mistreatment may include arrest, detention and prosecution. Decision-makers must also consider whether there are any individual factors in the case which indicate that any prosecution would deny the person access to a fair trial and whether any punishment would be either disproportionate or discriminatory on the basis of the person's political opinion.” was said in the “Country Police and Information Note: Gülenism: Turkey” by the UK Home Office.¹⁹ The UK Home Office raised seminal concerns about Kurdish people.²⁰
14. “There are reports that HROs are monitored by the authorities and that some persons who work for these organizations face harassment, intimidation, investigation, detention and prosecution at the hands of the authorities.” was said in the “Country Police and Information Note: Human Rights Defenders: Turkey” by the UK Home Office.²¹

e. Judges and Prosecutors are Often Reassigned as a Result of Their Decisions

15. Turkey's Council of Judges and Prosecutors has not only dismissed thousands of judges and prosecutors but has also continuously intervened in the course of justice by the use of resolutions of appointment, which it has issued on almost a daily basis. Since 2014, hundreds of judges and prosecutors have been reassigned because of the decisions they given, which were somehow displeasing to the government. (For the instances took place between 2014 and July of 2016, see footnote 16.)²² Some of the other significant instances are as follows:
- Murat Aydın, a judge in Karşıyaka and the Vice-President of the Judges and Prosecutors' Association (YARSAV), was reassigned and exiled to

Trabzon, after he applied to the Constitutional Court for the annulment of the legal article that related to “insulting the president.”²³

- The Chief Judge of the Istanbul Regional Appeal Court, Sadık Özhan, was reassigned after his decision to reverse the CHP Deputy Enis Berberoglu’s conviction.²⁴
- The Istanbul Court which released twenty-one detained journalists was dismantled, and the Council of Judges and Prosecutors suspended the three judges who released twenty-one journalists after eight months of pre-trial detention. Judges İbrahim Lorasdağı, Barış Cömert and Necla Yeşilyurt Gülbiçim, were suspended by the CPJ.²⁵
- Judges of the Istanbul 37th Heavy Penal Court were removed by the CPJ after the Court released seventeen detained lawyers.²⁶
- Ankara 20th Regional Appeal Court was dismantled a day after the Court acquitted a military officer of coup attempt charges. Four Judges of the Court were unseated and subjected to disciplinary investigation. President Erdoğan called the judges terrorists.²⁷

f. The Decisions to Release are Ineffective

16. In addition to arbitrary mass arrests of dissidents, orders which courts seldom give for their release, are constantly being cancelled by direct political intervention.
17. Twenty-one journalists who were released on 1st April, 2017, after 10-months in pre-trial detention, were rearrested at the exit gate of the Silivri Prison. The Istanbul 25th High Criminal Court had previously ordered the release of 21 of the 26 journalists who were accused for membership of the faith-based Gülen movement, which has been registered as a terror organization by the Turkish government, and has been accused of orchestrating the failed coup of July, 2016. The reason that the 21 journalists were denied release was either because a prosecutor appealed against their release, or because a new investigation was hastily launched following the court order to release them. The moment after the court’s decision was announced for the release of the 21 journalists, pro-government figures, including journalists, immediately launched a campaign on social media, which passionately demanded their re-arrest.²⁸
18. Many Kurdish MPs, including Ayhan Bilgen, Nursel Aydoğan, Ferhat Encü, Besime Konca, were re-arrested shortly after their release by the court.²⁹
19. Enis Berberoglu, a prominent journalist and a CHP Deputy, remains in prison, despite a court decision which quashed his conviction. Worse still, the Chief of the court which quashed his conviction was himself banished to another court.
20. On 2nd May, 2017, Aysenur Parıldak, a 27-year old Turkish journalist, was re-arrested only a few hours after an Ankara court released her from her nine-months pre-trial detention, in what has been seen as a new form of repression against critical and independent journalists in Turkey.³⁰
21. Cahit Nakıboğlu, a 70-year-old businessman who spent almost eighteen months in jail as part of the government’s post-coup crackdown on the Gülen

movement, was re-arrested only a day after he was released from prison, and he was put under house arrest.³¹

22. Taner Kılıç, who is the Chair of Amnesty International's Turkey Branch, was re-detained even before his release from Izmir Sakran Prison, and was then rearrested by the same court which had decided to release him. Taner Kılıç was taken into custody on 6th June, 2017, and was subsequently arrested by the Izmir Peace Criminal Judgeship on 9th June, 2017. On 31st January, 2018, the Istanbul 35th High Penal Court decided to release him at the trial's third hearing. However, after the prosecutor's appeal against the court's decision, his release procedure was frozen, and Mr. Kılıç was re-detained by prison guards, taken into the courthouse, and re-arrested by the same court that had decided to release him only hours previously.³²
23. In almost all of the cases of re-arrest, decisions to re-arrest have been triggered either by an AKP politician's statement, or by a message from a pro-Erdoğan journalist that has been posted online.
24. At the time that the said decisions to re-arrest (except in the case of Taner Kılıç) were made, there existed no right of appeal against release orders. Only after 4th December, 2017, the date when Decree No: 696 came into effect, did prosecutors and complainants have the right to appeal against release orders.
25. The İstanbul 37th High Assize Court, which had ruled for the release of the lawyers at the first hearing of the trial of 20 lawyers on the Friday, ruled to re-detain 12 of them, including the Association of Progressive Lawyers' (ÇHD) Chairman, Selçuk Kozağaçlı.³³
26. Ahmet Altan, a Turkish journalist and author, was detained a week after the Istanbul Regional Appeal Court released him.³⁴
27. Metin İyidil, a military officer, was detained a day after the Ankara Regional Appeal Court had acquitted him.

**g. The Turkish Constitutional Court's Decisions are Ineffective:
The Altan and Alpay Cases**

28. The journalists, Şahin Alpay and Mehmet Altan, who have been under arrest, respectively, since 31st July, 2016, and 22nd September, 2016, were not released, despite the Turkish Constitutional Court having ruled that decisions to arrest them were unlawful.
29. As per Article 153 of the Constitution, and Article 66/1 of the Law on the Establishment and Rules of Procedures of the Constitutional Court, Code No: 6216, "The decisions of the Constitutional Court are final. The decisions of the court are binding for the legislative, executive and judicial organs of the state, administrative offices, real and legal persons."
30. On 11th January, 2018, the Turkish Constitutional Court decided that decisions to arrest relating to the journalists, Sahin Alpay and Mehmet Altan, are unlawful and constitute the violation of rights that is envisaged by the Turkish

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

Constitution and the European Convention on Human Rights. On the same day, the Istanbul 13rd and 26th High Penal Courts refused to release Altan and Alpay, on the grounds that the decisions (of the TCC) had not yet been published in the Official Gazette. On 14th January, 2018, the Istanbul 13th and 26th High Penal Courts refused to release Altan and Alpay again, on the grounds that the TCC had exceeded its authority, which was drawn from the Constitution. On 15th January, 2018, the Istanbul 14th and 27th High Penal Courts refused the objections of Altan and Alpay's lawyers.³⁵

31. For the first time in Turkey's legal history, the constitutional authority of the Turkish Constitutional Court was thus ignored in seven separate court decisions.



h. The European Court of Human Rights' Decisions are Ineffective: The Cases of Selahattin Demirtas and Alparslan Altan

32. Alparslan Altan, who was the Deputy Chief Justice of the Turkish Constitutional Court, was detained hours after the coup attempt, and he was subsequently arrested by the Ankara Criminal Peace Judgeship. The European Court of Human Rights, on 16th April, 2019, decided that his detention was unlawful.³⁶ However, since then he has not been released and, on the contrary, he has been sentenced to eleven years in prison.³⁷
33. Selahattin Demirtas, who was the Co-Chair of pro-Kurdish Party, HDP, was detained on 4th November, 2016. On 20th November, 2018, the ECtHR decided that Turkey had violated Article 18 of the Convention, in conjunction with Article 5 § 3, and therefore the detention was unlawful.³⁸ However, Mr. Demirtas has not been released.

34. Osman Kavala, a prominent civil society leader, was detained in October, 2017. On 10th December, 2019, the ECtHR decided that Kavala's detention was a breach of Article 18 of the Convention, in conjunction with Article 5 § 3.³⁹ However, on 24th December, 2019, and 28th January, 2020, the trial court (the Istanbul 30th Heavy Penal Court) refused to release Mr. Kavala.⁴⁰

i. The UN Human Rights Committee's Decisions are Ineffective

35. On 26th March, 2019, the UN Human Rights Committee, in the case of İsmet Özçelik, Turgay Karaman and I.A v. Turkey, decided that the detention of applicants who were subject to refoulement (from Malaysia to Turkey), breached Article 9 § 1-3 (the right to the security of liberty) of the International Covenant on Civil and Political Rights.⁴¹ However, Turkey has ignored the UN Human Rights Committee's decision.

j. The UN Working Group on Arbitrary Detention Decisions is Ineffective

36. Since 2016, the UN WGAD has decided on nine occasions that Turkey has breached the right to the security of the liberty of applicants. The WGAD also concluded that the Turkish Government's detention praxis against the members of the Gülen Movement forms a Category V violation (a violation of the right to liberty on the grounds of discrimination that is based on nationality, religion, ethnic or social origin, political or other opinions, or any other status).⁴² Some of these applicants were those who were subjected to rendition from Pakistan to Turkey. Turkey has ignored all nine decisions and has not released any of the applicants.

k. Political Interference in the Judicial Process

37. According to The World Justice Project's annual reports, entitled *Rule of Law Index*, Turkey, with regard to constraints on government powers, was ranked 108th amongst 113 countries in 2016⁴³, 111st position out of 113 countries in 2017, and 2018⁴⁴, and was 123rd out of 125 countries in 2019.⁴⁵ This shows the Executive's absolute power over the judiciary and legislative.

38. President Erdoğan and the Ministry of Justice often intervene in judicial processes and have the decisions and judgments of the Courts reversed in hours or days. Three of the countless instances are as follows:

- The Metin İyidil Case: Metin İyidil, who was a three-star general, was detained and convicted by the First Instance Court for attempting to overthrow the Government. Upon his appeal, the Ankara 20th Regional Appeal Court acquitted him, when it was proven that he was abroad for a holiday during the coup attempt and was not involved in it. However, a day after the acquittal, the Court was dismantled, all of the judges who had rendered this decision were unseated and subjected to investigation. Later, President Erdoğan acknowledged that he interfered in the case. He said "How can a court follow getting a person sentenced to life imprisonment, by getting him acquitted or releasing him immediately? This is not understandable. Thank God, our Justice Minister and prosecutors were involved. They caught him as soon as possible [...]. It has been a cheerless step for our legal community. We gave all the necessary instructions on it. [...] He is now inside [in prison]."⁴⁶

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

- The Selahattin Demirtas Case: On 21st September, 2019, The Turkish President, Recep Tayyip Erdoğan, said his government would not allow the release of Selahattin Demirtaş, the jailed former Co-Chair of the People’s Democratic Party (HDP). “This nation does not forget, and will not forget, those who invited people to the streets and then killed 53 of our children in Diyarbakır. We have been following, will follow, this issue, until the end. We cannot release those people. If we release them, our martyrs will hold us accountable,”⁴⁷ said Erdoğan. On the very same day, Selahattin Demirtas was detained under a new investigation to prevent his release from the ongoing detention.
- The Can Dundar and Erdem Gul Case: When the Turkish Constitutional Court decided that the detention of the journalists, Can Dündar and Erdem Gül, was unlawful, President Erdoğan stated that he would neither recognize, nor obey, the Constitutional Court’s ruling. He said: “the prosecutor may object to the decision, and an upper court may start a new process”. He further noted that Turkey is ready to pay compensation if an upper court’s decision – detaining the two journalists again – were to be appealed before the Strasbourg Court. “The State can object to the European Court of Human Rights if it gives a decision supporting the Constitutional Court, or it can pay the compensation”, he said.⁴⁸ Moreover, the Minister of Justice, Bekir Bozdağ, declared that “the decision is certainly an examination of evidence: the Constitutional Court replaces the Court of First Instance, and makes an examination in substance. The Constitution does not accord the TCC such a right”.⁴⁹

I. The Defendants are Denied the Right to Defence⁵⁰

39. Since the failed coup of July 2016, there has been a relentless campaign of arrests against Turkish lawyers. In 77 of Turkey’s 81 provinces, lawyers have been detained and arrested on trumped-up charges, as part of criminal investigations orchestrated by the political authorities and conducted by provincial public prosecutors. As of January, 2020, 605 lawyers have been arrested, more than 1,500 lawyers have been prosecuted, and 334 lawyers were convicted and sentenced to a total of 2,086 years in prison. 14 of the detained or arrested lawyers are the Presidents or former Presidents of provincial bar associations. All of the prosecuted lawyers are being charged with terrorism that is related to offences such as being a member of an armed terrorist organization, or of running such an organization. Pursuant to the Turkish Penal Code, these two offences attract from 7.5 to 22.5 years in prison. The Turkish government has also targeted Turkish lawyers’ right of association. 34 different lawyers’ societies or associations have been shut down since the declaration of the state of emergency. After they were closed down by government decrees, all of their assets were also confiscated without compensation.^{51 52}
40. Human Rights Watch has also documented the mass prosecution of lawyers as a reprisal for their legal actions in a professional capacity.⁵³
41. Under the state of emergency rule, serious restrictions on the right to defence were introduced by the Decree Law. According to Emergency Decree 668, the public prosecutor can deny a detainee the right to see a lawyer for up to five

days. Emergency Decree 667 allows the authorities to ban a particular lawyer⁵⁴ from meeting a client, if the lawyer is found to have transmitted information to a terrorist or criminal organization, and the authorities appear to have implemented across-the-board restrictions that go well beyond that provision. Decree 667 stipulates that, in cases relating to terrorism and organized crime, communications between a detainee in pretrial prison detention and their lawyer can be recorded, monitored, limited, or stopped at the request of a prosecutor, if the authorities deem that there is a risk to security, or if such communications may be a means of passing on messages or instructions to "terrorist or other criminal organizations."⁵⁵

42. "Several lawyers told Human Rights Watch that they had limited opportunity to speak to their clients in confidence, because police officers were often present during their meetings with detainees... Some lawyers also reported that they had come under undue pressure from the police when they challenged official written police accounts of police interviews with their clients, at which they (the lawyers) had been present.
43. Most lawyers interviewed by Human Rights Watch expressed concerns for their own safety. Several commented that provincial bar associations and the Union of Turkish Bar Associations were not offering the support to lawyers that they needed, and were not willing to support efforts to document and lodge complaints about detainees' allegations of ill-treatment. Without the institutional support of the bar associations and the Union of Turkish Bar Associations, to which they belong, the ability of lawyers to protect the human rights of detainees without fear of reprisals is limited."⁵⁶
44. The Bar Human Rights Committee ("BHRC"), which is the international human rights arm of the Bar of England and Wales, has expressed concern in its trial observation reports as to the right to legal assistance and the right to adequate time and facilities to prepare a defence in Turkish court proceedings.⁵⁷

m. The Restrictions Introduced by the Decree Laws on The Rights to Fair Trials and Defence⁵⁸

45. Article 96 of Decree Law No. 696 changed the heading of Article 209⁵⁹ of the Turkish Penal Procedure Law (CMK) "Documents and records to be read mandatorily during the hearing" to "Documents and records to be told mandatorily during the hearing". Under this amendment, documents, records and other written documentation which can be used as evidence in a judgement will only be told (in summary) and not be (completely) read during hearings.
46. Article 5 of Decree Law No. 676 has made it possible "to hold a hearing without the participation of the defendant's lawyer". Article 1 of Decree Law No. 676 stipulated that, in the hearings of organized crime trials, a defendant can be represented by a maximum of three lawyers.⁶⁰ Prior to the state of emergency, this restriction was in effect only at the investigation stage, and with the above-mentioned amendment, the three-lawyer restriction is carried into effect for the prosecution stage also.

47. Article 2 of Decree Law No. 676 has unduly expanded the boundaries of the rule on banning a lawyer from attending the criminal proceedings.⁶¹ Prior to Decree Law 676, a lawyer would be banned from attending criminal proceedings only in a case where there is a pending prosecution⁶² against him/her; by the amendment in the decree, the existence of a pending investigation has been made sufficient to ban a lawyer. Also, prior to Decree Law 676, the scope to ban could comprise of only the "lawyer of the arrestee and convict". By changing the wording of *"may be banned from acting as a defence counsel, or as a representative of the arrestee or the convict"* to *"may be banned from acting as a defence counsel, or as a representative of the suspect, the arrestee or the convict"*; the restriction has become applicable for whole stages of the investigation and the prosecution procedures.

Istanbul Cumhuriyet Başsavcılığı Terör ve Örgütlü Suçlar Soruşturma Bürosu'nun 19/10/2017 tarih ve 2017/28997 soruşturma sayılı talebi ile; İstanbul C.Başsavcılığı'nın 2011/3377 ve 2017/105607 numaralı soruşturma dosyaları kapsamında işlem yapılan avukatlar hakkında ilgili kararname uyarınca DHKP/C terör örgütüne yönelik yürütülmekte olan 2017/28997 sayılı soruşturma kapsamında müdafilik görevlerinin kısıtlanmasına dair karar verilmesi kamu karar verilmesi talep edilmiş olmakla,
Talep ve talebe dayanarak evrak incelendi.
GEREĞİ DÜŞÜNÜLDÜ:
Dosyanın incelenmesinde: MLKP (Marksist Leninist Komünist Parti) terör örgütünün faaliyetlerinin deşifresine yönelik yürütülen soruşturma kapsamında terör örgütü propagandası yapmak, 2911 SKM suçlarından yargılamaları bulunan avukatlar ile haklarında soruşturma yürütülen avukatların şüphelilerle görüşmelerinin engellenmesine dair karara ihtiyaç duyulduğu belirtilmiş olmakla 667 Sayılı Kanun Hükmünde Kararname'nin 6.maddesinin g bendindeki "Yürütülen soruşturmalarda, 4/12/2004 tarihli ve 5271 sayılı Ceza Muhakemesi Kanununun 149 uncu maddesine göre seçilen veya aynı Kanunun 150 nci maddesine göre görevlendirilen müdafî, hakkında bu maddede sayılan suçlar nedeniyle soruşturma ya da kovuşturma bulunması halinde müdafilik görevini üstlenmekten yasaklanabilir. Cumhuriyet savcısının yasaklamaya ilişkin talebi hakkında, sulh ceza hâkimliği tarafından gecikmeksizin karar verilir. Yasaklama kararı, şüpheliye ve yeni bir müdafî görevlendirilmesi için ilgili baro başkanlığına derhal bildirilir." uyarınca yukarıda ismi belirtilen şüphelilerin müdafilik görevlerinin yasaklanmasına dair karar vermek gerekmiş ve aşağıdaki şekilde hüküm kurulmuştur.

The decision to ban 110 lawyers given by the 8th Istanbul Peace Criminal Judge (Oct. 2017).

48. In August, 2017, the Turkish Ministry of Justice issued an order under Article 6/g⁶³ of Decree 667 regarding the banning of certain lawyers from representing certain suspects. In the order in question, which was sent to all provincial public prosecutors, and they were asked to ban all lawyers who themselves were under criminal investigation for 2 years. So far, only in Istanbul, at least 400 lawyers have been banned by the two separate decisions that were issued by the Peace Criminal Judges.
49. Decree Law 668 has stipulated that the right of the person who has been taken into custody, to see a lawyer, may be restricted for five days^{64 65} by the prosecutor, (but no formal statements shall be taken from the accused during this time).
50. Decree Law 667 introduced the rule that oral consultations between the detainees and their lawyers may be recorded for security reasons, and the documents they exchange may be seized; the timing of such consultations may be regulated.⁶⁶ With Decree Law 676, this restriction was also carried into effect for consultations (between the detainees, and their lawyers after the detainees) in the prison.

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

51. Decree Law 667 introduced the ruling that the lawyer of the suspect, the arrestee, or the defendant, may be replaced at the request of the prosecution, by the Bar.⁶⁷
52. Decree Law 668 introduced the ruling that if the purpose of the investigation may be compromised, the defence counsel's right to examine the contents of the case-file, or to take copies, may be restricted by the decision of the prosecutor.⁶⁸ Prior to the state of emergency, such a restriction could only be decided upon by the judge.⁶⁹
53. Article 1-a of Decree Law no. 667 introduced the ruling that the deadline for bringing an arrested person before a judge is extended to 30⁷⁰ days.^{71 72} Prior to the state of emergency, the person arrested or detained had to be brought before a judge within forty-eight hours at the latest, and, in the case of offences committed collectively, within four days at the most.
54. Article 3-ç of Decree Law no. 668⁷³ introduced the ruling that the review of detention, or the examination of applications for release, may be conducted on the basis of written materials contained in the case-file (i.e., without hearing the person concerned, or his/her lawyer). Prior to the state of emergency, the judge had to hear the oral defence statement of the defendant or his/her counsel before reaching a decision.
55. Decree Law no. 667 introduced the ruling that the prosecution may seize and inspect correspondence between the defendants and "privileged witnesses" (such as spouses and lawyers, for example). Prior to the state of emergency, this was impossible.⁷⁴
56. Article 4 of Decree 676 introduced the ruling that the judge or the court may refuse to listen to the witness, or to the expert produced by the defendant. Prior to Decree 676, the judge or the court had to listen to the witness or the expert, if such were made available for the hearing by the defendant.⁷⁵
57. Article 3/1 of Decree Law 668 stipulated that any appeal against a detention order shall be examined within ten days⁷⁶ by the magistrate who took case. The Prior the decree, the maximum term in which to examine the appeal was three days⁷⁷
58. Article 142 of Decree Law 694 renders "to listen to 'the undercover investigator' as a witness in a closed hearing, without the attendance of the defendant or his/her lawyer" being possible.
59. Article 147 of Decree Law No. 694 gives authority to the judge to interrogate the defendant by video conference connection, without bringing him/her to the courtroom, even if s/he wants to attend the hearing personally.
60. Article 148 of Decree Law 694 has made the delivering of a verdict possible, even if the lawyer for the defence is not present at the hearing.
61. Article 141 of Decree Law 694 has increased the maximum pre-trial detention term from five to seven years.

62. Article 93 of Decree Law 696 gives to the prosecutor and the intervening party the authority to appeal against decisions to release the arrestee. Prior to the Decree, decisions to release that were given by the court were final.⁷⁸
63. Article 6.e of Emergency Decree Law 667 has brought about significant restrictions as to the detainees' right of communication with the outside world and visiting rights. It has narrowed down the range of relations who are allowed to visit a detainee, and the detainees' rights to be visited by 3 persons that he could freely choose, have been taken away. On the other hand, the detainees' rights to one telephone call per week has been reduced to one telephone call per fortnight.⁷⁹
64. Other essential changes introduced by Decree Laws nos. 667 and 668 are as follows:⁸⁰
- the prosecution may bar an advocate from taking up his/her duties if an investigation is pending against this person that is related to a list of offences;
 - a bill of indictment, or “documents which substitute for the bill of indictment” may be “read out or summarized and explained⁸¹” before the start of the trial;
 - in urgent cases, searches of private premises and offices (including lawyers' offices) may be authorized by a prosecutor; such seizures should be submitted to a judge for review within five days; this procedure also applies to the inspection of computers, databases, software, etc.;
 - in urgent cases, a prosecutor may order undercover investigative measures (such as wiretapping), which are subject to ex-post judicial examination.
- n. **Bar Human Rights Committee (of the Bar of England and Wales)**
65. The Bar Human Rights Committee (BHRC), which is the international human rights arm of the Bar of England and Wales often observes at the trials of jailed journalists in Turkey. In its trial observation reports⁸² regarding Turkey, the BHRC expresses concerns about the fundamental rights that are mentioned below:
- The Right to an Independent, Impartial and Competent Tribunal
 - The Right to Legal Assistance
 - The Right to Adequate Time and Facilities to Prepare a Defence
 - Sufficiency of Evidence (right to be charged with sufficient evidence)
 - Open Justice/Open Trial
 - Freedom of Expression.
66. BHRC expressed concerns, based on its observations on the Altan case, about fair trial rights and the rule of law in Turkey. Such concerns include the role of the judiciary, its independence and relationship with the prosecution, a lack of sufficient access to defence lawyers during pre-trial detention, insufficient pre-trial disclosure and a lack of sufficient evidence to establish a *prima facie* case in order to warrant continued detention and prosecution. The proceedings had the appearance of a ‘show trial’.⁸³

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

67. BHRIC raised a number of urgent human rights concerns, based on its observations of the trials that Turkey conducted in August and November, 2016. These include:
- Serious concerns relating to the adequacy and clarity of the indictments, which give no detail about several of the charges listed and appear to have been copied and pasted directly from a separate indictment against the editors of the *Cumhuriyet* newspaper.
 - A failure by the Prosecution to provide their evidence to the Defence, breaching the defendants' rights to a fair trial under the European Convention on Human Rights and the International Covenant on Civil and Political Rights. As of February, 2017, the defendants still do not know the nature of the accusations against them.
 - The continuing 23-month detention of Mehmet Baransu, of which 15 months were pre-charge. No reasons have been given by the Court for Mr Baransu's continued detention. There is no evidence as to its necessity.
 - The failure to allow Mr. Baransu effective and private legal representation, by video recording and supervising his legal conferences (which are limited to 60 minutes a week), and refusing him access to a computer to prepare his defence.
 - The dismissal of two of the three judges hearing the case, and the application by a number of former military officers to join the case as co-complainants, without notification being given to the Defence, thus further reducing the defendants' chances of a timely or fair hearing.⁸⁴



Judges of the Court of Cassation and the Council of States were giving a standing ovation to President Erdogan, 1 September 2016.

68. In another trial observation report by the BHRIC a number of serious flaws and suspected violations of the defendants' right to a fair trial were reported, those highlighted included:⁸⁵
- Judges and prosecutors failing to clarify the precise charges levelled against each defendant or offering factual evidence against them linking

TURKISH JUDICIARY, INDEPENDENCE, IMPARTIALITY AND THE RIGHT TO A FAIR TRIAL

them to clear charges, thus violating their rights under the International Covenant on Civil and Human Rights and the European Convention on Human Rights.

- Defendants being charged with membership of a proscribed organisation, despite the fact that this was legal at the time of the alleged crimes (the group in question was not banned until May, 2016).
- Large sections of the indictment appeared to have been copied and pasted from a completely different trial against a different Turkish newspaper, to the extent that defendants from that trial are named in this case.

- 69.** Unlawful use of pre-trial detention, including one defendant (Mehmet Baransu), who has been imprisoned awaiting trial since March, 2015, and who has struggled to access a lawyer or prepare his defence, again in violation of the International Covenant on Civil and Human Rights and the European Convention on Human Rights.

III. TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

a. Impunity Offered by Emergency Decree Nos.667-668

70. The very first Emergency Decree (no. 667, Art. 9 § 1) stipulated that “legal, administrative, financial and criminal liabilities shall not arise in respect of those persons who have adopted decisions and who fulfil their duties within the scope of this Decree Law”.^{86 87}
71. Emergency Decree no. 668 (Art. 37) has further expanded this principle of impunity⁸⁸, specifying that there will be no criminal, legal, administrative or financial responsibility for those making decisions, implementing actions or measures, or assuming duties as per judiciary or administrative measures for suppressing coup attempts or terror incidents, as well as individuals taking decisions or fulfilling duties as per the State of Emergency Executive Decrees.⁸⁹
72. By Emergency Decree no. 696 (Art. 121), the impunity provided to public servants under Emergency Decrees nos. 667-668, was also extended to civilians. More precisely, it was stipulated that those civilians acting to suppress the coup attempt of 15/7/2016, and the ensuing events, will have no legal, administrative, financial or criminal responsibility.^{90 91} What is more, all these three decrees were approved by the TGNA and have become ordinary laws (Law Nos. 6749, 6755 and 7079).⁹²
73. Under these provisions, public prosecutors have given non-prosecution decisions on criminal complaints that were filed for alleged murder and torture incidents. The Trabzon Prosecutors Office gave a non-prosecution decision under Art. 9 of Emergency Decree no. 667 regarding a complaint filed by an alleged torture victim.⁹³ Likewise, the Istanbul Prosecutorial Office gave a non-prosecution decision on a complaint that was filed by the family members of a military cadet who was tortured and murdered by civilians during the coup attempt.⁹⁴

T.C.
TRABZON
CUMHURİYET BAŞSAVCILIĞI

Soruşturma No : 2016/███
Karar No : 2017/███

KOVUŞTURMAYA YER OLMADIGINA DAIR KARAR

DAVACI : K.H.
MÜSTEKİ : ██████████, T.C. No: ██████████
Oğlu ██████████'den olma, ██████████19██ doğumlu, ██████████

VEKİLİ : A.V. ALI ██████████
ŞÜPHELİ : MEÇHUL SANIK
SUÇ : Görevi Kötüye Kullanma
SUÇ TARİHİ VE YERİ : 2016 TRABZON ██████████

SORUŞTURMA EVRAKI İNCELENDİ:

Her ne kadar yukarıda açık kimlik bilgileri yazılı müştekinin gözetilme alındığı sırada emniyet müdürlüğünde görevli polis memurları tarafından tehdit edilerek darp edildiği iddialarına ilişkin soruşturma işlemlerine başlanılmış ise de,

22/07/2016 tarihli 667 sayılı KHK'nın 9. Maddesi kapsamında bu kanun hükmünde kararname kapsamında karar alan ve görevleri yerine getiren kişilerin bu görevleri nedeniyle hukuki, idari, mali ve cezai sorumluluğusunun bulunmadığının belirtildiği, bu nedenle iddia konusu eylem nedeniyle şikayetçi olanlar hakkında kovuşturma yasağı bulunduğu anlaşılmaktadır.

Netice ve Karar: Yukarıda açıklanan gerekçelerle:

- 1)- Şüpheli yada şüpheliler hakkında kovuşturma imkanı bulunmadığından CMK m. 172/1 hükmü uyarınca **KAMU ADINA KOVUŞTURMAYA YER OLMADIGINA,**
- 2)- Kararın bir suretinin müşteki vekiline tebliğine,
- 3)- Olaydan zarar görenin, kararın tebliğinden itibaren 15 gün içerisinde Trabzon Sulh Ceza Hakimliği'ne itiraz hakkını kullanmakta serbestisine,
- 4)- İtirazın reddedilmesi halinde itiraz masraflarının itiraz edenden tahsil edileceğinin ihtarına,

CMK'nın 172 ve 173. maddeleri uyarınca karar verildi. 05/01/2017

ESREF AKTAŞ 174015
Cumhuriyet Savcısı
e-İmza Tablosu

(The Mentioned Nol-Pros Decision by Trabzon Prosecutorial Office)

b. Report by the United Nations Special Rapporteur on Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, dated 18 December, 2017.

74. “the Special Rapporteur notes with concern that there seemed to be a serious disconnect between declared government policy and its implementation in practice... Most notably, despite persistent allegations of widespread torture and other forms of ill-treatment, made in relation both to the immediate aftermath of the failed coup of 15 July 2016 and to the escalating violence in the south-east of the country, formal investigations and prosecutions in respect of such allegations appear to be extremely rare, thus creating a strong perception of de facto impunity for acts of torture and other forms of ill-treatment... According to numerous consistent allegations received by the Special Rapporteur, in the immediate aftermath of the failed coup, torture and other forms of ill-treatment were widespread, particularly at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations such as sports centres, stables and the corridors of courthouses... More specifically, the Special Rapporteur heard persistent reports of severe beatings, punches and kicking, blows with objects, falaqa, threats and verbal abuse, being forced to strip naked, rape with objects and other sexual violence or threats thereof, sleep deprivation, stress positions, and extended blindfolding and/or handcuffing for several days. Many places of detention were allegedly severely overcrowded, and did not have adequate access to food, water or medical treatment. Also, both current and former detainees alleged that they had been held incommunicado, without access to lawyers or relatives, and without being formally charged, for extended periods lasting up to 30 days... The Special Rapporteur heard numerous allegations that a great number of high- ranking military officers, Supreme Court judges, prosecutors, and other civil servants arrested for reasons related to the failed coup, as well as high-ranking members of pro-Kurdish political parties, had been held in prolonged solitary confinement... The Special Rapporteur was unable to confirm those allegations due to the time constraints imposed on his visit. Nevertheless, he wishes to recall that prolonged (of more than 15 days) or indefinite solitary confinement contravenes the absolute prohibition of torture and other cruel, inhumane or degrading treatment or punishment. Moreover, because of the prisoner’s inability to communicate with the outside world, solitary confinement also gives rise to situations conducive to other acts of torture or ill-treatment.” reported⁹⁵ Nils Melzer, who is the UN Nations Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment.

c. The Office of the United Nations High Commissioner for Human Rights

75. **In the report dated** 12th November, 2019, we read the following:
- Several stakeholders observed an escalation of torture and violence towards detainees while, at the same time, security personnel who may have committed crimes on behalf of the government, enjoyed immunity from prosecution during and after the attempted coup.
 - They recommended abrogating any provision that grants retroactive immunity from any legal, administrative, financial and criminal liability with respect to the perpetration of acts of torture or other ill-treatment,

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

particularly Emergency Decree-Laws Nos. (667, art. 9(1), 2016), (668 art. 37) and (696 art. 121), and related Articles of the Law No. 4483.59

- The Commissioner urged Turkey to tackle the numerous root causes of impunity in Turkey.
- Many stakeholders observed an extension of executive control over the judiciary. The justice system lacked any meaningful independence or impartiality.⁹⁶

76. In the report dated March, 2018, we see the following:⁹⁷

- OHCHR received credible reports that a number of police officers who refused to participate in arbitrary arrests, torture and other repressive acts under the State of Emergency were dismissed and/or arrested on charges of supporting terrorism.
- OHCHR documented the use of different forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and waterboarding. Based on accounts collected by the OHCHR, the acts of torture and ill-treatment generally appeared to be aimed at extracting confessions or forcing detainees to denounce other individuals. It was also reported that many of the detainees retracted forced confessions during subsequent court appearances.
- On the basis of numerous interviews and reports, OHCHR documented the emergence of a pattern of detaining women just before, during or immediately after giving birth. In almost all cases, the women were arrested as associates of their husbands, who were the Government's primary suspects in relation to connections to terrorist organizations, without separate evidence supporting charges against them. 79. OHCHR found that the perpetrators of ill-treatment and torture included members of the police, gendarmerie, military police and security forces.
- The United Nations Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment visited Turkey in November 2016 and found that torture was widespread following the failed coup, particularly at the time of arrest and subsequent detention. He further found that the number of investigations reportedly carried out into allegations of torture was "grossly disproportionate to the alleged frequency of violations

d. The Home Office; Country Policy and Information Notes

77. "... there is a real risk of mistreatment, simply on the basis that the person is a Gülenist/suspected Gülenist/relative or friend of a Gülenist, rather than due to any personal involvement in, or support for, the coup, and this may amount to persecution on the grounds of political opinion. Mistreatment may include arrest, detention and prosecution. Decision-makers must also consider whether there are any individual factors in the case which indicate that any prosecution would deny the person access to a fair trial and whether any punishment would be either disproportionate or discriminatory on the basis of the person's political opinion."⁹⁸ was said in the "Country Policy and Information Note: Gülenism: Turkey" by UK Home Office.

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

78. "Citizens critical of the government could be charged with a crime on the basis of defamation or terrorism for social media posts. President Erdoğan, senior officials and politicians harshly criticized those who disagreed with them. In August 2016, it was reported that 4,000 criminal insult cases were underway, based on claimed insults to the President or the Turkish state. There are reports that HROs are monitored by the authorities and that some persons who work for these organizations face harassment, intimidation, investigation, detention and prosecution at the hands of the authorities."⁹⁹(Statement in the "Country Police and Information Note: Human Rights Defenders: Turkey" by the UK Home Office).

e. Norwegian Ministry of Justice and Emergency Affairs (UDI)

79. According to UDI, these persons (Gülenists) are at risk of arrest, imprisonment, torture and conviction and therefore have the right to protection under the letter (a) of the first paragraph of Article 28 of the Immigration Act. In some cases, family members of the active members of the "Gülenists" also have the right to protection.¹⁰⁰

f. European Commission

80. The European Commission's reports (2016-2019) on Turkey have raised credible allegations of torture and ill-treatment."¹⁰¹ The 2019 report stated the following:¹⁰²

- Allegations of torture and ill treatment remain a serious concern. The repeated extensions of the state of emergency led to profound human rights violations, and the Government failed to take steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses. The removal of crucial safeguards by means of emergency decrees has increased the risk of impunity for perpetrators of such crimes, and has led to allegations of an increase in the number of cases of torture and ill-treatment in custody. Changes to the anti-terror legislation introduced a maximum pre-trial detention period of up to 12 days, in contravention of the relevant ECtHR case law (maximum of up to four days). There are concerns that changes in legislation allowing suspects to be brought back from prisons to police stations after being arrested have led to more cases of ill-treatment or torture.
- The handling of complaints of torture and ill-treatment is also reported to be ineffective, and allegedly entails a risk of reprisal. The NHREI, which should act as the national preventive mechanism, does not meet the key requirements under the Optional Protocol to the UN Convention Against Torture and is not yet effectively processing cases referred to it.
- Overcrowding and deteriorating prison conditions continue to be a source of deep concern. The prison population rate reached 318 per 100,000 inhabitants and, as of December 2018, the prison population stands at 260,000.
- At present, 743 children are staying with their detained mothers.
- As of December 2018, the total number of detainees in prison without an indictment, or pending trial, is 57,000. Over 20% of the total prison population are in prison for terrorism-related charges. These include journalists, political activists, lawyers and human rights defenders.

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

- There have been many allegations of human rights violations in prisons, including arbitrary restrictions on the rights of detainees, denial of access to medical care and the use of torture, mistreatment, prevention of open visits, and solitary confinement.
- There are also concerns related to the lack of access by civil society organizations to prisons, despite the allegations of human rights violations. Given that the national preventative mechanism is not fully operational, there is no oversight over human rights abuses in prisons.

g. The United States State Department

- 81.** The US State Department, in its Country Report on Human Rights Practices, has consistently reported torture, ill-treatment, arbitrary detention, the misuse of terrorism laws, and forced disappearances from Turkey, since 2016.
- 82.** In the 2016 report¹⁰³ it was reported that:
- “Following the coup attempt in July, detainees regularly reported problems including prison overcrowding and lack of access to legal representation and medical treatment. Thousands of detainees taken into custody in the initial aftermath of the July 15 coup attempt was held in stadiums, meeting rooms, and other sites, without cameras, where some were allegedly subject to mistreatment or abuse.¹⁰⁴.. Human rights groups documented several suspicious deaths of detainees in official custody following the coup attempt and noted 16 to 23 reported suicides of detainees as of November. On September 16, Seyfettin Yigit, in Bursa, allegedly committed suicide after being detained for Gülen-related connections. His family claimed he was a victim of police violence. Yigit had been heavily involved in developing the case, which was announced in 2013, alleging high-level official corruption that implicated members of then-prime minister Erdoğan’s family and close circle, including four ministers.”
 - Thousands of detainees taken into custody in the initial aftermath of the July 15 coup attempt were held in stadiums, meeting rooms, and other sites, without cameras, where some were allegedly subject to mistreatment or abuse. Amnesty International (AI) alleged some detainees in Ankara and Istanbul were tortured and reported widespread use of stress positions, denial of food and water, detention in unsanitary conditions, in addition to beatings and rapes. On July 25, AI reported that an anonymous witness at the Ankara police headquarters gym described the following: “...650-800 male soldiers were being held in the Ankara police headquarters sports hall. At least 300 of the detainees showed signs of having been beaten. Some detainees had visible bruises, cuts, or broken bones. Around 40 were so badly injured they could not walk. Two were unable to stand. One woman, who was also detained in a separate facility there, had bruising on her face and torso.” Bar Association representatives corroborated the allegations; in some cases, before-and-after photos appeared to show evidence of beatings by security forces. Authorities restricted lawyers’ access to the detainees as allowed under decrees passed during the state of emergency.¹⁰⁵
- 83.** In the 2017 report¹⁰⁶ the following were reported:
- The continuing state of emergency—imposed following the July 2016 coup attempt, renewed once in 2016 and an additional four times during the year—

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

had far-reaching effects on the country's society and institutions, restricting the exercise of many fundamental freedoms. By the year's end, authorities had dismissed or suspended more than 100,000 civil servants from their jobs, arrested or imprisoned more than 50,000 citizens, and closed more than 1,500 nongovernmental organizations (NGOs) on terrorism-related grounds, since the coup attempt, primarily for alleged ties to the cleric Fethullah Gülen, and his movement, whom the government accused of masterminding the coup attempt.

- The most significant human rights issues included the alleged torture of detainees in official custody; allegations of forced disappearance; arbitrary arrest and detention, under the state of emergency, of tens of thousands, including members of parliament and two Turkish-national employees of the U.S. Mission to Turkey, for alleged ties to terrorist groups or peaceful legitimate speech; executive interference with independence of the judiciary, affecting the right to a fair trial and due process; political prisoners, including numerous elected officials; severe restriction of freedoms of expression and media, including imprisonment of scores of journalists, closing media outlets, and the criminalization of criticism of government policies or officials; blocking websites and content; severe restriction of freedoms of assembly and association; interference with freedom of movement; and incidents of violence against LGBTI persons and other minorities.
- The government continued to take limited steps to investigate, prosecute, and punish members of the security forces and other officials accused of human rights abuses; impunity for such abuses was a problem.

84. In the 2018 report, the following were reported: Human rights issues included reports of arbitrary killing, suspicious deaths of persons in custody; forced disappearances; torture; arbitrary arrest and the detention of tens of thousands of persons, including opposition members of parliament, lawyers, journalists, foreign citizens, and three Turkish-national employees of the U.S. Mission to Turkey for purported ties to "terrorist" groups or peaceful legitimate speech; political prisoners, including numerous elected officials and academics; closure of media outlets and criminal prosecution of individuals for criticizing government policies or officials; blocking websites and content; severe restriction of freedoms of assembly and association; restrictions on freedom of movement; and violence against women, and lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons, and members of other minorities.¹⁰⁷

h. The Council of Europe Commissioner for Human Rights

85. "As regards on-going criminal proceedings, among the most immediate human rights concerns are consistent reports of allegations of torture and ill-treatment.... The Commissioner further urges the authorities to authorize the publication of the forthcoming report of the CPT as soon as it is adopted and communicated by the latter. In the opinion of the Commissioner, this would be the best way to dispel, once and for all, any doubts regarding torture and ill-treatment."¹⁰⁸

i. CPT - European Committee for the Prevention of Torture

86. CPT has visited Turkey four times since 2016. Visits were carried out

- Between 06/05/2019 and 17/05/2019 (ad hoc visit)

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

- Between 04/04/2018 and 13/04/2018 (ad hoc visit)
- Between 10/05/2017 and 23/05/2017 (periodic visit)
- Between 29/08/2016 and 06/09/2016 (ad hoc visit).

87. According to the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT), its findings from visits to prisons in Turkey in 2016 will not be published due to the lack of government approval.¹⁰⁹ Reports on the subsequent three visits have not been published either, due to Turkey's veto.

j. Human Rights Watch

88. In the report dated 25 October, 2016, by Human Rights Watch, entitled "A Blank Check: Turkey's Post-Coup Suspension of Safeguards Against Torture" 13 cases of alleged abuse committed by the Turkish Police against persons in their custody, including stress positions, sleep deprivation, severe beatings, sexual abuse, and rape threats, since the coup attempt, were detailed. ¹¹⁰ Human Rights Watch (HRW) reported that the government's decrees under the state of emergency facilitated torture by removing safeguards that protected detainees from mistreatment. The report described a pattern of denial of access to legal aid and detainees' medical reports, which it claimed prevented substantiation of allegations of physical abuse. A provision in the emergency decrees absolved government officials of any responsibility for abuses in connection with duties carried out in the context of the decrees.¹¹¹



89. "Cases of torture and ill-treatment in police custody were widely reported through 2017, especially by individuals detained under the anti-terror law, marking a reverse in long-standing progress, despite the government's stated zero tolerance for torture policy. There were widespread reports of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations... There were credible reports of unidentified perpetrators, believed to be state agents, abducting men in at least six cases, and holding them in undisclosed places of detention in circumstances that amounted to possible enforced disappearances. At least one surfaced in official custody and three others were released after periods of two to three months. The men had all been dismissed from civil service jobs for Gülenist connections."¹¹²

90. “The 11 cases of torture or ill-treatment [that] Human Rights Watch includes in this report represent a fraction of the credible cases reported in the media and on social media. Such reports indicate that torture and ill-treatment in police custody in Turkey has become a widespread problem. Official figures show that in the past year well over 150,000 people have passed through police custody accused of terrorist offenses, membership of armed groups, or involvement in the attempted coup in July 2016. The highest number of detentions concerns people suspected of links with the group the government and courts in Turkey refer to as the Fethullahist Terror Organization (FETÖ), [which is] associated with the US-based cleric Fethullah Gülen. The government says this group was behind the attempted coup. The second largest group concerns people with alleged links to the armed Kurdistan Workers’ Party (PKK/KCK). Cases reported to Human Rights Watch show that it is people detained on these two grounds who are at the greatest risk of torture. In all 11 cases of torture presented in this report, which altogether involve scores of individuals, Human Rights Watch gathered accounts of severe beatings, threats, and insults. Human Rights Watch heard accounts of detainees stripped naked, and in some cases of detainees being threatened with sexual assault or being sexually assaulted. In many cases, the torture appeared to be aimed at extracting confessions or forcing detainees to implicate other individuals. Detainees who alleged torture, were brought before doctors for routine medical reports, but either the doctors showed no interest in the physical evidence of torture, or the presence of police officers inhibited them from conducting proper medical examinations and made it hard for detainees to describe their injuries or speak about treatment in custody. In October, 2016, Human Rights Watch published a report on the impact of the removal of safeguards against torture and ill-treatment under the state of emergency that was imposed in Turkey after the attempted coup.[1] For example, the government extended the period of police detention to 30 days and restricted the right of detainees to meet their lawyers. The report documented incidents of torture that followed the introduction of these measures. In January, 2017, the cabinet issued a decree lifting some of the most severe of these restrictions on detainees’ rights. However, the evidence presented in this report indicates that, in spite of the easing of restrictions on detainees’ rights, the abuse of detainees in police custody has continued. Although President Erdoğan’s government publicly asserts a zero tolerance for torture, there remains a climate of impunity for the torture and mistreatment of detainees. Human Rights Watch is not aware of any serious measures that have been taken to investigate credible allegations of torture, much less to hold the perpetrators to account. Human Rights Watch discussed the cases of torture documented in its October 2016 report directly with the Turkish government. However, a year later, lawyers and families have informed Human Rights Watch that there has yet to be any sign that prosecutors have conducted effective investigations into two complaints by named individuals, examined in the October report, or complaints by three individuals identified in the report by their initials. Several individuals whose cases are examined in this report also told prosecutors or courts that they had been ill-treated. Most of their allegations appear to have been ignored or side-lined. There are scant indications that prosecutors are taking the initiative proactively in order to investigate abuse when they encounter suspects who show signs of having

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

been subjected to ill-treatment. These developments should be seen in the context of the government's moves since the July 2016 coup attempt to further undermine the already compromised independence of the judiciary. Mass dismissals and prosecutions of judges and prosecutors over alleged Gülenist links, and tighter executive control over the judiciary, make it increasingly unlikely that prosecutors and judges who are concerned about their own job security, will risk investigating such crimes."¹¹³

91. HRW's 2018 report mentions the following:

- Cases of torture and ill-treatment in police custody were widely reported throughout 2017, especially by individuals detained under the anti-terror law, marking a reversal of long-standing progress, despite the government's stated zero tolerance for torture policy. There were widespread reports of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations.
- There were credible reports of unidentified perpetrators, believed to be state agents, abducting men in at least six cases, and holding them in undisclosed places of detention in circumstances that amounted to possible enforced disappearances.
- At least one surfaced in official custody, and three others were released after periods of two to three months. The men had all been dismissed from civil service jobs for Gülenist connections.¹¹⁴

92. HRW's 2019 report reported on the following:

- Continued allegations of torture, ill-treatment, and cruel and inhumane, or degrading treatment in police custody, and prisons and the lack of any meaningful investigation into them, remained a deep concern. These issues were raised by the UN special rapporteur on torture in a February statement.
- There have been no effective investigations into the 2017 abductions, allegedly by state agents, of at least six men who were held in undisclosed places of detention before their release, months later, in circumstances that amount to possible enforced disappearance.
- The Turkish authorities continued to seek the extradition of alleged Gülen supporters, many of them teachers, from countries around the world. Without adhering to legal due process, security services in countries, including Kosovo and Moldova, cooperated with Turkish agents during the year to apprehend and transfer Turkish citizens to Turkey, where they were detained and prosecuted.¹¹⁵

93. HRW's 2020 report stated the following:

- A rise in allegations of torture, ill-treatment, and cruel and inhumane, or degrading treatment in police custody and prison over the past four years, has set back Turkey's earlier progress in this area. Those targeted include Kurds, leftists, and alleged followers of Fethullah Gülen.
- Prosecutors do not conduct meaningful investigations into such allegations, and there is a pervasive culture of impunity for members of the security forces and public officials who are implicated.

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

- The European Committee for the Prevention of Torture (CPT) has conducted two visits to detention places in Turkey since the coup attempt, one in May, 2019, although the Turkish government has not given permission for reports from either visit to be published.
- There were abductions of six men in February, and one in August, in circumstances that amount to possible enforced disappearances by state agents, with six surfacing in police custody months later, and then being remanded to pretrial detention, but restricted from seeing lawyers sent by the families.
- Turkish authorities continued to seek the extradition of alleged Gülen supporters, many of them teachers, from countries around the world. Countries that complied with Turkey's requests bypassed legal procedures and judicial review. Those illegally extradited in this way were detained and prosecuted on return to Turkey.¹¹⁶

k. Amnesty International

94. Its report dated 24 July, 2016 reads as follows: 'Information provided to Amnesty International by lawyers reflected that many detainees were being held arbitrarily. In the vast majority of cases, they said that no evidence establishing reasonable suspicion of criminal behaviour was presented against their clients during the charge hearings; and the hearing did not establish that there were permissible reasons for detention pending trial. 'Instead, lawyers explained that judges ordered detained soldiers to be placed in pre-trial detention if they left their barracks the evening of the coup, regardless of the reason. In one case, a detainee who appeared before the court was not asked a single question by the judge at her hearing. 'Some of the questioning by judges was entirely irrelevant to the events of the coup attempt, and appeared intended to establish any link to Fethullah Gülen or institutions sympathetic to him... 'Lawyers explained that detainees were remanded in pre-trial detention even without a finding that a detainee was a flight risk or that there was a risk a detainee would tamper with evidence, as is legally required.'¹¹⁷

l. Progressive Lawyers Association

95. 'In August [2016], the Istanbul Prison Monitoring Commission of the Progressive Lawyers Association (PLA-ÇHD) reported that the state of emergency had negatively affected prison conditions. The report, based on information acquired through complaints received, and interviews conducted, by the association's lawyers, identified several alleged violations of prisoners' rights, including prisoners injured during prison transfers, restrictions on telephone calls and family visits, restricted access to information and reading material, recordings of attorney-client meetings, and abuse of sick prisoners. 'The HRA [Human Rights Association] reported that political prisoners were typically held in higher-security prisons and only received one to two hours per week of recreational time. The law normally allows prisoners 10 hours of recreational time per week, and this provision was restricted by government decree following the coup attempt.'¹¹⁸
96. Selçuk Kozağaçlı, the President of the PLA-ÇHD, said, during the Ankara Bar Association's general assembly on Oct. 16 (2016), that people imprisoned as part of a government crackdown on the Gülen movement are being

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

systematically tortured in the most barbaric ways, including rape, removal of nails, and the insertion of objects into their anuses. “They remove the nails of colleagues [during detention] at police stations. Believe me, I saw people who underwent a colostomy after they were tortured with objects inserted into their anuses in prison and police stations,” said Selçuk Kozağaçlı.

m. Stockholm Center For Freedom

97. In a report entitled “Mass Torture and Ill-Treatment in Turkey”, Sweden based human rights organization, the Stockholm Center for Freedom, reported 29 cases of torture incidents including rape, sexual abuse, severe beatings, sleep deprivation, stress positions, subjecting to cold pressurized water, deprivation of food and water, threats to kill and rape.¹¹⁹ “Torture, abuse and ill treatment of detainees and prisoners in Turkey has become the norm rather than the exception under the repressive regime of President Recep Tayyip Erdoğan, who has publicly vowed to show no mercy to his critics, opponents and dissidents amid a mass persecution that has landed over 50,000 people in jail on trumped-up charges in the last ten months alone.”¹²⁰ said the report.
98. The SCF also reported the death of Gokhan Açikkollu, who was a history teacher and who died after enduring 13 days of torture and abuse in police detention in İstanbul.¹²¹ According to the SCF, 54 people were reported to have lost their lives, most of them under suspicious circumstances, and locked up during the ongoing state of emergency rule.¹²²

n. Platform for Peace and Justice

99. A report from the Platform for Peace and Justice found; “With significant human rights violation claims, the prisons of Turkey are places which are closed to inspections by both national and international civil rights organizations and cannot be efficiently scrutinized by the UN and EU institutions. Even the reports about these prisons which have managed to be prepared after restricted inspections, are not allowed to be made public. Because of the oppression in the country, neither detainees nor their lawyers are able to pursue the violations committed in these prisons by means of either judicial or administrative remedies, and, for the same reasons, they cannot make these violations known to the public. Following the extensive detentions conducted after the July 15 event, the report draws attention to the fact that the majority of the rights violations are committed against those who have been detained under the accusation of the “membership of a terrorist organisation”¹²³

o. Advocates of a Silenced Turkey

100. The AST (an US based NGO), on 20th January, 2020, reported that, since 2016, 104 victims have lost their lives due to torture and ill-treatment, either under police custody or in prisons.¹²⁴

p. Ankara Bar Association

101. On 28th May, 2019¹²⁵, and 20 December, 2019¹²⁶, the Ankara Bar Association published two reports documenting the ongoing torture and sexual abuse of suspects that was taking place in the Ankara Police HQ. The Ankara Bar Association immediately informed the Public Prosecutor’s Office to take immediate steps to end the ongoing torture incidents, however, the

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

Prosecutor's office did not take any steps to stop the torture and/or to investigate the incident.

q. **Gaziantep Bar Association, Sanliurfa Bar Association and TOHAV**

102. Gaziantep and Sanliurfa Bar Associations, and TOHAV (Society & Law Research Association) have published separate reports documenting torture, sexual abuse and illegal interrogation of individuals detained in the district of Halfeti in the Sanliurfa province.¹²⁷ Like the other incidents, no steps have been taken by the respective authorities to stop or investigate the incidents.

r. **A Coalition of Human Rights Organisations**

103. A coalition of NGOs consisting of the Ankara Medical Chamber (ATO), the Human Rights Association, the Lawyers Association for Freedom, the Contemporary Lawyers' Association, the Rights Initiative Association, the Revolutionary 78'ers Federation, the Human Rights Agenda Association, the SES Ankara Branch, and Human Rights Foundation of Turkey (TIHV), made a joint statement regarding torture and ill-treatment incidents that had taken place in Turkey, and in Ankara, in particular. "There has been an increase in kidnapping, torture and ill-treatment in custody, with the aim of exerting pressure on people, punishing, intimidating and forcing them to confess, which started, in particular, with the State of Emergency process, and which has increased in recent years. ***In the case of Ankara, these practices have unfortunately become systematic.***" It said in the statement.¹²⁸



s. **A Coalition of International Journalists: Black Sites –Turkey**

104. A coalition, consisting of nine media outlets from different countries, documented the Turkish Government's illegal rendition and abduction operation and the black sites of the Turkish Intelligence Agency (MIT) where victims have been tortured for months.¹²⁹



t. **Overpopulation of Prisons in Turkey**

105. İHD (Human Rights Association) said, in a report on Oct. 21 (2016), that there are nearly 220,000 people in Turkey's prisons, which is more than 20 percent above the 183,000-person capacity. According to the İHD report, Turkish

TORTURE, ILL-TREATMENT AND INHUMANE PRISON CONDITIONS IN TURKEY

prisons rapidly became overwhelmed by detentions and arrests that followed the failed coup in Turkey on July 15.¹³⁰ According to the Prison Studies, the official capacity of Turkish prisons is 220,000.¹³¹

- 106.** On 20th December, 2019, the Minister of Justice, Abdulhamit Gül, stated that there were 290,000 people in prisons.¹³² It means that the occupancy level of Turkish prisons is %131 or %153 depending on whether one based on the IHD's report or the Prison Studies' report.
- 107.** According to a report (November-2019) by the Human Rights Commission of the Turkish Parliament, Silivri prison's inmate population more than doubled its official capacity. The Commission also determined that the drinking water in the prison was coming through old and rusty pipes, which was resulting in health problems among the inmates.¹³³

IV. PLIGHT OF INDIVIDUALS WHO WERE BROUGHT BACK TO TURKEY BY MEANS OF RENDITION OR ABDUCTION

- 108.** Ayten Öztürk, who was detained in Lebanon in March, 2018, for alleged membership of the Revolutionary People's Liberation Party/Front (DHKP/C) and who was subjected to illegal rendition, was tortured for six months in the Turkish Intelligence Agency's (MIT) blacksite. Ozturk's 12-page defence in court goes into great detail about the torture, and this is also similar to the statements of those people who were kidnapped by MIT with Black Transporters. Up to the present, 27 people have been kidnapped in relation to cases about the Gülen Movement. Survivors have stated that there were other tortured people, and that some of them may be Syrian Kurds.¹³⁴
- 109.** Zabit Kisi, a Turkish citizen, was abducted in Kazakhstan and brought to Turkey on 30 October, 2017. No one heard anything about him for 108 days. During this time, no information was given to his family or his lawyers, despite formal applications. He recounted the torture to which he was subjected through a plea submitted to the Court. According to the document that was included in the case file,
- Zabit Kisi had been tortured from the moment he was handed over to MIT in Kazakhstan, and he had bled from his genitals for days because of a blow to his groin on the plane.
 - He was kept in a container for 108 days at a distance of 6 minutes by car from the airport where they landed in Ankara, and he was stripped naked, given electric shocks to his body, left dehydrated for days, exposed to sexual abuse, beaten without interruption, was watched while attending to toilet needs, had drugs injected into his body when he was about to die, and was then tortured again.
 - People introduced themselves as MIT officials on the plane and they turned him over to the Ankara Anti-Terror Teams in a place he did not know, after 108 days of torture.¹³⁵
 - After an unfair trial, Zabit Kisi was sentenced to 13 years in prison.
- 110.** Alaettin Duman and Tamer Tibik: On 13th October, 2016, Alaettin Duman (49) and Tamer Tibik (43) were kidnapped and later turned over to Turkey. Duman was an educator and Tibik served as the General Secretary of the Malaysian–Turkish Chamber of Commerce and Industry for about 1.5 years. Duman and Tibik were tortured, both in Malaysia and Turkey.¹³⁶
- 111.** Alaettin Duman had been tortured, especially during the night, while he was in police custody in the Turkish capital. Some nights he was taken out of the police station to an empty spot in a remote place, threatened with a gun to his head, and told to, “Confess everything. Your wife and daughters are in danger if you do not confess.” These threats continued non-stop.¹³⁷ Duman was subjected to beating, torture, death threats and staged executions during his pretrial detention in Ankara, according to his cellmate.¹³⁸

- 112.** Turgay Karaman, 43, Ihsan Aslan, 39, and Ismet Ozcelik, 58, were deported to Turkey on 11 May, 2017, without due process.¹³⁹ They were remanded for pretrial detention in Turkey. According to the UN Human Rights Committee documents, İsmet Özçelik informed his counsel that he had been subjected to ill-treatment, that violence had been used against him and that his family had been threatened. Due to this ill-treatment, his health problems – in particular, his heart condition, have drastically worsened. Turgay Karaman has also been subjected to ill treatment and torture. The authors claim that they have also been threatened with solitary confinement. In their submission of 25 September, 2017, the authors provide further information about their claims under Article 10 of the Covenant. They claim that their families were not informed of their prison transfers, and that they were detained in a prison far from their families' hometown. Contact with their families is thus so difficult and burdensome that they rarely have the opportunity to communicate with them, despite having made official applications for telephone conversations with family members. They also claim that they were not allowed to receive clothes from their families for a period of three months, and that they were refused adequate medical care. They are kept in over-crowded cells, which are intended for a maximum of 20 persons, but in which 26 persons are held. They have been deprived of basic access to food, hygienic conditions and recreation.
- 113.** On 26 March, 2019, the UN Human Rights Committee opined that Turkey had violated the rights to security and liberty of Karaman, Arslan and Ozcelik, and decided that Turkey had to release the applicants.¹⁴⁰ However, Turkey has sentenced all three to long terms of imprisonment, instead of releasing them.

V. POLITICAL ATMOSPHERE

114. Speaking at a rally in the Black Sea province of Zonguldak on April 4, 2017, Erdoğan said, “We will eradicate this cancer [the Gülen movement] from the body of this country and the state. They will not enjoy the right to life. ... Our fight against them will continue until the end. We will not leave them wounded.”¹⁴¹
115. Mehmet Metiner, a ruling party MP, who also serves as the Chair of the parliamentary sub-committee on prisons, once stated that the commission would not investigate allegations of torture against alleged Gülen supporters in prisons...¹⁴²
116. Addressing AKP supporters, the former Economy Minister, Nihat Zeybekçi, said, “We will punish them in such a way that they will say, ‘I wish I was dead’. They will not see a human face and they will not hear a human voice. They will die like sewer rats in cells of 1.5–2 square meters.”¹⁴³
117. “If a dealer is near a school the police have a duty to break his leg. Do it and blame me. Even if it costs five, 10, 20 years in jail – we will pay.”¹⁴⁴ said Suleyman Soylu, Turkey's Interior Minister, who is, *ex officio*, the chief of the police force.

VI. PROVISIONS OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS APPLICABLE TO EXTRADITION CASES

Article 1: Obligation to respect Human Rights: The High Contracting Parties shall secure for everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

Article 3: Prohibition of torture: No one shall be subjected to torture or to inhumane or degrading treatment or punishment.

Article 6: Right to a fair trial: 1. In the determination of his civil rights and obligations, or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proven guilty, according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands, and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person, or through legal assistance of his own choosing, or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine, or have examined, witnesses against him, and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

VII. PROVISIONS OF THE UN CONVENTION AGAINST TORTURE APPLICABLE TO EXTRADITION CASES

Article 3: 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.¹⁴⁵

VIII. THE EUROPEAN COURT OF HUMAN RIGHTS' RULINGS REGARDING EXTRADITION CASES

- 118.** The European Court of Human Rights has referred to the European Convention on Human Rights as “a constitutional instrument of European public order (ordre publique)”. The ECHR does not recognize the doctrine of “nationality”, either. According to Article 1 (of) the ECHR, “everyone” within the jurisdiction of a contracting party benefits from the rights and freedoms enumerated in the Convention. This means that, in theory at least, the rights and freedoms recognised by the Convention are universally available to all individuals, including aliens, be they nationals (e.g., immigrants or refugees) or non-nationals (e.g., stateless) of a foreign state.¹⁴⁶
- 119.** The Court said, in regard to Articles 1 and 3 of the Convention, that “the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhumane or degrading treatment or punishment, including such ill-treatment administered by private individuals.”¹⁴⁷
- 120.** Article 6 guarantees the right to a fair and public trial in the determination of an individual’s civil rights and obligations, or of any criminal charge against him. The High Contracting Parties are under a positive obligation to take all the steps necessary to ensure that the right to a fair trial is guaranteed.
- 121.** The court has said, in its landmark decision about the applicability of Article 3 of the Convention to decisions relating to extradition requests:
“The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhumane or degrading treatment or punishment would itself engage the responsibility of a Contracting State under Article 3. That the abhorrence of torture has such implications is recognized in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, which provides that “no State Party shall ... extradite a person where there are substantial grounds for believing that he would be in danger of being subjected to torture”. The fact that a specialized treaty should spell out in detail a specific obligation that is attached to the prohibition of torture does not mean that an essentially similar obligation is not already inherent in the general terms of Article 3 of the European Convention. It would hardly be compatible with the underlying values of the Convention, that the “common heritage of political traditions, ideals, freedom and the rule of law”, to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed. Extradition in such circumstances, while not explicitly referred to in the brief and general wording of Article 3 (Art. 3), would plainly be contrary to the spirit and intendment of the Article, and, in the Court’s view, this inherent obligation not to extradite also extends to cases in which the fugitive

would be faced by a real risk of exposure to inhumane or degrading treatment or punishment, proscribed by that Article”¹⁴⁸, in the receiving State.

- 122.** The Court has found that the extradition, by the Belgian Government, of a Tunisian national, Mr Trabelsi, from Belgium to the United States, where he was to be prosecuted on charges of terrorist offences and was liable to be sentenced to life in prison, was a violation of Article 3 of the Convention.¹⁴⁹ The applicant complained, in particular, that his extradition to the United States of America would expose him to treatment incompatible with Article 3 of the Convention. He contended, in this regard, that some of the offences for which his extradition had been granted carried a maximum sentence of life imprisonment, which was irreducible *de facto*, and that if he were convicted, he would have no prospect of ever being released. The Court considered that the life sentence to which the applicant was liable in the United States was irreducible, inasmuch as US law provided for no adequate mechanism to review this type of sentence, which meant that his extradition to the United States had amounted to a violation of Article 3 of the Convention.¹⁵⁰
- 123.** The Court has addressed the issue of states’ parties’ reliance on diplomatic assurances as a safeguard against violations of states’ obligations under Article 3 (prohibition against torture) of the European Convention on Human Rights.¹⁵¹ In *Chahal v. United Kingdom*,¹⁵² the court ruled that the return to India of a Sikh activist would violate the U.K.’s obligations under Article 3, despite diplomatic assurances proffered by the Indian government that Chahal would not suffer mistreatment at the hands of the Indian authorities.^{153 154}
- 124.** The Grand Chamber of the Court unanimously reaffirmed the absolute character of the prohibition of torture and inhumane or degrading treatment or punishment, provided by Article 3 of the European Convention on Human Rights (ECHR). In the case of *Saadi v. Italy*¹⁵⁵, the Court held that the decision of the Italian government to deport a suspected terrorist to Tunisia—where he would have faced a “real risk” of torture—would have resulted in a violation of Article 3 ECHR. The Court strongly reaffirmed the principle that no circumstance, including the threat of terrorism, can justify exposing an individual to the risk of serious human rights mistreatment.¹⁵⁶
- 125.** Article 6 of the European Convention on Human Rights guarantees the right to a fair trial. It enshrines the principle of the rule of law upon which a democratic society is built, and the paramount role of the judiciary in the administration of justice, reflecting the common heritage of the Contracting States. It guarantees the procedural rights of parties to civil proceedings (Article 6 §1) and the rights of the defendant (the accused suspect) in criminal proceedings (Article 6 §§1, 2 and 3). Whereas other participants in the trial (victims, witnesses, etc.) have no standing from which to complain under Article 6 (*Mihova v. Italy*), their rights are often taken into account by the European Court of Human Rights.¹⁵⁷
- 126.** According to the Court’s case-law, however, an issue may exceptionally arise under Article 6, as a result of an extradition or expulsion decision, in circumstances where the individual would risk suffering a flagrant denial of a fair trial, i.e., a flagrant denial of justice, in the requesting country. This principle

was first set out in *Soering v. the United Kingdom* (§ 113), and it has subsequently been confirmed by the Court in a number of cases (*Mamatkulov and Askarov v. Turkey* [GC], §§ 90-91; *Al Saadoon and Mufdhi v. the United Kingdom*, § 149; *Ahorugeze v. Sweden*, § 115; *Othman (Abu Qatada) v. the United Kingdom*, § 258). The term “flagrant denial of justice¹⁵⁸” has been considered to be synonymous with a trial, which is manifestly contrary to the provisions of Article 6, or the principles that are embodied therein (*Sejdovic v. Italy* [GC], § 84; *Stoichkov v. Bulgaria*, § 56; *Drozd and Janousek v. France and Spain*, § 110).¹⁵⁹

- 127.** It took over twenty years from the *Soering v. the United Kingdom* judgment – that is, until the Court’s 2012 ruling in the case of *Othman (Abu Qatada) v. the United Kingdom* – for the Court to find, for the first time, that an extradition or expulsion would in fact violate Article 6. This indicates, as is also demonstrated by the examples given in the preceding paragraph, that the “flagrant denial of justice” test is a stringent one. A flagrant denial of justice goes beyond mere irregularities or the lack of safeguards in the trial proceedings, such as might result in a breach of Article 6 if such a trial occurred within the Contracting State itself. What is required is a breach of the principles of a fair trial that are guaranteed by Article 6, which is so fundamental as to amount to a nullification, or to the destruction of the very essence, of the right guaranteed by that Article (*Ahorugeze v. Sweden*, § 115; *Othman (Abu Qatada) v. the United Kingdom*, § 260).¹⁶⁰
- 128.** When examining whether an extradition or expulsion would amount to a flagrant denial of justice, the Court considers that the same standard and burden of proof should apply as in the examination of extraditions and expulsions under Article 3. Accordingly, it is for the applicant to adduce evidence that is capable of proving that there are substantial grounds for believing that, if removed from a Contracting State, he would be exposed to a real risk of being subjected to a flagrant denial of justice. Where such evidence is adduced, it is for the Government to dispel any doubts about it (*Ahorugeze v. Sweden*, § 116; *Othman (Abu Qatada) v. the United Kingdom*, §§ 272-280; *El Haski v. Belgium*, § 86; *Saadi v. Italy* [GC], § 129). In order to determine whether there is a risk of a flagrant denial of justice, the Court must examine the foreseeable consequences of sending the applicant to the receiving country, bearing in mind the general situation there, together with his personal circumstances (*Al-Saadoon and Mufdhi v. the United Kingdom*, § 125; *Saadi v. Italy* [GC], § 130). The existence of the risk must be assessed primarily with reference to those facts which were known, or ought to have been known, to the Contracting State at the time of expulsion (*Al-Saadoon and Mufdhi v. the United Kingdom*, § 125; *Saadi v. Italy* [GC], § 133). Where the expulsion or transfer has already taken place by the date on which it examines the case, however, the Court is not precluded from having regard to information which comes to light subsequently (*Al-Saadoon and Mufdhi v. the United Kingdom*, § 149; *Mamatkulov and Askarov v. Turkey* [GC], § 69).¹⁶¹

IX. OPINIONS OF THE UN BODIES

- 129. The UN Committee Against Torture:** On 10th May, 2019, The Committee decided in relation to three cases that the possible extradition of three Turkish citizens from Morocco to Turkey would violate Morocco's obligation under the UN Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment.¹⁶²
- 130. The UN Human Rights Committee:** the Committee, in the case of İsmet Özçelik, Turgay Karaman and I.A v. Turkey, decided that the detention of applicants who were subject to refoulement (from Malaysia to Turkey), breached Article 9 § 1-3 (the right to the security of liberty) of the International Covenant on Civil and Political Rights.¹⁶³ The Committee also concluded that the Turkish Constitutional Court did not appear as an effective domestic remedy for the applicants.
- 131. The UN Working Group on Arbitrary Detention:** Since 2016, the WGAD has considered ten cases filed against Turkey. In all cases, the WGAD opined that the detentions in question were unlawful.¹⁶⁴ The WGAD also concluded that the Turkish Government's detention praxis against the members of the Gülen Movement forms a Category V violation (a violation of the right to liberty on the grounds of discrimination that is based on nationality, religion, ethnic or social origin, political or other opinions, or any other status).¹⁶⁵
- 132.** The UN Human Rights Committee and WGAD have consistently decided that Turkey had criminalized lawful conducts including exercise of the right to freedom of thought, conscience and religion, the right to freedom of expression, the right of peaceful assembly, the right to freedom of association with others.

X. JUDGMENTS RENDERED ON TURKEY'S EXTRADITION REQUESTS

- 133.** Since 2016, the courts of the United Kingdom, Germany, Brazil, Romania, Bosnia, Poland, Montenegro and Greece have dismissed extradition requests filed by Turkey. Refusals were based on either the political nature of the accusations, or were due to their failure to pass a dual criminality test, or because of the risk of being subjected to torture or ill-treatment in Turkey.
- 134. Germany:** The Federal Constitutional Court on 18 December, 2017¹⁶⁶, and 4 December, 2019¹⁶⁷, having concluded that it was highly likely that Turkey would not respect minimum standards deriving from international law, annulled the lower courts' decisions ordering the extradition of two different individuals to Turkey.¹⁶⁸
- 135. Brazil:** The Supremo Tribunal Federal, on 6 August, 2019, dismissed the extradition request filed by Turkey on Ali Sipahi.¹⁶⁹ Brazil's Supreme Court unanimously concluded that "There was no assurance that the extradited person would be ensured an impartial trial by an independent judge."¹⁷⁰
- 136. The United Kingdom:** Since 2016, the UK courts have dismissed at least six extradition requests filed by the Turkish Government:
- a) On 14 December, 2016, Westminster Magistrates' Court decided that extradition of the accused would breach his rights, which are enshrined under Arts. 2,3,6,8 of the European Convention on Human Rights. The Court also concluded that Turkey's request was politically motivated, and it failed to pass the dual criminality test.¹⁷¹
 - b) On 4 May, 2017, the High Court of Justice annulled a decision to extradite an individual to Turkey on the grounds that his extradition would violate Art. 3 of the European Convention on Human Rights.¹⁷²
 - c) On 28 November, 2018, Westminster Magistrates' Court dismissed Turkey's request for the extradition of three individuals. The Court concluded that the accusations against the accused were politically motivated, and they would be highly likely face ill-treatment.¹⁷³ The High Court of Justice upheld the decision.¹⁷⁴
- 137. Poland:** In April of 2016, the Polish Regional Appeal Court in Gorzów Wielkopolski refused to extradite Erdal Gökoğlu, a Turkish citizen with refugee status granted by Belgium, to Turkey. The Court concluded that Mr. Gökoğlu's fundamental rights, which are enshrined by the ECHR, may be violated in Turkey.¹⁷⁵
- 138. Bosnia:** Since 2016, the Bosnian courts have dismissed at least three extradition requests filed by the Turkish Government:
- a) In April of 2018, The Appeals Chamber of Bosnia dismissed a request for the extradition of Humeyra Gökçen, on the grounds that she had refugee

status, granted by Bosnia, and there was a failure in the dual criminality test.¹⁷⁶

- b) On 18 December, 2018, the Court of Bosnia and Herzegovina rejected Turkey's request to extradite Özer Özсарay, a Turkish journalist, on the grounds that Bosnia did not recognize a terrorist organization called FETÖ, referring to a Ministry of Security of Bosnia and Herzegovina document, dated 6 November, 2018. The decision was upheld by the Bosnian Court of Appeal and announced by the Minister of Justice, Josip Grubesa, on 16 January, 2019. The Minister noted that Turkey's request did not meet the requirements for compliance with an agreement on Mutual Legal Assistance in Criminal Matters.¹⁷⁷
- c) On 17 December, 2019, a Bosnian Court annulled an administrative decision to deport Fatih Keskin, who was a Turkish teacher working in Bosnia.¹⁷⁸

139. Romania: Since 2016, Romanian courts have dismissed at least two extradition requests filed by the Turkish Government:

- a) On 14 December, 2018, the Bucharest Court of Appeal dismissed Turkey's extradition request relating to the journalist, Kamil Demirkaya.¹⁷⁹ The Court concluded, as follows: 'All this evidence entitles the Court to find that, in this case, it may be reasonably determined that the extradition of the Turkish citizen is being requested in order to prosecute or punish him for reasons of political or ideological opinions, or for membership of a certain social group, which is a mandatory reason to refuse (an) extradition (request).'
- b) On 18 December, 2019, the Appeal Court dismissed Turkey's request for the extradition of Busra Zeynep Zen, who is an English teacher living in Romania. The Court found that Turkey's request was politically motivated and groundless.¹⁸⁰

140. Montenegro: On 7 October, 2019, Montenegro's Appeal Court overturned a lower court's decision which approved Turkey's extradition request in relation to Harun Ayvaz, who is allegedly a member of the Gülenist movement, and who is wanted in his home country for alleged terrorism offences.¹⁸¹

141. Greece: Since 2016, Greece's First Instance and Appeal Courts have dismissed Turkey's eight extradition requests. In the opinion as to the decision: 'They may be subjected to torture and inhumane behavior,' the Greek prosecutor said.¹⁸² 'In each case there are valid concerns of an unfair trial, and the risk of facing torture and humiliating behavior,' a court official said, citing the ruling.¹⁸³

XI. CONCLUSION

- 142.** The reports mentioned above, together with the respective judgments and opinions rendered by courts in the United Kingdom, Germany, Brazil, Romania, Bosnia, Poland, Montenegro and Greece, and by the ECtHR, the UN Human Rights Committee, the UN Committee Against Torture (UNCAT) and the UN Working Group on Arbitrary Detention (WGAD) on the matter, clearly show that anyone (principal), particularly in cases where the principal is accused of terrorism-related offences or offences against state security, who may be extradited to Turkey,
- i.** will most likely be subjected to torture and ill-treatment,
 - ii.** will not be able to enjoy his right to freedom in the absence of undue government approval, even when released by a competent court of law,
 - iii.** will not be able to enjoy the right to a fair trial,
 - iv.** his right to counsel will be unlawfully hindered.
- 143.** Finally, in the view of the well-established positions of the European Court of Human Rights and the UN Human Rights Committee, the UNCAT and the WGAD,
- i.** The treatment the principal will receive at the hands of Turkish official bodies will constitute serious violations of Articles 3 and 6 of the European Convention on Human Rights, and would be a violation of Article 3 of the UN Convention Against Torture,
 - ii.** Any state which extradites an individual, particularly those who are accused of terrorism-related offences, or offences against state security, to Turkey, will be breaching its obligation under the International Covenant on Civil and Political Rights, the UN Convention Against Torture and the European Convention on Human Rights.

§§§§§§

XII. ENDNOTES

- 1 <https://www.bik.gov.tr/turkiyedeki-suriyelilerden-368-bini-evine-dondu/>
<https://www.turkishminute.com/2019/11/21/turkey-detains-261000-arrests-91000-in-post-coup-crackdown-on-gulen-followers/>
- 2 <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/firari-fetoculer-icin-94-ulkeyle-iade-trafigi/1531205>
- 3 <https://www.csce.gov/sites/helsinkicommission.house.gov/files/SCHENKKAN%20Nate%20-%20Testimony.pdf>
- 4 <https://www.dw.com/en/turkey-using-interpol-to-track-down-dissidents/a-51159723>
- 5 Mustafa Onder, Ferhat Erdoğan, Elmas Ayden vs Morocco, 845/2017, 846/2017, 827/2017, <https://arrestedlawyers.org/2019/12/05/the-un-committee-against-torture-extradition-to-turkey-would-constitute-a-breach-of-article-3-of-the-convention/>
- 6 https://soe.tccb.gov.tr/Docs/OHAL_Report_2019.pdf
- 7 <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/firari-fetoculer-icin-94-ulkeyle-iade-trafigi/1531205>
- 8 The Free Judges. The Collapse of Turkish Judiciary in Numbers and Principles. <https://freejudges.wordpress.com/2017/12/21/%E2%80%8Bopinion-the-collapse-of-turkish-judiciary-in-numeric-and-principle/>
- 9 Anatolian News Agency. More than 35 judges and prosecutors dismissed in Turkey. <http://aa.com.tr/en/turkey/more-than-35-judges-prosecutors-dismissed-in-turkey/928093?amp=1>
- 10 Infographic on purge of the Turkish Judiciary, <https://arrestedlawyers.org/2019/09/07/infographic-on-purge-of-the-turkish-judiciary/>
- 11 Ibid.
- 12 <https://www.facebook.com/CommissionerHR/posts/806253422883903>
- 13 Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders, <https://www.coe.int/en/web/commissioner/-/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders>
- 14 The Venice Commission. Opinion on The Amendments To The Constitution Adopted By The Grand National Assembly On 21st January, 2017, And To Be Submitted To A National Referendum On 16 April, 2017. [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2017\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2017)005-e)
- 15 Platform for Peace and Justice (PPJ). *The Non-Independence and Non-Impartiality Of the Turkish Judiciary*. <http://www.platformpj.org/wp-content/uploads/NON-INDEPENDENCE-OF-TURKISH-JUDICIARY.pdf>
- 16 The World Justice Project. Rule of Law Index 2016-2017. <http://data.worldjusticeproject.org/pdf/rule-of-law-index-TUR.pdf>
- 17 The World Justice Project. Rule of Law Index 2017-2018. worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf
- 18 <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2019>
- 19 Home Office. Country Police and Information Note: Gülenism: Turkey. p.9 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682868/Turkey_-_Gülenists_-_CPIN_-_v2.0.pdf
- 20 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850840/turkey-ffm-report-2019.pdf
- 21 Home Office. Country Police and Information Note: Human Rights Defenders: Turkey.
- 22 Platform for Peace and Justice (PPJ). *The Non-Independence and Non-Impartiality Of the Turkish Judiciary*
 - Kemal Karanfil, the former Criminal Justice of the Peace of Eskişehir, who, in one of his decisions as a Criminal Judge of Peace, held that Criminal Peace Judgeships were devoid of independence and impartiality, and they lacked due judicial process, a decision which he sent to the Turkish Constitutional Court for consideration, and he was consequently appointed to a court in Zonguldak on the 15th January, 2015, only 6 months after he took office in Eskişehir.
 - The 7th Assize Court Judges, İsmail Bulun and Numan Kılınc, who had dismissed a case about the illegal wiretapping of the, then, Prime Minister's office, were removed from their posts shortly after their decision. This removal was carried out by an HSYK resolution, dated the 25th July, 2015.
 - Judge Fatma Ekinci, who released a defendant called Hasan Palaz, was appointed to another court after her decision.

- Judges Hülya Tıraş, Seyhan Aksar, Hasan Çavaç, Bahadır Çoşlu, Yavuz Kökten, Orhan Yalmanlı, Deniz Gül, Faruk Kırmacı, were the first Criminal Peace judges to be appointed to the Ankara Courthouse by the HSYK decree, dated the 16th July, 2014. In just a year, between the 16th July, 2014, and the 28th July, 2017, seven of the eight Criminal Peace judges (with the exception of the judge of the 8th Criminal Court of Peace) were all dismissed. Firstly, Judges Yavuz Kökten and Süleyman Köksaldı were removed from office because of their decisions to acquit some police officers inculpated by the ruling party.
- Judge Orhan Yalmanlı was dismissed from bench because of his refusal, on the 1st March, 2015, to arrest certain police officers. Hasan Çavaç, who dismissed the motions concerning Judge Orhan Yalmanlı's decision, and Seyhan Aksar, who had released the officers earlier, were also dismissed on the 9th March, 2015. The Judge of the 8th Criminal Court of Peace, Hülya Tıraş who released 110 officers who had been detained for 110 days, was relieved of her duty two weeks after her decision. Judges Yaşar Sezikli and Ramazan Kanmaz were dismissed for the same reasons on the 23rd July, 2015.
- Judge Osman Doğan, who did not arrest 18 officers who were detained under the scope of the illegal wiretapping investigation, was also relieved of his duty for the same reasons. Similar practices were observed in other provinces, especially in Istanbul and Izmir.
- Nilgün Güldalı, a judge in the Bakırköy 2nd Assize Court, who voted for the release of the arrested judges, Mustafa Başer and Metin Özçelik, during a monthly detention evaluation hearing on the 24th July, 2015, was appointed to a Labour Court only a day later, by an HSYK resolution.
- The 4th Administrative Court Chief Judge, Cihangir Cengiz, who granted a motion for a stay of execution regarding the TIB's (Turkey's Presidency of Telecommunication and Communication) decision to ban access to YouTube, was appointed to the Konya Administrative Court before the end of his tenure.
- The Chief of the 4th Istanbul Administrative Court and two of its members were transferred to other cities for holding a motion for the stay of an execution, which concerned the environmental impact assessment report for Istanbul's Third Airport, and the demolition of the 16/9 towers that spoil the Istanbul skyline.
- The Chief Judge of the Istanbul 10th Administrative Court, Rabia Başer, and an associate judge, Ali Kurt, who repealed the Gezi Park & Taksim Square Projects, were appointed to different courts and different cities after their decisions, and before the end of their tenure.
- Judge Cemil Gedikli, who issued a verdict of detention for the suspects in a corruption investigation, dated 17th December, 2013, was appointed first to Erzurum, then to Kastamonu, within a year, without his request or consent.
- The Judge of the Bakırköy 2nd Criminal Court of First Instance, Osman Burhaneddin Toprak, who admitted that the indictment stating that the news appearing in pro-government newspapers that there were assassination allegations against Sümeyye Erdoğan, was slander, was then appointed to Konya, without his request or consent, and before the end of his tenure, on 15th October, 2015.
- Shortly before the general elections that were held on the 1st November, 2015, certain TV channels were arbitrarily removed from Digiturk, a digital TV platform. The Judge of the 1st Consumer Court of Mersin Province, Mustafa Çolaker, who ruled in favour of these channels, namely, STV and Bugün TV, in a court case that was filed against the Digiturk platform, was appointed to the Çorum Province, and disciplinary procedures under the supervision of an inspector were also launched.
- The Court of Cassation prosecutor, Mazlum Bozkurt, who upheld the decision for a conviction verdict that was issued by the Court of First Case for the defendants, Colonel Hüseyin Kurtoğlu and five other military officers, at a Court of First Case, was suspended on the 1st December, 2015, by the HSYK.
- The Judge at the Ankara Criminal Court of Peace, Süleyman Köksaldı, who issued a rebuttal order for the news about the cancellation of Fetullah Gülen's passport and spying allegations at the TIB, was appointed as the Ankara 21st Labor Court Judge, without his request or consent, and before the end of his term.

²³ Stockholm Center for Freedom. Descent into Arbitrariness The End Of the Rule Of Law.

<https://stockholmcf.org/wp-content/uploads/2017/04/Turkey%E2%80%99s-Descent-Into-Arbitrariness-The-End-Of-Rule-Of-Law.pdf>

²⁴ Cumhuriyet. Kemal Kilicdaroglu ve Enis Berberoglu'nun davalarına bakan hakimler gece yarisi gorevden alindi.

http://www.cumhuriyet.com.tr/haber/siyaset/895122/Kemal_Kilicdaroglu_ve_Enis_Berberoglu_nun_da_valarina_bakan_hakimler_gece_yarisi_gorevden_alindi.html

25 <https://www.turkishminute.com/2017/04/03/govt-suspends-judges-released-journalists/>

26 <https://odatv.com/turkiyenin-konustugu-karari-veren-hakimler-suruldu-mu-20091802.html>

27 <https://ipa.news/2020/01/19/general-re-arrested-as-erdogan-fumes-at-judges-for-freeing-him/>

28 Stockholm Center for Freedom. 21 Journalists' Re-Arrest Comes After Outcry Among Pro-Gov't Colleagues. stockholmcf.org/21-journalists-re-arrest-comes-after-outcry-among-pro-govt-colleagues/

29 <https://stockholmcf.org/turkish-court-rules-re-arrest-of-pro-kurdish-hdps-spokesperson-ayhan-bilgen/> <https://www.turkishminute.com/2017/05/02/arrest-warrant-issued-for-newly-released-hdp-deputy/> <https://turkeypurge.com/8023-2>, <https://stockholmcf.org/arrest-warrant-issued-for-released-hdp-deputy-konca/>

30 Stockholm Center for Freedom. Turkish Journalist Under Suicide Risk Re-Arrested A Few Hours After Release.

stockholmcf.org/journalist-parildak-re-arrested-before-leaving-prison-following-her-release-by-court/

31 Stockholm Center for Freedom. 70-Year-Old Turkish Businessman Re-Arrested After Erdoğan's Henchman Reacted To His Release. <https://stockholmcf.org/70-year-old-turkish-businessman-re-arrested-after-erdogans-henchman-reacted-to-his-release/>

32 Af Örgütü. Taner Kılıç'ın tahliye kararının ardından gerçekleşen hukuki süreç.

<https://www.amnesty.org.tr/icerik/taner-kilic-in-tahliye-kararinin-ardindan-gerceklesen-hukuki-surec>

33 <https://arrestedlawyers.org/2018/09/16/turkey-rearrests-12-lawyers-a-day-after-their-release/>

34 <https://ahvalnews.com/turkish-courts/turkish-journalist-ahmet-altan-detained-days-after-release>

35 The Arrested Lawyers Initiative. Lawyers to Alpay and Altan say Constitutional Court rulings are binding on all. <https://arrestedlawyers.org/2018/01/16/lawyers-to-alpay-altan-say-constitutional-court-rulings-are-binding-on-all/>

36 Alparslan Altan v. Turkey - [12778/17](http://hudoc.echr.coe.int/eng?i=002-12446), <http://hudoc.echr.coe.int/eng?i=002-12446>

37 <https://www.turkishminute.com/2019/03/06/former-deputy-chief-justice-given-11-year-jail-sentence-over-gulen-links/>

38 Demirtas v Turkey, Application no. [14305/17](http://hudoc.echr.coe.int/eng?i=001-187961), <http://hudoc.echr.coe.int/eng?i=001-187961>

39 Kavala v. Turkey, Application no. [28749/18](http://hudoc.echr.coe.int/eng?i=001-199515), <http://hudoc.echr.coe.int/eng?i=001-199515>,

40 <https://www.reuters.com/article/us-turkey-security-gezi/turkey-keeps-businessman-in-jail-despite-european-court-release-call-idUSKBN1YS001>

41 CCPR/C/125/D/2980/2017,

https://arrestedlawyers.files.wordpress.com/2018/12/ccpr_c_125_d_2980_2017_28518_e.pdf

42 Opinions Nos. [53/2019](http://www.echr.coe.int/eng/press/pr2019050301.htm), [10](http://www.echr.coe.int/eng/press/pr2019050302.htm), [2019](http://www.echr.coe.int/eng/press/pr2019050303.htm), [78/2018](http://www.echr.coe.int/eng/press/pr2019050304.htm), [42/2018](http://www.echr.coe.int/eng/press/pr2019050305.htm), [43/2018](http://www.echr.coe.int/eng/press/pr2019050306.htm), [44/2018](http://www.echr.coe.int/eng/press/pr2019050307.htm), [11/2018](http://www.echr.coe.int/eng/press/pr2019050308.htm)

43 The World Justice Project. *Rule of Law Index 2016-2017*.

<http://data.worldjusticeproject.org/pdf/rule-of-law-index-TUR.pdf>

44 The World Justice Project. *Rule of Law Index 2017-2018*.

https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf

45 <https://worldjusticeproject.org/our-work/publications/rule-law-index-reports/wjp-rule-law-index-2019>

46 <https://ipa.news/2020/01/19/general-re-arrested-as-erdogan-fumes-at-judges-for-freeing-him/>

47 <https://ahvalnews.com/recep-tayyip-erdogan/turkeys-erdogan-signals-continued-imprisonment-former-hdp-leaders>

48 <https://en.haberler.com/president-erdogan-prosecutors-may-object-to-dundar-889396/>

49 <https://globalfreedomofexpression.columbia.edu/cases/case-journalists-can-dundar-erdem-gul/>

50 The Arrested Lawyers Initiative. Report: The Right to Defence Under Turkey's State of Emergency Rule.

<https://arrestedlawyers.org/2018/01/29/report-the-right-to-defence-under-turkeys-state-of-emergency-rule/>

51 The Arrested Lawyers Initiative. <https://arrestedlawyers.org/2019/12/18/report-update/>

52 Joint Stakeholder Submission to the UN Human Rights Council's Universal Periodic Review,

<http://www.barhumanrights.org.uk/wp-content/uploads/2019/07/UPR-Turkey-Combined.pdf>

53 Lawyers on Trial, https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf

54 "A Judge could ban the detainee from being interviewed by his/her lawyers, upon the public prosecutor's request. A decision on the banning shall be immediately served on the detainee and the relevant Bar Presidency, with a view to assigning a new lawyer. The public prosecutor may ask for replacement of the lawyer who has been commissioned by the Bar" Decree 667, Article 6/d

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

55 Human Rights Watch. A Blank Check Turkey's Post-Coup Suspension of Safeguards Against Torture, October 2016. https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf

56 Human Rights Watch. "In Custody, Police Torture and Abductions in Turkey" October, 2017.

<https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>

⁵⁷ Home Office. Country Police and Information Note: Human Rights Defenders: Turkey.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619684/Turkey_-_HRDs_-_CPIN_-_v2_0_June_2017_.pdf

⁵⁸ The Arrested Lawyers Initiative (The ALI). The Rights to Defence & Fair Trial Under Turkey's Emergency Rule, February, 2018. <https://arrestedlawyers.files.wordpress.com/2018/02/the-rights-to-defence-fair-trial-in-turkey.pdf>

⁵⁹ Article 209 of the Turkish Penal Procedure Law before the Decree Law as follows:

Documents and records to be read* mandatorily during the main hearing

Article 209 – (1) The records of interrogation of the accused, conducted by a delegated member of the court or through a rogatory letter, the records of the hearing of the witness, conducted by a delegated member of the court or through a rogatory letter, as well as documents, such as records of bodily examination and those that are related to the crime scene investigation that are to be used as evidence, and other written papers, excerpts from criminal records and personal status registers concerning the personal and their economic state, shall be read during the main hearing.

(2) If there is an explicit request, documents containing personal data about the accused and the victim shall be read out in a closed trial session, upon the decision of the court.

* "to be read" was changed as "to be told"

⁶⁰ Decree Law 667, Article 6:

ğ) Within the scope of the investigations and prosecutions, three lawyers, at the most, shall be present during statement - taking and questioning periods or hearings.

⁶¹ Article 150/3 of the Turkish Penal Procedure Law before the Decree Law read as follows:

(3) In cases where there is a pending **prosecution*** because of crimes listed in this subparagraph against a lawyer who has been selected according to Art. 149, or who has been appointed according to Art. 150, and who is defending or representing an individual who has been arrested with a warrant as a result of crimes, or has been convicted of crimes, as listed in Arts. 220 and 314 of the Turkish Criminal Code, or terrorism crimes, may be banned from acting as a defence counsel, or as a representative of **the arrestee or the convict****.

* "**prosecution**" was changed to "**investigation**"

(The prosecution or investigation with regard to the offences that are enumerated under the Fourth, Fifth, Sixth and Seventh Sections of the Fourth Chapter of the Second Volume of the Turkish Criminal Code, no. 5237, dated 26 September 2004, the offences falling under Anti-Terror Law no. 3713, dated 12th April, 1991, and the collective offences.)

** "**the arrestee or the convict**" was changed to "**the suspect, the arrestee or the convict.**"

⁶² With regard to the offences enumerated under the Fourth, Fifth, Sixth and Seventh Sections of the Fourth Chapter of the Second Volume of the Turkish Criminal Code, no. 5237 dated 26th September, 2004, the offences falling under the Anti-Terror Law, no. 3713, dated 12th April, 1991, and the collective offences.

⁶³ Decree Law 667, Article 6:

g) Within the scope of the investigations performed, the defence counsel selected under Article 149 of the Criminal Procedure Code no. 5271, of 4th December, 2004, or assigned under Article 150 thereof, may be banned from taking on his/her duty if an investigation or a prosecution is being carried out in respect of him /her due to the offences enumerated in this Article. The Office of Magistrates' Judge shall render a decision on the public prosecutor's request for a ban without any delay. A decision on banning shall be immediately served on the suspect, and the relevant Bar Presidency, with a view to assigning a new counsel.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁶⁴ Decree Law no. 668, Article 3-m) "The right of the suspect in custody to see a defence counsel may be restricted for five days by the decision of the public prosecutor. No statement shall be taken during this time."

⁶⁵ Decree Law no. 676, dated 29th October, 2016, it (five days) was changed to one day.

⁶⁶ Decree Law 667, Article 6/d) "Where there is a risk that public security and the security of the penitentiary institution are endangered, that the terrorist organization or other criminal organizations are directed, that orders and instructions are given to them or if secret, clear or crypto messages are transmitted to them through remarks during the interviews between the detainees and their lawyers; the interviews may be recorded auditorily or audio-visually via technical devices, the officers may be present during the interviews between the detainee and his/her lawyer, with a view to monitoring the interview, documents or document templates and files given by the detainee to his/her lawyer or *vice versa*, and the records kept by them concerning the interview between them, may be seized, or the

days and hours of the interviews may be limited upon the public prosecutor's order. In the event that the interview of the detainee is understood to be made for the aim set out above, the interview shall be immediately ended, and this fact shall be recorded into the Minutes, together with the grounds thereof. The parties shall be warned about this issue prior to the interview. In the event that such Minutes are drawn up in respect of a detainee, the Office of the Magistrates' Judge can ban the detainee from interviewing his/her lawyers, upon the public prosecutor's request. A decision on banning shall be immediately served on the detainee and the relevant Bar Presidency, with a view to assigning a new lawyer. The public prosecutor may ask for the replacement of the lawyer who is commissioned by the Bar. The commissioned lawyer shall be paid in accordance with Article 13 of Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23rd March, 2005."

⁶⁷ Decree Law 667, Article 6/d) "The public prosecutor may ask for replacement of the lawyer commissioned by the Bar. The commissioned lawyer shall be paid in accordance with Article 13 of Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23rd March 2005."

⁶⁸ Decree Law 668, Article 3/l) "The defence counsel's right to examine the contents of the case file, or to take copies of the documents, can be restricted by the decision of the public prosecutor, if the purpose of the investigation may be compromised"

⁶⁹ Article 153/2 of the Turkish Penal Procedure Law, prior to the Decree Law, read as follows:

(2) The power of the defence counsel may be restricted, **upon a motion from the public prosecutor, by the decision of a Justice of the Peace,*** if a review into the contents of the file, or copies taken, hinders the aim of the ongoing investigation.

* **"upon a motion of the public prosecutor, by the decision of a Justice of the Peace,*" was changed to 'by the decision of the prosecutor'.**

⁷⁰ Article 1-a of Decree Law no. 667 "a) The period of custody shall not exceed thirty days .."

Prior to the state of emergency, the deadline was (a maximum) four days.

⁷¹ With Article 10-a of Decree Law no. 684, dated 23 January 2017, 30 days was changed to 14 days.

⁷² According to the Government memorandum, p. 70, by 28 October 2016, of 45,225 persons who were arrested under the scope of FETÖ/PDY investigations, 61.1% (27,514 persons) remained in detention, without access to a judge for 1-5 days, 24.1% (11,042 persons) for 6-10 days, 9.4% (4,139 persons) for 11-15 days, 3.7% (1,760 persons) for 16-20 days, 1.2% (478 persons) for 21-25 days, and 0.5% (292 persons) for 26-30 days.

[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

(footnote_103)

⁷³ Article 3-ç of Decree Law no. 668: ç) Requests that release shall be concluded over the case file within a maximum period of thirty days, along with a review of the detention.

⁷⁴ Decree Law 667, Article 6/d) ".. the interviews may be recorded auditorily or audio-visually via technical devices, the officers may be present during the interviews between the detainee and his/her lawyer with a view to monitoring the interview, documents or document templates and files, given by the detainee to his/her lawyer, or *vice versa*, and the records kept by them concerning the interview between them may be seized, or the days and hours of the interviews may be limited upon the public prosecutor's order."

⁷⁵ **Article 178 of the Turkish Penal Procedure Law, prior to the Decree Law read as follows: Directly bringing the witness and an expert whose summons was denied**

Article 178 – (1) In cases where the president of the court, or the trial judge, denies the written application to summon a witness or expert who is called by the accused or the intervening party, the accused or the intervening party may bring these individuals to the main hearing. These individuals shall be heard at the main trial.

⁷⁶ Decree Law 668, Article 3:

c) The office of the magistrate or court, to whose detention order there has been an objection, shall revise its order if it deems relevant; otherwise, it shall refer the objection, within ten days, to the authority that is competent to examine the objection.

ç) Requests for release shall be concluded over the case file within a maximum period of thirty days, along with a review of the detention.

⁷⁷ **Article 105 of the Turkish Penal Procedure Law prior the Decree Law, reads as follows:**

The procedure

Article 105 – (1) In cases where there is a motion filed according to the provisions of Arts. 103 and 104, the decision, on approving the motion, denying the motion or ordering judicial control, shall be rendered by the competent authority **within three days**, after the opinions of the Public Prosecutor,

suspect, accused or defence counsel have been obtained. These decisions may be subject to a motion of opposition.

⁷⁸ Re: Amnesty's Taner Kılıç case.

⁷⁹ Decree Law 667, Article 6:

e) The detainees may only be visited by his/her spouse, relatives of the first and second degrees, the first-degree relatives - in - law and his/her guardian or trustee, only where the relevant documents are submitted. The powers of the Ministry of Justice and the Chief Public Prosecutor's Office shall be reserved. The detainees shall enjoy the right to telephone conversations once every fifteen days and for a period not exceeding ten minutes, such calls are limited to those persons set out in this subparagraph.

⁸⁰ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

⁸¹ Decree Law 667, Article 6:

h) Prior to the hearings before the criminal courts, a bill of indictment, or a document which substitutes for a bill of indictment, shall be read out, or summarized and explained.

⁸² BHRC. Addendum Report: TURKEY: Trial Observation: Altan and Others.

<http://www.barhumanrights.org.uk/wp-content/uploads/2017/11/Turkey.Altan-trial.part-2.v1-.pdf>

⁸³ BHRC. Trial Observation Report: Altan and Others v. Turkey: journalists on trial after the coup June 2017. <http://www.barhumanrights.org.uk/wp-content/uploads/2017/09/Turkey-Report-June-2017.pdf>

⁸⁴ BHRC. www.barhumanrights.org.uk/bhrc-legal-observers-call-on-turkey-to-ensure-fair-trial-rights-of-araf-journalists

⁸⁵ BHRC. www.barhumanrights.org.uk/bar-human-rights-committee-publishes-interim-report-on-trial-of-turkish-journalists/

⁸⁶ <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

⁸⁷ Human Rights Watch. A Blank Check: Turkey's Post-Coup Suspension of Safeguards Against Torture, p.44, October 2016. https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf

⁸⁸ https://tr.boell.org/sites/default/files/ohal_rapor_ing_final_version.pdf

⁸⁹ <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

⁹⁰ <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

⁹¹ Sol International. Turkey's new decree grants impunity to 'civilians' against coup plots.

<https://news.sol.org.tr/turkeys-new-decree-grants-impunity-civilians-against-coup-plots-173743>

⁹² <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

⁹³ Turkish Minute. Prosecutor drops torture complaint due to impunity under state of emergency, <https://www.turkishminute.com/2017/01/15/prosecutor-drops-torture-complaint-due-impunity-state-emergency/>

⁹⁴ <https://verfassungsblog.de/did-turkeys-recent-emergency-decrees-derogate-from-the-absolute-rights/>

<https://ipa.news/2019/02/23/non-prosecution-ruling-on-the-killing-of-cadet-cites-controversial-emergency-decree/>

<https://www.turkishminute.com/2019/02/22/turkish-court-dismisses-murder-of-military-cadet-during-coup-attempt/>

⁹⁵ Report of the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment on his mission to Turkey. <https://drive.google.com/file/d/114Hqs6kf9CKSUPGajYIAjN--mLlEK95C/view>

⁹⁶ <https://undocs.org/A/HRC/WG.6/35/TUR/3>

⁹⁷ https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

⁹⁸ Home Office. Country policy and information note: Gülenism, Turkey, April 2017, p.9

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607266/CPIN_-_Turkey_-_Gulenists_-_v1.pdf

⁹⁹ Home Office. Country Policy and Information Note: Human Rights Defenders: Turkey.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619684/Turkey_-_HRDs_-_CPIN_-_v2_0_June_2017_.pdf

¹⁰⁰ Regjeringen. GI-15/2017 – Instruks om praktisering av utlendingsloven § 28 – asylsøkere som anfører risiko for forfølgelse på grunn av (tillagt) tilknytning til Gülen-nettverket.

<https://www.regjeringen.no/no/dokumenter/gi-152017--instruks-om-praktisering-av-utlendingsloven-->

[28--asylsokere-som-anforer-risiko-for-forfolgelse-pa-grunn-av-tillagt-tilknytning-til-gulen-nettverket/id2575439/?q=gj-15/2017](https://www.asylsokere-som-anforer-risiko-for-forfolgelse-pa-grunn-av-tillagt-tilknytning-til-gulen-nettverket/id2575439/?q=gj-15/2017)

- 101 European Commission. 'Commission staff working document; Turkey 2016 report, http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf. European Commission. 'Commission staff working document; Turkey 2018 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-turkey-report.pdf>.
- 102 European Commission. 'Commission staff working document; Turkey 2019 report, <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-turkey-report.pdf>.
- 103 US Department of State. 'Country Reports on Human Rights Practices for 2016,' Turkey, dated 3 March, 2017.
Stockholm Center for Freedom. Suspicious Deaths and Suicides in Turkey, March 2017. https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf
- 104 US Department of State. 'Country Reports on Human Rights Practices for 2016,' Turkey, dated 3 March, 2017, (Section 1.c).
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265482>
- 105 <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/turkey/>
- 106 <https://www.state.gov/reports/2017-country-reports-on-human-rights-practices/turkey/>
- 107 <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/turkey/>
- 108 Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, dated 7 October, 2016.
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2952586&SecMode=1&DocId=2392872&Usage=2>
- 109 Hurriyet Daily News. European Anti-Torture Committee says Ankara does not allow report on Turkey to be published. <http://www.hurriyetdailynews.com/european-anti-torture-committee-says-ankara-does-not-allow-report-on-turkey-to-be-published-112277>
- 110 Human Rights Watch. 'Turkey: Emergency decrees facilitate torture,' dated 25 October, 2016. <https://www.hrw.org/news/2016/10/25/turkey-emergency-decrees-facilitate-torture>
- 111 <https://www.state.gov/reports/2016-country-reports-on-human-rights-practices/turkey/>
- 112 Human Rights Watch. World Report 2018. <https://www.hrw.org/world-report/2018/country-chapters/turkey>
- 113 Human Rights Watch. In Custody, Police Torture and Abductions in Turkey, October 2017. <https://www.hrw.org/report/2017/10/12/custody/police-torture-and-abductions-turkey>
- 114 <https://www.hrw.org/world-report/2018/country-chapters/turkey>
- 115 <https://www.hrw.org/world-report/2019/country-chapters/turkey>
- 116 <https://www.hrw.org/world-report/2020/country-chapters/turkey>
- 117 Amnesty International. 'Turkey: Independent monitors must be allowed to access detainees amid torture allegations,' dated 24th July, 2016. <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>
- 118 The US Department of State. 'Country Reports on Human Rights Practices for 2016,' Turkey, dated 3 March, 2017, (Section 1.c).
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265482>
- 119 Stockholm Center For Freedom. Mass Torture and Ill-Treatment in Turkey, June. 2017. https://stockholmcf.org/wp-content/uploads/2017/06/Mass-Torture-And-Ill-Treatment-In-Turkey_06.06.2017.pdf
- 120 Stockholm Center For Freedom. Mass Torture and Ill-Treatment in Turkey, June, 2017.
- 121 Stockholm Center For Freedom. Tortured to Death, November. 2017, https://stockholmcf.org/wp-content/uploads/2017/11/Tortured-to-death-holding-gokhan-acikkollus-killers-to-account_report_21.11.2017.pdf
- 122 Stockholm Center for Freedom. Suspicious Deaths and Suicides In Turkey, March, 2017. https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf
- 123 Platform for Peace and Justice. A Comprehensive Report on The Prison Conditions In Turkey: In *Prison 2017*. <http://www.platformpj.org/report-comprehensive-report-prison-conditions-turkey-prison-2017/>
- 124 <https://silencedturkey.org/wp-content/uploads/2020/01/SYSTEMATIC-TORTURE-AND-ILL-TREATMENT-IN-TURKEY-January-5th.pdf>
- 125 <https://arrestedlawyers.files.wordpress.com/2020/01/joint-report-ankara-bar-28-may-2019.pdf>

- <https://arrestedlawyers.org/2019/11/25/report-on-criminal-liabilities-with-regard-to-torture-incident-took-place-in-ankara-police-headquarters-between-20-and-28-may-2019/>
- 126 <https://twitter.com/ankarabarosuihm/status/1210646342286159872?s=20>
<https://arrestedlawyers.files.wordpress.com/2020/01/report-by-ankara-bar-association-human-rights-commission-1.pdf>
- 127 <http://www.tohav.org/Content/UserFiles/ListItem/Docs/katalog1427tohavs-report-on-torture-in-urfa.pdf>
<https://m.bianet.org/english/human-rights/209087-report-on-halfeti-by-urfa-bar-association-the-detained-subjected-to-sexual-torture>
<https://bianet.org/english/human-rights/209087-report-on-halfeti-by-urfa-bar-association-the-detained-subjected-to-sexual-torture>
<https://boldmedya.com/en/2019/06/10/gaziantep-bar-associations-report-on-torture-claims-in-halfeti-district-of-sanliurfa/>
- 128 <https://hakinisiyatifi.org/torture-is-a-crime-against-humanity-without-exception-and-is-strictly-prohibited.html>
<https://arrestedlawyers.org/2020/01/01/human-rights-ngos-torture-and-ill-treatment-in-custody-have-become-systematic-practice-of-ankara-police/>
- 129 <https://correctiv.org/en/top-stories-en/2018/12/06/black-sites/>
- 130 Turkish Minute. 'Justice minister: no maltreatment or torture in Turkish prisons,' dated 24 October, 2016. <https://www.turkishminute.com/2016/10/24/justice-minister-no-maltreating-torture-turkishprisons/>
- 131 <https://www.prisonstudies.org/country/turkey>
- 132 <http://www.hurriyet.com.tr/gundem/adalet-bakani-gul-hurriyete-konuk-oldu-acik-cezaevinde-yeni-model-41401781>
- 133 Infamous Silivri prison more than doubled its official capacity, <https://www.duvarenglish.com/domestic/2019/11/09/infamous-silivri-prison-more-than-doubled-its-official-capacity/>
- 134 <https://boldmedya.com/en/2019/06/21/ayten-ozturk-who-survived-the-secret-torture-center-in-ankara-i-was-tortured-for-6-months/>
<https://morningstaronline.co.uk/article/w/i-was-tortured-in-a-turkish-jail-journalist-says>
<http://bianet.org/english/print/209800-joint-statement-by-rights-organizations-investigate-allegations-of-torture>
- 135 <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/>
- 136 Cellmate: Teacher abducted by Turkey's MIT from Malaysia subjected to torture in Ankara, <https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>
- 137 <https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>
- 138 <https://stockholmcf.org/cellmate-teacher-abducted-by-turkeys-mit-from-malaysia-subjected-to-torture-in-ankara/>
- 139 <https://stockholmcf.org/wp-content/uploads/2017/05/Erdogans-Long-Arms-The-Case-Of-Malaysia.pdf>
- 140 https://arrestedlawyers.files.wordpress.com/2018/12/ccpr_c_125_d_2980_2017_28518_e.pdf
- 141 TRT Haber. Cumhurbaşkanı Erdoğan'dan İKBY'ye bayrak tepkisi, 4 April 2017. <http://www.trthaber.com/haber/gundem/cumhurbaskani-Erdoğan-dan-ikbyye-bayrak-tepkisi-307472.html>
- 142 Cumhuriyet. AKP'li Metiner'den vahim sözler: İşkence'ye inceleme yok, 3 October 2016. http://www.cumhuriyet.com.tr/haber/turkiye/608880/AKP_li_Metiner_den_vahim_sozler_iskenceye_inceleme_yok.html
- 143 T24. Ekonomi Bakanı: Bu darbecilere öyle bir ceza vereceğiz ki 'Gebertin bizi' diye yalvaracaklar!, 1 August 2016. <http://t24.com.tr/haber/ekonomi-bakani-bu-darbecilere-oyle-bir-ceza-verecemiz-ki-gebertyn-bizi-diye-yalvaracaklar,352845>
- 144 BBC. Turkey minister Soyly tells police to break drug dealers' legs. <http://www.bbc.com/news/world-europe-42563865>
- 145 Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>
- 146 Hélène Lambert. The Position of Aliens in Relation to the European Convention on Human Rights. P.8

¹⁴⁷ A. v. the United Kingdom, 23 September, 1998.

¹⁴⁸ Soering v. The United Kingdom (European Court of Human Rights Application no. 14038/88), para 88. <http://hudoc.echr.coe.int/eng?i=001-57619>

¹⁴⁹ Trabelsi v. Belgium (ECHR, Application No 140/10,) <http://hudoc.echr.coe.int/eng?i=001-146372>

¹⁵⁰ Council of Europe. Extradition and life imprisonment. http://www.echr.coe.int/Documents/FS_Extradition_life_sentence_ENG.pdf

¹⁵¹ Human Rights Watch. Diplomatic Assurances and Their Use In Europe https://www.hrw.org/reports/2004/un0404/5.htm_-_ftn73

¹⁵² Chahal v. United Kingdom. (ECtHR, 70/1995/576/662)

¹⁵³ Ibid., para. 37.

¹⁵⁴ Extradition and life imprisonment.

¹⁵⁵ Saadi v Italy (ECtHR, Application no. 37201/06) <http://hudoc.echr.coe.int/eng?i=001-85276>

¹⁵⁶ Gianluca Gentili. European Court of Human Rights: An absolute ban on deportation of foreign citizens to countries where torture or ill-treatment is a genuine risk. <https://academic.oup.com/icon/article/8/2/311/699980>

¹⁵⁷ Dovydas Vitkauskas & Grigoriy Dikov. Protecting the right to a fair trial under the European Convention on Human Rights. <https://rm.coe.int/168007ff57>

¹⁵⁸ Some instances that have been assessed as “Flagrant Denials of Justice”:

- Conviction in absentia with no subsequent possibility of a fresh determination of the merits of the charge (Einhorn v. France (dec.), § 33; Sejdic v. Italy [GC], § 84; Stoichkov v. Bulgaria, § 56);
- A trial which is summary in nature and is conducted with a total disregard for the rights of the defence (Bader and Kanbor v. Sweden, § 47);
- Detention without any access to an independent and impartial tribunal to have the legality of the detention reviewed (Al-Moayad v. Germany (dec.), § 101);
- Deliberate and systematic refusal of access to a lawyer, especially for an individual detained in a foreign country (ibid.);
- Use in criminal proceedings of statements obtained as a result of a suspect’s, or another person’s, treatment in breach of Article 3 (Othman (Abu Qatada) v. the United Kingdom, § 267; El Haski v. Belgium, § 85).

(Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb) http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf)

¹⁵⁹ Council of Europe. Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb). http://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

¹⁶⁰ Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb)

¹⁶¹ Ibid.

¹⁶² [Mustafa Onder, Ferhat Erdoğan, Elmas Ayden](https://arrestedlawyers.org/2019/12/05/the-un-committee-against-torture-extradition-to-turkey-would-constitute-a-breach-of-article-3-of-the-convention/) vs Morocco, 845/2017, 846/2017, 827/2017, <https://arrestedlawyers.org/2019/12/05/the-un-committee-against-torture-extradition-to-turkey-would-constitute-a-breach-of-article-3-of-the-convention/>

7.6 The Committee .. notes that the successive extensions of the state of emergency in Turkey have led to serious human rights violations against hundreds of thousands of people, including arbitrary deprivation of the right to work and of freedom of movement, torture and ill-treatment, arbitrary detention, and violations of the rights to free association and expression. In this regard, the Committee recalls its concluding observations on the fourth periodic report of Turkey (CAT/C/TUR/CO/4), in 2016, in which it noted with concern, in paragraph 9, a significant disparity between the high number of allegations of torture reported by non-governmental organizations, and the data provided by the State party in its fourth periodic report (see CAT/C/TUR/4, Paras. 273–276 and Annexes 1 and 2), suggesting that not all of the allegations of torture had been investigated during the reporting period. In the same concluding observations, the Committee highlighted, in Paragraph 19, its concern about recent amendments to the Code of Criminal Procedure, which gave the police greater powers to detain individuals, without judicial oversight, during police custody. In Paragraph 33, the Committee expressed regret about the lack of complete information on suicides, and other sudden deaths in detention facilities, during the period under review.

7.7 The Committee notes that, according to the complainant, the state of emergency established in Turkey on 20 July, 2016, has increased the risk of persons accused of belonging to a terrorist group being subjected to torture while in detention. The Committee also recognizes that the aforementioned concluding observations predated the start of the state of emergency. However, it observes that, according to reports on the human rights situation in Turkey and the prevention of torture published

since the imposition of the state of emergency, the concerns raised by the Committee remain pertinent.

7.8 In the present case, the Committee notes that the complainant claims to have been persecuted on account of his political activities, in that he was believed to be a member of the Hizmet movement, which has been deemed responsible for the attempted coup d'état in July, 2016. The Committee notes that, according to the report issued in 2018, the Office of the United Nations' High Commissioner for Human Rights had access to reliable information indicating that torture and ill-treatment were used during pretrial detention as the Turkish authorities responded to the attempted coup d'état. In the same report, the Office claims to have documented the use of various forms of torture and ill-treatment in custody, including severe beatings, threats of sexual assault and actual sexual assault, electric shocks and simulated drownings. The aim of these acts of torture was generally to extract confessions, or to elicit denunciations of other persons, as part of the investigations into events surrounding the attempted coup d'état. In his report on his mission to Turkey, the Special Rapporteur on torture and other cruel, inhumane or degrading treatment or punishment, notes that the use of torture was widespread in the aftermath of the coup. The Special Rapporteur also notes that "the low number of investigations and prosecutions initiated in response to allegations of torture or ill-treatment seemed grossly disproportionate to the alleged frequency of the violations, indicating insufficient determination on the part of the responsible authorities to take such cases forward".

7.9 With regard to the direct impact of the state of emergency imposed on 20th July, 2016, the Committee takes note of the concern raised by the Office of the United Nations High Commissioner for Human Rights about the adverse effects of the resulting measures on safeguards against torture and ill-treatment. In particular, the Office refers to the restrictions that may be imposed on contacts between detainees and their lawyers, the increase in the maximum permitted duration of police custody, the closure of certain independent mechanisms for the prevention of torture and the excessive use of pretrial detention. After successive extensions decreed by the Turkish authorities, the state of emergency officially ended on 19 July, 2018. In a letter dated 8 August, 2018, the Turkish authorities informed the Council of Europe that the state of emergency had terminated on 19 July, 2018, at the end of the deadline set by Decision No. 1182, and that, accordingly, the Government of the Republic of Turkey had decided to withdraw the notice of derogation from the European Convention on Human Rights. However, a series of legislative measures have been adopted that extend the application of the restrictive measures introduced during the state of emergency, including the possibility of prolonging police custody for up to 12 days.

¹⁶³ CCPR/C/125/D/2980/2017,

https://arrestedlawyers.files.wordpress.com/2018/12/ccpr_c_125_d_2980_2017_28518_e.pdf

¹⁶⁴ [Ercan Demir \(79/2019\)](#), [Melike Göksan and Mehmet Fatih Göksan \(53/2019\)](#) [Mustafa Ceyhan \(10/2019\)](#), [Hamza Yaman \(78/2018\)](#), [Andrew Craig Brunson \(84/2018\)](#), [Mestan Yayman \(42/2018\)](#), [Ahmet Caliskan \(43/2018\)](#) [Muharrem Gençtürk \(44/2018\)](#), [Kacmaz Family \(11/2018\)](#), [Rebii Metin Görgeç \(1/2017\)](#).

¹⁶⁵ Opinions Nos. [53/2019](#), [10, 2019](#), [78/2018](#), [42/2018](#), [43/2018](#), [44/2018](#), [11/2018](#)

¹⁶⁶ 2 BvR 2259/17, 18 December, 2017.

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/12/rk20171218_2bvr225917en.html

¹⁶⁷ 2 BvR 1832/19, 4 December, 2019,

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/12/rk20191204_2bvr183219en.html

¹⁶⁸ The German Federal Constitutional Court: It is highly likely Turkey will not respect minimum standards deriving from international law,

<https://arrestedlawyers.org/2020/01/27/the-german-federal-constitutional-court-turkey-highly-likely-will-not-respect-minimum-standards-deriving-from-international-law/>

German court halts deportation of Turk convicted of Islamist support,

<https://www.todayonline.com/world/german-court-halts-deportation-turk-convicted-islamist-support>

¹⁶⁹ Supremo Tribunal Federal, Ext 1578,

<https://portal.stf.jus.br/processos/detalhe.asp?incidente=5650027>

¹⁷⁰ Brazil's top court denies extradition of Erdoğan opponent,

<https://www.reuters.com/article/us-brazil-turkey/brazils-top-court-denies-extradition-of-erdogan-opponent-idUSKCN1UW2ID>

¹⁷¹ The-Republic of Turkey v Nurhak Talay, The Westminster Magistrates Court, 14 December, 2016.

<https://www.matrixlaw.co.uk/judgments/court-considers-human-rights-risks-extradition-case/>

<https://www.matrixlaw.co.uk/wp-content/uploads/2016/12/The-Republic-of-Turkey-v-Nurhak-Talay.pdf>

172 Charles v Mugla, Chief Public Prosecution Office Republic of Turkey [2017] EWHC 952 (Admin) (04 May 2017). The High Court of Justice Queen's Bench Division Administrative Court.

<http://www.bailii.org/ew/cases/EWHC/Admin/2017/952.html>

173 The Westminster Magistrates Court, 28 November, 2018.

UK court rejects Turkish extradition request for media boss,

<https://www.theguardian.com/law/2018/nov/28/uk-court-rejects-turkish-extradition-request-for-media-boss>

174 Turkey fails in final attempt to extradite media boss from UK,

<https://www.theguardian.com/law/2019/apr/09/turkey-fails-to-extradite-hamdi-akin-ipek>

175 Refugee's Extradition to Turkey Rejected by Polish Court

<https://www.liberties.eu/en/news/court-rejects-application-for-extradition-of-a-refugee-from-poland-to-turkey/7992>

<http://www.hfhr.pl/en/court-no-leave-to-extradite-refugee-to-turkey/>

176 Bosnia court rejects extradition of Turkish national over Gülen links

<https://www.reuters.com/article/us-turkey-security-bosnia/bosnia-court-rejects-extradition-of-turkish-national-over-gulens-links-idUSKBN1HU1LJ>

177 Bosnia rejects Turkey's extradition request for journalist over Gülen links

<https://www.turkishminute.com/2019/07/31/bosnia-rejects-turkeys-extradition-request-for-journalist-over-gulen-links/>

https://hizmetnews.com/24904/bosnia-rejects-turkeys-extradition-request-for-journalist-over-gulen-links/#_XibIFRdKhQI

178 Bosnia-Herzegovina court rules not to hand Keskin over to Turkey

<https://www.aljazeera.com/news/2019/12/bosnia-herzegovina-court-rules-hand-keskin-turkey-191217065837153.html>

179 Bucharest court rejects Turkey's extradition request for journalist, <https://www.romania-insider.com/romania-rejects-extradition-request-turkish-journalist>

<https://www.agerpres.ro/justitie/2018/12/14/curtea-de-apel-bucuresti-respinge-cererea-turciei-de-extradare-a-jurnalistului-kamil-demirkaya-de-la-zaman-romania--227764>

Romania rejects request by Turkey to extradite journalist, ,

<https://apnews.com/e0fdd8f7193a4211a5a10bb0556ef057>

Landmark ruling by Romanian Appeal Court confirms problems in the rule of law in Turkey

<https://www.nordicmonitor.com/2019/07/romanian-high-court-rejects-turkish-government-allegations-against-critics/>

180 Romania Rejects Turkish Request to Extradite 'Gülenist' Teacher

<https://balkaninsight.com/2019/12/18/gulenist-teacher-wanted-by-ankara-arrested-in-romania/>

181 Montenegro Reconsiders Extradition of 'Gülenist' to Turkey,

<https://balkaninsight.com/2019/10/08/montenegro-reconsiders-extradition-of-gulenist-to-turkey/>

182 Greece rejects new extradition request for Turkish soldiers

<https://www.dw.com/en/greece-rejects-new-extradition-request-for-turkish-soldiers/a-38685651>

183 Greek court rejects extradition of Turkish coup fugitives

<https://www.reuters.com/article/us-greece-turkey-military-court/greek-court-rejects-extradition-of-turkish-coup-fugitives-idUSKCN1GS14A>