

THE ARRESTED LAWYERS INITIATIVE

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

The Arrested Lawyers Initiative
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EXECUTIVE SUMMARY

After the 2016's failed coup attempt, the rule of law has forsaken Turkey. Erdogan Regime has suspended or dismissed more than 110,000 judges, teachers, doctors, police and other civil servants since July 15, 2016. Turkey's Justice Ministry announced on July 13, 2017 that 50,510 people have been arrested and 169,013 have been the subject of legal proceedings on coup charges since 2016 July.

Erdogan's foe or political dissent who live abroad have been facing 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 Erdogan Regime's international policy.

Turkey has so far sent 81 extradition requests to Germany only within the scope the post-coup attempt investigations. In the last 18 months, two separate United Kingdom courts and the German Federal Constitutional Court have dismissed extradition requests filed by Turkey.

The reports prepared by the international and national official entities and respected civil society organisations that were explained in detail below together with the respective judgments of the German and English Courts on the matter show that anyone (principal) 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 fair trial,
- iv. his right to counsel will be unlawfully hindered.

Finally, in view of the well-established position of the European Court of Human Rights the treatment the principal will receive in the hands of Turkish official bodies will constitute serious violations of Article 3 and 6 of the European Convention on Human Rights.

I. INTRODUCTION

1. After the 2016's failed coup attempt, the rule of law has forsaken Turkey. Erdogan Regime has suspended or dismissed more than 110,000¹ judges, teachers, doctors, police and other civil servants since July 15, 2016. Turkey's Justice Ministry announced on July 13, 2017 that 50,510 people have been arrested and 169,013 have been the subject of legal proceedings on coup charges since 2016 July.
2. Erdogan's foe or political dissent who live abroad have been facing 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 Erdogan Regime's international policy.
3. Turkey has so far sent 81 extradition requests to Germany only within the scope the post-coup attempt investigations. In the last 18 months, two separate United Kingdom courts² and the German Federal Constitutional Court³ 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 which may be extradited to Turkey would have right to a fair trial and defence and whether they would have any safeguards against torture or ill-treatment.

¹ Stockholm Center for Freedom. Turkish Deputy PM Bozdağ Claims 110,778 People Dismissed from Public Duties by Government Decrees. <https://stockholmcf.org/turkish-deputy-pm-bozdag-claims-110778-people-dismissed-from-public-duties-by-government-decrees/>

² a) 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>

b) The-Republic of Turkey v Nurhak Talay, Westminster Magistrates' Court, (14/12/2016).

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

³ <http://www.todayonline.com/world/german-court-halts-deportation-turk-convicted-islamist-support>

Germany's highest court on Tuesday halted the deportation of a Turkish citizen convicted of supporting an Islamist militant organization, saying authorities should first ensure he wouldn't face torture or inhumane prison conditions in Turkey.

The Federal Constitutional Court overturned a ruling by a lower court that ordered the deportation of the man, who was born and raised in Germany, after he was convicted of traveling to Syria and supporting a "terrorist organization". The court ruling said the 30 years-old man, who was not identified by name, went to Syria with his wife and children in 2013 where he supported an Islamist militia group, after his return to Germany, he transferred money to an account related to Islamic State, it said.

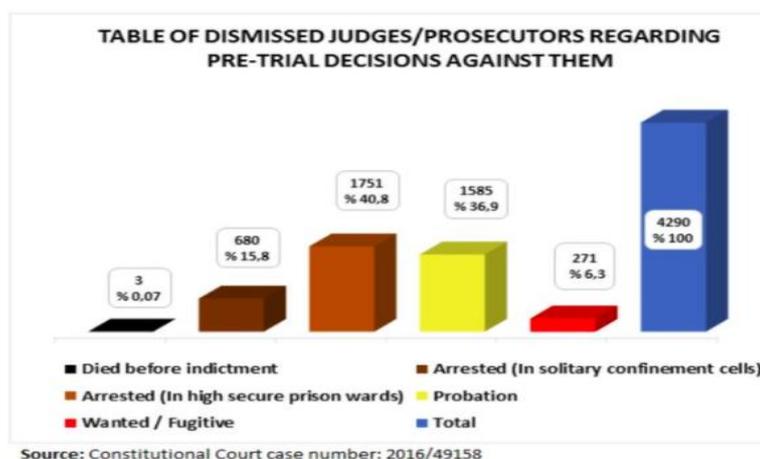
He was initially sentenced to three years and six months in prison in Germany in 2015, but immigration authorities ordered his immediate deportation to Turkey.

The high court called for checks. "It is constitutionally necessary for responsible authorities and courts to be informed about the conditions in a destination country before a deportation," the court said.

I. TURKISH JUDICIARY, INDEPEDENCE, IMPARTIALITY AND THE RIGHT TO FAIR TRIAL

a. Purge of Turkish Judges and Prosecutors

5. In the wake of July 16, when the soldiers who actually organised or took part in the failed the coup attempt were yet to be determined, Turkey's top judicial body, the High Boards of Judges and Prosecutors, convened to suspend 2745 judges/prosecutors including its members.⁴ As reported by the state-run Anatolian News Agency, as of 5 October 2017 the number of judges and prosecutors dismissed has reached 4560⁵ which according to a human rights group named "the Free Judges" is %29,8 of the number of judges and prosecutors in the judiciary.
6. 4290 of dismissed 4560 judges and prosecutors have been under prosecution and 2431 of them were arrested.



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

7. By the constitutional amendment dated 16 April 2017, Turkey's top judicial body has been reshaped by AKP Government. The new structure of the CJP

⁴ The Free Judges. The Collapse of Turkish Judiciary in Numeric and Principle. <https://freejudges.wordpress.com/2017/12/21/%E2%80%8Bopinion-the-collapse-of-turkish-judiciary-in-numeric-and-principle/>

⁵ Anatolian News Agency. More than 35 judges, prosecutors dismissed in Turkey. <http://aa.com.tr/en/turkey/more-than-35-judges-prosecutors-dismissed-in-turkey/928093?amp=1>

has caused serious concern in terms of independence and impartiality of the judiciary as a whole.

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 considerably increases the risk of it being subjected to political influence. To avert such risk, European standards foresee that at least half of the members of 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 ensures in practice adherence to the rule of law and the independence of the judiciary, without which there can be no effective protection of human rights in Turkey."
9. "The constitutional amendment which runs the danger of transforming into a one-person presidential system is against a democratic regime based on the separation of powers. Considering the chronic concerns that the Turkish Judiciary is not independent, the judiciary's power to control the executive will further weaken with 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 more 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 party of the President has a three-fifths

majority in the Assembly, it will be able to fill all 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 together 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 appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors. Getting control over this body thus means getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where 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 following 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 seats in the CJP.” was said in the opinion dated 13 March 2017 by the Venice Commission.⁶

10. “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 securities of a court or tribunal ‘previously established by law, independent and impartial’ within the scope of Article 6 of the Convention. The evaluations regarding the prevalent lack of independence and impartiality of the judiciary in Turkey are not immaterial apprehensions but 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 hence 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 violation of civil rights and no right of access to a court in particular.” was said in the report entitled “[Non-](#)

⁶ The Venice Commission. Opinion On The Amendments To The Constitution Adopted By The Grand National Assembly On 21 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)

[Independence and Non-Impartiality Of Turkish Judiciary](#)” by the Platform for Peace and Justice.⁷

c. Judges and Prosecutors are Often Reassigned for Their Decisions

11. Turkey’s Council of Judges and Prosecutor have not only dismissed thousands of judges and prosecutors but also have continuously intervened in the course of justice by resolutions of appointment which it has issued almost on a daily basis.
12. Since 2014, hundreds of judges and prosecutors have been reassigned because of the decisions they gave which were somehow displeasing to the government.
13. Kemal Karanfil, former Criminal Judge of 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, was consequently appointed to a court in Zonguldak on the 15th January 2015 only 6 months after he was given office in Eskişehir.⁸
14. The 7th Assize Court Judges İsmail Bulun and Numan Kılınç 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 by a HSYK resolution dated the 25th July 2015.⁹
15. Judge Fatma Ekinci, who released a defendant called Hasan Palaz, was appointed to another court after her decision.¹⁰
16. Judges Hülya Tıraş, Seyhan Aksar, Hasan Çavaç, Bahadır Çoşlu, Yavuz Kökten, Orhan Yalmançı, Deniz Gül, Faruk Kırmacı were the first Criminal Peace judges to be appointed to the Ankara Courthouse with the HSYK decree dated the 16th July 2014. In just a year, between the 16th of July 2014 and the 28th of 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

⁷ Platform for Peace and Justice (PPJ). “[Non-Independence and Non-Impartiality Of Turkish Judiciary](#)” <http://www.platformpj.org/wp-content/uploads/NON-INDEPENDENCE-OF-TURKISH-JUDICIARY.pdf>

⁸ (PPJ). “[Non-Independence and Non-Impartiality Of Turkish Judiciary](#)”

⁹ (PPJ). “[Non-Independence and Non-Impartiality Of Turkish Judiciary](#)”

¹⁰ (PPJ). “[Non-Independence and Non-Impartiality Of Turkish Judiciary](#)”

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 of 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 of 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 of July 2015.¹¹

17. Judge Osman Doğan, who did not arrest 18 officers who were detained within the scope of the illegal wiretapping investigation, was also relieved of his duty for the same reasons. Similar practices have been observed in other provinces, especially in Istanbul and Izmir.¹²
18. Nilgün Güldalı, a judge of 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 of July 2015, was appointed to a Labor Court only a day later by a HSYK resolution.¹³
19. The 4th Administrative Court Chief Judge Cihangir Cengiz, who granted a motion for 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.¹⁴
20. The chief of the 4th Istanbul Administrative Court and two members were transferred to other cities for holding a motion for stay of execution which concerned the environmental impact assessment report for the Istanbul Third Airport and the demolition of the 16/9 towers that spoil the Istanbul skyline.¹⁵
21. The Chief Judge of the Istanbul 10th Administrative Court Rabia Başer and associate judge Ali Kurt, who repealed the Gezi Park & Taksim Square Projects,

¹¹ (PPJ). "Non-Independence and Non-Impartiality Of Turkish Judiciary"

¹² (PPJ). "Non-Independence and Non-Impartiality Of Turkish Judiciary"

¹³ (PPJ). "Non-Independence and Non-Impartiality Of Turkish Judiciary"

¹⁴ (PPJ). "Non-Independence and Non-Impartiality Of Turkish Judiciary"

¹⁵ (PPJ). "Non-Independence and Non-Impartiality Of Turkish Judiciary"

- were appointed to different courts and different cities after their decisions, before the end of their tenure.¹⁶
22. Judge Cemil Gedikli, who issued the verdict of detention for the suspects of the corruption investigation dated the 17th of December 2013, was appointed first to Erzurum, then to Kastamonu within a year, without his request or consent.¹⁷
23. The Judge of the Bakırköy 2nd Criminal Court of First Instance Osman Burhaneddin Toprak, who admitted the indictment that the news appearing in pro-government newspapers that assassination allegations against Sümeyye Erdoğan was slander, was appointed to Konya without his request or consent before the end of his tenure on the 15th of October 2015.¹⁸
24. Shortly before the general elections held on the 1st of 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 filed against the Digiturk platform, was appointed to the Çorum Province and also disciplinary procedures under the supervision of an inspector were launched.¹⁹
25. The Court of Cassation prosecutor Mazlum Bozkurt, who upheld the decision for the conviction verdict issued by the court of first case for the defendants Colonel Hüseyin Kurtoğlu and the other five military officers at a court of first case, was suspended on the 1st of December 2015 by the HSYK.²⁰
26. 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 before the end of his term.²¹
27. Murat Aydın, a judge in Karşıyaka and the vice president of the Judges and Prosecutors Association (YARSAV), was reassigned and exiled to Trabzon after

¹⁶ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

¹⁷ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

¹⁸ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

¹⁹ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

²⁰ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

²¹ (PPJ). “Non-Independence and Non-Impartiality Of Turkish Judiciary”

he applied to the Constitutional Court for the annulment of the legal article concerning “insulting the president.”²²

28. Chief Judge of Istanbul Regional Appeal Court, Sadık Özhan was reassigned after decision to reverse CHP deputy Enis Berberoglu’s conviction.²³

d. The Decisions to Release are Ineffective

29. In addition to arbitrary mass arrests of dissidents, orders which courts may seldom give for their release are constantly being cancelled out by direct political intervention.

30. Twenty-one journalists who were released on 1 April 2017 after 10-months in pre-trial detention, were rearrested at the exit gate of Silivri Prison. The Istanbul 25th High Criminal Court had previously ordered the release of 21 of the 26 journalists who were accused of membership to the faith-based Gülen movement, which has been registered as a terror organization by the Turkish government and accused of orchestrating the failed coup of July 2016. The reason why 21 journalists were denied release was either a prosecutor appealed against their release or 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 fervently demanding their re-arrest.²⁴

31. On 2 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.²⁵

²² Stockholm Center for Freedom. Descent into Arbitrariness The End Of 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>

²³ Cumhuriyet. Kemal Kilicdaroglu ve Enis_Berberoglu’nun davalarina bakan hakimler gece yarisi gorevden alindi. http://www.cumhuriyet.com.tr/haber/siyaset/895122/Kemal_Kilicdaroglu_ve_Enis_Berberoglu_nun_davalarina_bakan_hakimler_gece_yarisi_gorevden_alindi.html

²⁴ Stockholm Center for Freedom. 21 Journalists’ Re-Arrest Comes After Outcry Among Pro-Gov’t Colleagues. <https://stockholmcf.org/21-journalists-re-arrest-comes-after-outcry-among-pro-govt-colleagues/>

²⁵ Stockholm Center for Freedom. Turkish Journalist Under Suicide Risk Re-Arrested A Few Hours After Release. <https://stockholmcf.org/journalist-parildak-re-arrested-before-leaving-prison-following-her-release-by-court/>

32. Many Kurdish MPs, including Ayhan Bilgen, Nursel Aydođan, Ferhat Encü, Besime Konca, were re-arrested shortly after their release by court.²⁶
33. Cahit Nakıbođlu, a 70-year-old businessman who spent nearly 1,5 years 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 put under house arrest.²⁷
34. Enis Berberođlu, 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.
35. Taner Kılıç who is the chair of the Amnesty International's Turkey Branch was re-detained even before released from Izmir Sakran Prison then rearrested by the same court which decided to release him. Taner Kılıç was taken into custody on 6 June 2017 and subsequently arrested by Izmir Peace Criminal Judgeship on 9 June 2017. On 31 January 2018, Istanbul 35th High Penal Court decided to release him at the third hearing of trial. But 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 which decided to release him only hours ago.²⁸
36. In almost all cases of re-arrest, decisions to re-arrest have been triggered either by an AKP politician's statement or a message a pro-Erdogan journalist posted online.
37. At the time the said decisions to re-arrest (except case of Taner Kılıç) were made, there existed no right of appeal against release orders. Only after 4 December 2017, the date when Decree No: 696 came into effect, prosecutors and complainants had right to appeal against release orders.

²⁶<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/>

²⁷ 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/>

²⁸ Af Örgütü. **Taner Kılıç'ın tahliye kararının ardından gerçekleşen hukuki süreç.**
<https://www.amnesty.org.tr/icerik/taner-kilic-in-tahliye-kararinin-ardindan-gercekle-sen-hukuki-surec>

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

38. Journalists Şahin Alpay and Mehmet Altan who has been under arrest respectively since 31 July 2016 and 22 September 2016 were not released despite the Turkish Constitutional Court ruled that decisions to arrest about them are unlawful.
39. 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."
40. *On 11 January 2018, the Turkish Constitutional Court decided that decisions to arrest as to journalists Sabin Alpay and Mehmet Altan are unlawful and constitutes the violation of rights envisaged by Turkish Constitution and European Convention on Human Rights. Same day, Istanbul 13th and 26th High Penal Courts refused to release Altan and Alpay on the grounds that the decisions (of the TCC) have not yet been published in the Official Gazette. On 14 January 2018, Istanbul 13th and 26th High Penal Courts refused to release Altan and Alpay again on the grounds that the the TCC exceeded its authority drawn by the Constitution. On 15 January 2018, Istanbul 14th and 27th High Penal Courts refused objections of the lawyers to Altan and Alpay.*²⁹
41. Thus, for the first time in Turkey's legal history, constitutional authority of the Turkish Constitutional Court was ignored in seven separate court decisions.

f. The Defendant are denied of the Right to Defence³⁰

42. **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 25 January 2018, 582**

²⁹ 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/>

³⁰ 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/>

lawyers have been arrested, 1502 lawyers are under prosecution and 81 lawyers were convicted. 14 of detained or arrested lawyers are [the presidents or former presidents of provincial bars associations](#). All prosecuted lawyers are being charged with terrorism related offences such as being member of an armed terrorist organisation or to run such an organisation. Pursuant to Turkish Penal Code, these two offences attract 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 have also been confiscated without compensation.**³¹

43. **Under the state of emergency rule, serious restrictions as to the right to defence were introduced with 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 lawyer³² from meeting with a client if the lawyer is found to have transmitted information to a terrorist or criminal organization, 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.”³³

44. “..Several lawyers told Human Rights Watch that they had limited opportunity to speak to their clients in confidence because police officers were often present

³¹ The Arrested Lawyers Initiative. <https://arrestedlawyers.org>

³² “Judge could ban the detainee from interviewing with his/her lawyers, upon the public prosecutor’s request. 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 replacement of the lawyer 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)

³³ 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

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.

45. 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 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 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.”³⁴

46. The Bar Human Rights Committee (“BHRC”) which is the international human rights arm of the Bar of England and Wales has expressed concerns 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.³⁵

g. The Restrictions Introduced with the Decree Laws as to The Rights To Fair Trials and Defence³⁶

47. Article 96 of the Decree Law No. 696 changed the heading of Article 209³⁷ of Turkish Penal Procedure Law (CMK) "Documents and records to be read

³⁴ 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>

³⁵ 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

³⁶ 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-defense-fair-trial-in-turkey.pdf> Section (xi) was quoted as whole from the report of The ALI named “The Rights to Defence & Fair Trial Under Turkey’s Emergency Rule”

³⁷ 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 the letter of rogatory, the records of hearing of the witness conducted by a delegated member of the court or through the letter of rogatory, as well as documents such as records of bodily examination and records 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 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”

mandatorily during the hearing" to "Documents and records to be told mandatorily during the hearing". Under this amendment, documents, records and other writings which can be used as evidence in judgement will only be told (in summary) and not be (completely) read during hearings.

48. Article 5 of the Decree Law No. 676 has made "to hold hearing without the participation of the defendant's lawyer" possible.³⁸
49. Article 1 of the Decree Law No. 676 has stipulated that in the hearings of organised crime trials a defendant can be represented by maximum three lawyers.³⁹ Prior the state of emergency, this restriction was in effect only for investigation stage, with the above-mentioned amendment the three-lawyer restriction is carried into effect also for the prosecution stage.
50. Article 2 of the Decree Law No. 676 has unduly expanded the boundaries of the rule as to banning a lawyer to attend the criminal proceedings.⁴⁰ Prior the Decree Law 676, a lawyer would be banned from to attend the criminal proceedings only in case where there is a pending prosecution⁴¹ against him / her; by the amendment with the decree, the existence of a pending investigation has been made sufficient to ban a lawyer. And also, prior the Decree Law 676, the scope of to ban could comprise only "lawyer of the arrestee and convict". By changing the wording of "*may be banned from acting as a defense counsel or as a representative of the arrestee or the convict*" as "*may be banned from acting as a defense counsel*

³⁹ Decree Law 667, Article 6:

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

⁴⁰ **Article 150/3 of the Turkish Penal Procedure Law before the Decree Law 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 Art. 149, or has been appointed according Art. 150, and who is defending or representing an individual who has been arrested with a warrant because of crimes, or has been convicted of crimes as listed in Art. 220 and 314 Turkish Criminal Code, or terrorism crimes, may be banned from acting as a defense counsel or as a representative of **the arrestee or the convict****.

*** "prosecution" was changed as "investigation"**

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

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

⁴¹ With regard to the offences enumerated under Fourth, Fifth, Sixth and Seventh Sections of Fourth Chapter of Second Volume of the Turkish Criminal Code no. 5237 dated 26 September 2004, the offences falling under the Anti-Terror Law no. 3713 dated 12 April 1991 and the collective offences.

or as a representative of the suspect, the arrestee or the convict"; the restriction has become applicable for whole stages of investigation and prosecution procedures.

51. In August 2017, the Turkish Ministry of Justice issued an order under Article 6/g⁴² of the Decree 667 regarding the banning of certain lawyers from representing certain suspect. In the order in question which was sent to all provincial public prosecutors, lawyers who themselves were under criminal investigation were asked to be banned for 2 years. So far, in only Istanbul at least 400 lawyers have been banned by the two separate decisions issued by Peace Criminal Judges.

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 Kanununun 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 regarding 110 lawyers by the 8th Istanbul Peace Criminal Judge, dated October 2017

52. The Decree Law 668 has stipulated that the right of the person who taken under custody to see a lawyer may be restricted for five days⁴³ ⁴⁴ by the prosecutor, (but no formal statements shall be taken during this time from the accused.).
53. The Decree Law 667 introduced 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.⁴⁵

⁴² 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 4 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. 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)

⁴³ Decree Law no. 668, Article 3-m) "The right of the suspect in custody to see a defense counsel may be restricted for five days by the decision of the public prosecutor. No statement shall be taken during this time."

⁴⁴ Decree Law no. 676, dated 29 October 2016, it (five days) was changes as one day.

⁴⁵ Decree Law 667, Article 6/d) "Where there is a risk that public security and the security of the penitentiary institution is endangered, that the terrorist organization or other criminal organizations are directed, that orders and instructions are given to them or secret, clear or crypto messages are transmitted to them through the remarks during the interviews between the detainees and their lawyers; the interviews may be recorded auditorily or audio - visually

With the Decree Law 676, this restriction was carried into effect also for consultations (between the detainees and their lawyers after the detainees) in the prison.

54. The Decree Law 667 introduced that the lawyer of the suspect, the arrestee or the defendant may be replaced, at the request of the prosecution, by the Bar.⁴⁶
55. The Decree Law 668 introduced that if the purpose of the investigation may be compromised, the defence counsel's right to examine the contents of the case-file or take copies may be restricted by the decision of the prosecutor.⁴⁷ Prior to state of emergency, such a restriction could only be decided by the judge.⁴⁸
56. Article 1-a of the Decree Law no. 667 introduced that the dead-line for bringing an arrested person to a judge is extended to 30⁴⁹ days.⁵⁰ ⁵¹ Prior the state of emergency, the person arrested or detained shall be brought before a judge within at latest forty-eight hours and in case of offences committed collectively within at most four days.

via technical devices, the officers may be made 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 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 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 could ban the detainee from interviewing with his/her lawyers, upon the public prosecutor's request. 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 replacement of the lawyer commissioned by the Bar. The commissioned lawyer shall be paid in accordance with Article 13 of the Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23 March 2005."

⁴⁶ 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 the Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23 March 2005."

⁴⁷ Decree Law 668, Article 3/l) "The defense counsel's right to examine the contents of the case file or take copies of the documents can be restricted by the decision of the public prosecutor, if the purpose of the investigation may be compromised"

⁴⁸ **Article 153/2 of the Turkish Penal Procedure Law prior the Decree Law as follows:**

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

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

⁴⁹ **Article 1-a of the Decree Law no. 667** "a) The period of custody shall not exceed thirty day .."

Prior the state of emergency, the dead-line was (maximum) four days.

⁵⁰ With the article 10-a of the Decree Law no. 684, dated 23 January 2017, it (30 days) was changed as 14 days.

⁵¹ According to the Government memorandum, p. 70, by 28 October 2016, out of 45,225 persons who were arrested within 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)

57. Article 3-ç of the Decree Law no. 668⁵² introduced that review of detention or examination of the 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 oral defence statement of defendant or his / her counsel before reaching a decision.
58. The Decree Law no. 667 introduced that the prosecution may seize and inspect correspondence between defendants and “privileged witnesses” (such as spouses and lawyers, for example). Prior the state of emergency, it was impossible.⁵³
59. Article 4 of the Decree 676 introduced that the judge or the court might refuse to listen the witness or the expert produced by the defendant. Prior the the Decree 676, the judge or the court had to listen the witness or the expert if they were made available for the hearing by the defendant.⁵⁴
60. Article 3/1 of the Decree Law 668 stipulated that any appeal against a detention order shall be examined within ten days⁵⁵ by the magistrate who took the Prior the decree, the maximum term to examine the appeal was three days⁵⁶

⁵² Article 3-ç of the Decree Law no. 668: 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.

⁵³ Decree Law 667, Article 6/d) “.. the interviews may be recorded auditorily or audio - visually via technical devices, the officers may be made 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 days and hours of the interviews may be limited upon the public prosecutor’s order.”

⁵⁴ **Article 178 of the Turkish Penal Procedure Law prior the Decree Law as follows:**

Directly bringing the witness and expert whose summons was denied

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

⁵⁵ Decree Law 668, Article 3:

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

⁵⁶ **Article 105 of the Turkish Penal Procedure Law prior the Decree Law 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 defense counsel have been obtained. These decisions may be subject to a motion of opposition.

61. Article 142 of the Decree Law 694 renders “to listen ‘the undercover investigator’ as a witness in a closed hearing without attendance of the defendant or his / her lawyer” possible.
62. Article 147 of the Decree Law No. 694 gives authority to the judge to interrogate the defendant by video conference connection without bringing him to the courtroom, even if he wanted to attend the hearing personally.
63. Article 148 of the Decree Law 694 has made the delivering of the verdict possible even if the lawyer for the defence is not present at the hearing
64. Article 141 of the Decree Law 694 has increased the maximum pre-trial detention term from five to seven years.
65. Article 93 of the Decree Law 696 gives to the prosecutor and the intervening party the authority to appeal against the decisions to release of the arrestee. Prior the decree, the decisions to release given by the court was final.⁵⁷
66. Article 6.e of the Emergency Decree Law 667 has brought about significant restrictions as to the detainees' right of communication with the outer world and visiting rights. It narrowed down the range of relations who are allowed to visit a detainee and the detainees' rights to be visited by 3 persons he could freely chose have been taken away. On the other hand, detainees' right to a telephone call per week has been reduced to a telephone call per fortnight.⁵⁸
67. Other essential changes introduced by Decree Law no. 667 and 668 are as follows:⁵⁹
 - the prosecution may bar an advocate from taking up his/her duties if an investigation is pending against this person related to enumerated offences;

⁵⁷ Re: Amnesty’s Taner Kılıç case.

⁵⁸ Decree Law 667, Article 6:

e) The detainees may only be visited by his/her spouse, relatives of the first and second degrees and 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 for once every fifteen days and for a period not exceeding ten minutes, limited to the persons set out in this subparagraph.

⁵⁹ [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)

- a bill of indictment or “documents which substitute for the bill of indictment” may be “read out or summarized and explained⁶⁰” before the start of the trial;
- in urgent cases searches in private premises and offices (including lawyers’ offices) may be authorised by a prosecutor; such seizures should be submitted to a judge for review within five days; this procedure also applies to inspection of computers, databases, software, etc.;
- in urgent cases a prosecutor may order undercover investigative measures (such as wiretappings) which are subject to ex-post judicial examination.

h. The Home Office

68. “.. 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.”⁶¹ was said in the “Country Police and Information Note: Gulenism: Turkey” by the UK Home Office.

69. “There are reports that HROs are monitored by the authorities and that some persons who work for these organisations face harassment, intimidation, investigation, detention and prosecution at the hands of the authorities.”⁶² was

⁶⁰ Decree Law 667, Article 6:

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

⁶¹ Home Office. Country Police and Information Note: Gulenism: Turkey. p.9

[https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607266/CPIN - Turkey -
_Gulenists - v1.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607266/CPIN_-_Turkey_-_Gulenists_-_v1.pdf)

⁶² 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619684/Turkey_-_HRDs_-_CPIN_-_v2_0_June_2017_.pdf)

said in the “Country Police and Information Note: Human Rights Defenders: Turkey” by the UK Home Office.

i. Bar Human Rights Committee (of the Bar of England and Wales)

70. The Bar Human Rights Committee (“BHRC”) which is the international human rights arm of the Bar of England and Wales often observes trials of jailed journalists in Turkey. In its trial observation reports⁶³ regarding Turkey, the BHRC expresses concerns on the fundamental rights 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.

71. 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 to warrant continued detention and prosecution. The proceedings had the appearance of a ‘show trial’.⁶⁴

72. BHRC raised a number of urgent human rights concerns based on its observations of trials Turkey conducted on 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 Cumhuriyet newspaper.

⁶³ 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>

⁶⁴ 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>

- 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 continued 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, further reducing the defendants' chances of a timely or fair hearing.⁶⁵

73. In another trial observation report by the BHRC a number of serious flaws and suspected violations of the defendants' right to a fair trial were reported highlighted including: ⁶⁶

- Judges and prosecutors failing to clarify the precise charges levelled against each defendant, or offer factual evidence against them linking them to clear charges, 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).

⁶⁵ BHRC. <http://www.barhumanrights.org.uk/bhrc-legal-observers-call-on-turkey-to-ensure-fair-trial-rights-of-araf-journalists>

⁶⁶BHRC. <http://www.barhumanrights.org.uk/bar-human-rights-committee-publishes-interim-report-on-trial-of-turkish-journalists/>

- Large sections of the indictment appearing 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.
- 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.

j. The World Justice Project

74. According to The World Justice Project’s annual report entitled “[Rule of Law Index 2016](#)”, Turkey is on 99th rank amongst 113 countries. Turkey is on 105th rank in terms of “fundamental rights” and on 108th rank in terms of “constraints on government powers” amongst 113 countries.⁶⁷
75. 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.⁶⁸

⁶⁷ **The World Justice Project. Rule of Law Index 2016-2017.** <http://data.worldjusticeproject.org/pdf/rule-of-law-index-TUR.pdf>

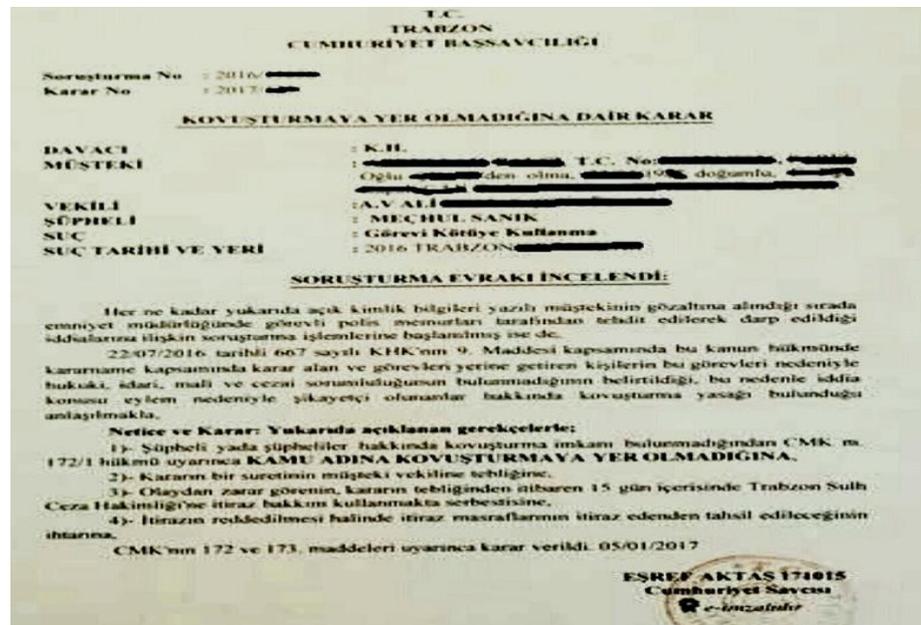
⁶⁸ **The World Justice Project. Rule of Law Index 2017-2018.** https://worldjusticeproject.org/sites/default/files/documents/WJP_ROLI_2017-18_Online-Edition.pdf

II. TORTURE & ILL-TREATMENT AND PRISON CONDITIONS IN TURKEY

a. Impunity Offered by Emergency Decree No.667

76. By the Emergency Decree Law No.667, Turkish government have offered impunity to the all public servants for any crime they may commit in performance of their duties including torture.

77. In a very troubling provision, emergency decree 667 states that “individuals who make decisions and perform their duty in the context of this decree bear no legal, administrative, financial or criminal responsibility for those duties performed.” This sends a clear signal to police officers and other officials that they can abuse detainees and violate their rights without fear of legal or other consequences. It also is a clear breach of Turkey’s non-derogable duty under international law to prevent and punish acts of torture and ill-treatment.⁶⁹ *By this article, Trabzon* Prosecutorial Office, drops torture complaint due to impunity under state of emergency.⁷⁰



(Mentioned Nol-Pros Decision by Trabzon Prosecutorial Office)

⁶⁹ 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

⁷⁰ 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/>

78. *Recently, a new decree dated 24 December 2017 brings amendment above mentioned Decree 667 and says that "Regardless of their official duties or appointments, any individuals who participated in suppressing the coup attempt on July 15, 2016, terror acts and other acts which are regarded to be a continuation of these, shall be subjected to the first clause."*⁷¹ This amendment brings impunity to 'civilians' in addition to officials as well.

b. Report by The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment dated 18 December 2017

79. "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**

⁷¹ 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>

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, inhuman 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." was said **in the report⁷² by Nils Melzer who is the United Nations Special Rapporteur** on torture and other cruel, inhuman or degrading treatment or punishment.

c. The Home Office; Country Policy and Information Notes

80. "... there is a real risk of mistreatment simply on the basis that the person is a Gulenist / suspected Gulenist / relative or friend of a Gulenist, 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."⁷³ was said in the "Country Police and Information Note: Gulenism: Turkey" by UK Home Office.

⁷² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey. <https://drive.google.com/file/d/114Hqs6kf9CKSUPGajYlAjN--mLIEK95C/view>

⁷³ 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/607266/CPIN_-_Turkey_-_Gulenists_-_v1.pdf)

81. “Citizens critical of the government could be charged with a crime on the basis of defamation or terrorism for social media posts. President Erdogan, senior officials and politicians harshly criticised 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 organisations face harassment, intimidation, investigation, detention and prosecution at the hands of the authorities.”⁷⁴ was said in the “Country Police and Information Note: Human Rights Defenders: Turkey” by UK Home Office.

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

82. 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.⁷⁵

e. European Commission

83. The European Commission published a report on Turkey in November 2016 in which it said; ‘Developments in the area of prevention of torture and ill-treatment, in particular after 15 July, are of serious concern. Following the July coup attempt, a large number of suspects were detained in irregular locations without appropriate detention conditions and serious impediments to their procedural rights according to European standards were reported. There was a sharp rise in the prison population and prison overcrowding reached very worrying limits. A Law Decree amending the Law on Enforcement of Sentences in August resulted in the release on probation of around 40 000 inmates in order

⁷⁴ 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](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619684/Turkey_-_HRDs_-_CPIN_-_v2_0_June_2017.pdf)

⁷⁵ 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=gi-15/2017>

to create room in prison facilities to deal with detained and sentenced persons suspect of implication in the coup attempt. Following their release, there were 192 181 people for some 180 000 places in the penal institutions, of which 59 819 are detained and 132 362 convicted as of 9 September 2016. The prison population rate has grown to over 200 per 100 000 inhabitants which is a high figure among Council of Europe states”⁷⁶

f. The US State Department

84. The United States Country Report on Human Rights Practices for 2016 noted followings: “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 [2016] coup attempt were held in stadiums, meeting rooms, and other sites without cameras, where some were allegedly subject to mistreatment or abuse.⁷⁷.. 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 Gulen-related connections. His family claimed he was a victim of police violence. Yigit had been heavily involved in developing the case announced in 2013, alleging high-level official corruption that implicated members of then-prime minister Erdogan’s family and close circle, including four ministers.”⁷⁸

⁷⁶ European Commission. ‘Commission staff working document; Turkey 2016 report,’ published 9 November 2016 (page 63). http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf

⁷⁷ 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&dclid=265482>

⁷⁸ 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

g. 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 authorise 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.”⁷⁹

h. CPT - European Committee for the Prevention of Torture

86. According to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), its findings from visits to prisons in Turkey in 2016 will not be published because of the lack of government approval.⁸⁰

i. Human Right Watch

87. 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.⁸¹

88. “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

⁷⁹ 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>

⁸⁰ 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>

⁸¹ 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>

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.”⁸²

89. “The 11 cases of torture or ill-treatment 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), associated with 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 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 physical evidence of torture or the presence of police officers inhibited them from conducting proper medical examinations and made it hard for detainees

⁸² Human Rights Watch. World Report 2018.
<https://www.hrw.org/world-report/2018/country-chapters/turkey>

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 with 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 the government of President Erdogan 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 hold 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 latest report also told prosecutors or courts they had been ill-treated. Most of their allegations appear to have been ignored or sidelined. There are scant indications that prosecutors are taking the initiative proactively to investigate abuse when they encounter suspects who show signs of having 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 concerned about their own job security will risk investigating such crimes.’⁸³

j. Amnesty International

90. Amnesty International published the following on 24 July 2016: ‘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.’⁸⁴

k. Progressive Lawyers Association

91. ‘In August [2016], the Istanbul Prison Monitoring Commission of the Istanbul branch of the Progressive Lawyers Association 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, recording of attorney-client meetings, and abuse of sick prisoners. ‘The HRA

⁸³ 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>

⁸⁴ Amnesty International. ‘Turkey: Independent monitors must be allowed to access detainees amid torture allegations,’ dated 24 July 2016. <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>

[Human Rights Association] reported that political prisoners typically were 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, a provision restricted by government decree following the coup attempt.⁸⁵

92. Selçuk Kozağaçlı, the president of the Progressive Lawyers' Association (ÇHD), said during the Ankara Bar Association's general assembly on Oct. 16 that people imprisoned as part of a government crackdown on the Gülen movement are being 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. İHD said in a report on Oct. 21 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 prisons rapidly became overwhelmed by detentions and arrests that followed the failed coup in Turkey on July 15.⁸⁶

1. Stockholm Center For Freedom

93. In a report entitled "**Mass Torture and Ill-Treatment in Turkey**", Sweden based human rights organisation 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, depriving of food and water, threats to kill and rape.⁸⁷

94. "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

⁸⁵ 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&dclid=265482>

⁸⁶ 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/>

⁸⁷ 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

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.”⁸⁸ said in the report.

95. The SCF also reported the death of Gokhan Açikkollu who was a history teacher and died after enduring 13 days of torture and abuse in police detention in İstanbul.⁸⁹

96. 54 people were reported to have lost their lives, most under suspicious circumstances and under lock-up during ongoing state of emergency rule.⁹⁰

m. Platform For Peace And Justice

97. A by 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 organisations, and cannot be efficiently scrutinised 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.

98. 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 “membership of a terrorist organisation”⁹¹

⁸⁸ Stockholm Center For Freedom. Mass Torture and Ill-Treatment in Turkey, June 2017.

⁸⁹ 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>

⁹⁰ 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>

⁹¹ Platform for Peace and Justice. A Comprehensive Report On The Prison Conditions In Turkey: In Prison 2017. <http://www.platformpi.org/report-comprehensive-report-prison-conditions-turkey-prison-2017/>

n. Human Rights Association (IHD) & Turkey Human Rights Foundation (TIHV)

99. In a [report](#) dated 20 December 2017 by (IHD) Human Rights Association; solitary confinement, torture, arbitrary discipline punishments, inadequate health service, unlawful communication restrictions were underlined as the most frequent right violations are being lived in Turkish prisons.⁹²

100. On December 2017, The Human Rights Association (IHD) and the Human Rights Foundation of Turkey (TIHV) reported followings:

- i. A total of 570 people applied to the TIHV as victims of torture,
- ii. 2,278 people were tortured and 11 abducted in Turkey,
- iii. With the decrees, Turkish Government has created guarantees for state officials that they will not be prosecuted for violations committed during the period of emergency rule,
- iv. Security forces killed 36 people and wounded 12 in extrajudicial killings and by firing arbitrarily into a crowd on the pretext that they did not obey an order to stop during the first 11 months of 2017.

⁹² İnsan Hakları Derneği. Mahpusların Diliyle Türkiye Hapishanelerinde Hak İhlalleri Raporu, 20 December 2017. http://www.ihd.org.tr/wp-content/uploads/2017/12/cezaevi_raporu_2017.pdf

III. POLITICAL ATMOSPHERE

101. 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.”⁹³
102. 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 of alleged Gülen supporters in prisons...⁹⁴
103. Addressing the AKP supporters, 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.”⁹⁵
104. “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.”⁹⁶ said Suleyman Soylu Turkey's Interior Minister who is ex officio the chief of the police force.

⁹³ TRT Haber. Cumhurbaşkanı Erdoğan'dan İKBY'ye bayrak tepkisi, 4 April 2017. <http://www.trthaber.com/haber/gundem/cumhurbaskani-Erdoğandan-ikbyye-bayrak-tepkisi-307472.html>

⁹⁴ 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>

⁹⁵ 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-verecegiz-ki-gebartin-bizi-diye-yalvaracaklar.352845>

⁹⁶ BBC. Turkey minister Soylu tells police to break drug dealers' legs. <http://www.bbc.com/news/world-europe-42563865>

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

ARTICLE 1

Obligation to respect Human Rights

The High Contracting Parties shall secure to 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 inhuman 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 proved 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.

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

105. The European Court of Human Rights has referred to the European Convention on Human Rights as “a constitutional instrument of European public order (*ordre public*)”. The ECHR does not recognise the doctrine of “nationality” either. According to Article 1 (of) 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 nonnationals (e.g., stateless) of a foreign state.⁹⁷
106. The Court said as to Article 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 inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals.”⁹⁸
107. 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.
108. The court has said in its landmark decision about the applicability of Article 3 of the Convention to decisions relating to extradition requests as follows: “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 inhuman 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 recognised in Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading

⁹⁷ Hélène Lambert. *The Position of Aliens in Relation to the European Convention on Human Rights*. P.8

⁹⁸ *A. v. the United Kingdom*, 23 September 1998.

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 specialised treaty should spell out in detail a specific obligation attaching 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 "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 in the receiving State by a real risk of exposure to inhuman or degrading treatment or punishment proscribed by that Article".⁹⁹

109. 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 liable to be sentenced to life in prison, was a violation of Article 3 of the Convention.¹⁰⁰ 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 life prison sentence 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 for reviewing this type of sentence,

⁹⁹ 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>

¹⁰⁰ Trabelsi v. Belgium (ECHR, Application No 140/10,) <http://hudoc.echr.coe.int/eng?i=001-146372>

which meant that his extradition to the United States had amounted to a violation of Article 3 of the Convention.¹⁰¹

110. 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.¹⁰² In *Chahal v. United Kingdom*,¹⁰³ 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.^{104 105}

111. 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*¹⁰⁶, 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 mistreatments.¹⁰⁷

112. 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 procedural rights of parties to civil proceedings (Article 6 §1) and rights of the defendant (accused suspect) in criminal proceedings (Article 6 §§1, 2 and 3). Whereas other participants in the trial (victims,

¹⁰¹ Council of Europe. Extradition and life imprisonment.

http://www.echr.coe.int/Documents/FS_Extradition_life_sentence_ENG.pdf

¹⁰² Human Rights Watch. Diplomatic Assurances and Their Use In Europe

<https://www.hrw.org/reports/2004/un0404/5.htm - fn73>

¹⁰³ *Chahal v. United Kingdom*. (ECtHR, 70/1995/576/662)

¹⁰⁴ *Ibid.*, para. 37.

¹⁰⁵ Extradition and life imprisonment.

¹⁰⁶ *Saadi v Italy* (ECtHR, Application no. 37201/06) <http://hudoc.echr.coe.int/eng?i=001-85276>

¹⁰⁷ 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>

witnesses, etc.) have no standing to complain under Article 6 (*Mihova v. Italy*), their rights are often taken into account by the European Court of Human Rights.¹⁰⁸

113. According to the Court’s case-law, however, an issue might 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 has subsequently been confirmed by the Court in a number of cases (*Mamatkulov and Askarov v. Turkey* [GC], §§ 90-91; *AlSaadoon and Mufdhi v. the United Kingdom*, § 149; *Ahorugeze v. Sweden*, § 115; *Othman (Abu Qatada) v. the United Kingdom*, § 258). The term “flagrant denial of justice¹⁰⁹” has been considered synonymous with a trial which is manifestly contrary to the provisions of Article 6 or the principles embodied therein (*Sejdovic v. Italy* [GC], § 84; *Stoichkov v. Bulgaria*, § 56; *Drozd and Janousek v. France and Spain*, § 110).¹¹⁰

114. 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.*

¹⁰⁸ Dovydas Vitkauskas & Grigoriy Dikov. Protecting the right to a fair trial under the European Convention on Human Rights. <https://rm.coe.int/168007ff57>

¹⁰⁹ Some instances assessed as the “Flagrant Denial of Justice”:

- conviction in absentia with no subsequent possibility of a fresh determination of the merits of the charge (*Einhorn v. France* (dec.), § 33; *Sejdovic v. Italy* [GC], § 84; *Stoichkov v. Bulgaria*, § 56);
- a trial which is summary in nature and 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)

¹¹⁰ 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

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 lack of safeguards in the trial proceedings such as might result in a breach of Article 6 if occurring within the Contracting State itself. What is required is a breach of the principles of a fair trial guaranteed by Article 6 which is so fundamental as to amount to a nullification, or destruction of the very essence, of the right guaranteed by that Article (*Ahorugeze v. Sweden*, § 115; *Othman (Abu Qatada) v. the United Kingdom*, § 260).¹¹¹

115. 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 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). 354. 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 and 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*

¹¹¹ Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb)

Mufdhi v. the United Kingdom, § 149; Mamatkulov and Askarov v. Turkey [GC], § 69).¹¹²

¹¹² Guide on Article 6 of the European Convention on Human Rights Right to a fair trial (criminal limb).

VI. CONCLUSION

116. The reports mentioned above together with the respective judgments of the German and English Courts on the matter clearly show that anyone (principal) 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 fair trial,
- iv. his right to counsel will be unlawfully hindered.

117. Finally, in view of the well-established position of the European Court of Human Rights the treatment he (principal) will receive in the hands of Turkish official bodies will constitute serious violations of Article 3 and 6 of the European Convention on Human Rights.

END.