

## Long Term Detention of Human Rights Defenders

### Introduction

Attending to the call of the Special Rapporteur on the situation of human rights defenders for inputs to inform her thematic studies to be presented at the Human Rights Council in March session and at the General Assembly in October, ASSEDEL human rights advocacy association responses to the third (3<sup>rd</sup>), fourth (4<sup>th</sup>) and fifth (5<sup>th</sup>) questions in this document.

3<sup>rd</sup> question - Do you know of any human rights defender(s) whose time in pre-trial detention and/or administrative detention by States combines with a sentence that amounts, or would amount to 10 years or more? Please provide a list of cases.

4<sup>th</sup> question - Do you know of any human rights defender(s) falling under any of the previous categories above, who were released before ending their long-term prison sentences for any reasons (e.g., granted a pardon, as a result of an appeal, or released on humanitarian or other grounds)? Please provide a list of cases.

5<sup>th</sup> question- What actions do you suggest the Special Rapporteur can take to:

- a) Prevent defenders from being detained for long terms in connection to their human rights work? And
- b) Have those human rights defenders arbitrarily detained under long sentences released?

### The Emphasized Country in this Report

ASSEDEL is a Strasbourg-based human rights advocacy association and this report emphasizes the human rights violations in Turkey. An important reason for this choice is the drifting shift of the Turkish regime toward a dictatorial form after July 2016. Until that date, although not as modern western democracies, it was able to mention the existence of a form of democracy in Turkey. According to the Freedom House reports<sup>12345</sup>, Turkey has fallen into 'Not-free' status in the last five years, was considered 'Partially-free' before 2016<sup>678</sup>.

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<sup>1</sup> <https://freedomhouse.org/country/turkey/freedom-net/2016>

<sup>2</sup> <https://freedomhouse.org/country/turkey/freedom-world/2017>

<sup>3</sup> <https://freedomhouse.org/country/turkey/freedom-world/2018>

<sup>4</sup> <https://freedomhouse.org/country/turkey/freedom-world/2019>

<sup>5</sup> <https://freedomhouse.org/country/turkey/freedom-world/2020>

<sup>6</sup> [https://freedomhouse.org/sites/default/files/01152015\\_FIW\\_2015\\_final.pdf](https://freedomhouse.org/sites/default/files/01152015_FIW_2015_final.pdf)

<sup>7</sup> [https://freedomhouse.org/sites/default/files/2020-02/Freedom\\_in\\_the\\_World\\_2014\\_Booklet.pdf](https://freedomhouse.org/sites/default/files/2020-02/Freedom_in_the_World_2014_Booklet.pdf)

<sup>8</sup> [https://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet\\_0.pdf](https://www.freedomhouse.org/sites/default/files/FIW%202013%20Booklet_0.pdf)

Soon after the coup attempt, on July 21, a state of emergency (OHAL) was declared and within its scope, twelve (12) decree-laws were issued. According to the study of the Mecliste.org website<sup>9</sup>, 7 of the 12 Decree Laws that have been issued contain a list of *closure or expulsion*. Table-1 below presents the total number of closed institutions based-on these decree laws. With these decrees, **83 thousand 45 people** in total were expelled from the public services. Although not as long as the ten-year limit set by the Special Rapporteur, many human rights defenders were the victims of decree-laws<sup>10</sup>.

<i>Institutions</i>	<i>Closed</i>	<i>Re-opened</i>	<i>Still closed</i>
<i>Hospitals and other health institutions</i>	35	1	34
<i>Private education institutions</i>	1043	54	989
<i>Foundations</i>	104	18	86
<i>Associations</i>	1500	175	1325
<i>Trade unions, federations, and confederations</i>	19	0	19
<i>Universities</i>	15	0	15
<i>News agencies</i>	5	0	5
<i>TV stations</i>	16	1	15
<i>Radio stations</i>	24	2	22
<i>Newspapers</i>	62	6	56
<i>Journals and magazines</i>	19	0	19
<i>Publishers</i>	29	0	29
<b>TOTAL</b>	<b>2871</b>	<b>257</b>	<b>2614</b>

**Table-1<sup>11</sup>**. The total number of closed institutions and organizations in Turkey after 07, 2016

### ASSEDEL's Evaluations and Comments

Although she has not been sentenced for ten years or more, the most striking example affected by the decree was human rights defender and lawyer Ebru Timtik. Ms. Timtik was a Kurdish-Turkish human rights lawyer who died after going on a hunger strike in pursuit of a fair trial<sup>12</sup>. She was one of a group of 18 lawyers known for representing clients critical of the Turkish government, who was arrested in September 2017. Timtik initiated a hunger-strike on January 2, 2020, to fight for her right to have a fair trial. After 238 days of fasting, Timtik died on August 27, 2020, weighing only 30 kg<sup>13</sup>. She became the fourth Turkish prisoner to die on a hunger strike in 2020, following the deaths of Helin Bölek, İbrahim Gökçek, and Mustafa Koçak<sup>14</sup>.

<sup>9</sup> <https://mecliste.org/guncelleme/ohalin-cetelesi-toplam-83-bin-kisi-ihrac-edildi>

<sup>10</sup> <https://m.bianet.org/bianet/insan-haklari/190524-100-gundur-tutuklu-bulunan-hak-savunuculari-kimdir>

<sup>11</sup> <https://t24.com.tr/haber/tam-liste-15-temmuzdan-sonra-kac-khk-cikarildi-kac-kurum-kapatildi-hangi-kurumdan-toplam-kac-kisi-ihrac-edildi,374482>

<sup>12</sup> [https://en.wikipedia.org/wiki/Ebru\\_Timtik](https://en.wikipedia.org/wiki/Ebru_Timtik)

<sup>13</sup> <https://www.al-monitor.com/pulse/originals/2020/08/turkey-eburu-timtik-hunger-strike-dies-lawyer-kurdish-prison.html>

<sup>14</sup> [https://eeas.europa.eu/headquarters/headquarters-homepage/84536/turkey-statement-spokesperson-death-eburu-timtik\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/84536/turkey-statement-spokesperson-death-eburu-timtik_en)

### **Response to 3<sup>rd</sup> Question**

Rights defender and academic Mehmet Osman Kavala is still in detention after three and a half years with a demand for aggravated life and up to twenty (20) years of a prison sentence. Mr. Kavala is the founding member, board member, or advisory board member of many non-governmental organizations such as Open Society Foundation, the Anatolian Cultural Management Board, TESEV, TEMA Foundation, History Foundation, Diyarbakır Institute for Political and Social Research, Turkey Cinema, and Audiovisual Culture Foundation<sup>15</sup>.

Kavala has been held in detention since November 2017, on false allegations that he used the 2013 Istanbul Gezi Park protests as a pretext for an attempt to overthrow the government, and that he was involved in the July 15, 2016, attempted military coup<sup>16</sup>. Despite the unlawful detention and an acquittal by the Turkish criminal court presiding over his trial, Osman Kavala has been kept behind bars under a newly issued charge of “espionage” since March 2020. His lawyers are currently challenging the lawfulness of the detention before Turkey’s Constitutional Court. However, the Committee of Ministers indicated in its decision that Turkey should not wait for a ruling of the Constitutional Court but should release Kavala immediately.

The European Court of Human Rights (ECHR) judgment in *Kavala v. Turkey* – Application no. 28749/18 – found violations of the following provisions of the European Convention on Human Rights: Article 5(1), right to liberty and security; article 5(4), right to a speedy decision on the lawfulness of detention; and the rarely used article 18, limitation on use of restrictions on rights, taken together with article 5(1). The Court required Turkey to release Kavala and said that any continuation of his detention would prolong the violations and breach the obligation to abide by the judgment in accordance with article 46(1) of the Convention. The judgment on Osman Kavala’s case is particularly significant because it is the first final ruling of the ECHR against Turkey in which the Court determined that, in interfering with an individual’s rights, Turkey acted in bad faith and out of political motivations, violating the article 18 of the European Convention on Human Rights.<sup>17</sup>

### **Response to 4th Question**

Eren Keskin is a prominent human rights defender and lawyer in Turkey. She is the co-president of the Human Rights Association in Turkey (IHD). For the past thirty years, Ms. Keskin has contributed to protecting the rights of persons belonging to minorities, and worked on issues relating to violence against women and torture. She is an honorary member of the Paris Bar Association, and the winner of multiple international awards for her peace and human rights work, including the 2018 Helsinki Civil Society Award<sup>18</sup>, Aachen

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<sup>15</sup> <https://www.haberturk.com/osman-kavala-kimdir-osman-kavala-neden-tutuklu-2967490>

<sup>16</sup> <https://www.hrw.org/news/2020/09/07/turkey-release-osman-kavala>

<sup>17</sup> <https://www.hrw.org/news/2020/09/07/turkey-release-osman-kavala>

<sup>18</sup> <https://www.fidh.org/en/issues/human-rights-defenders/turkey-continuing-judicial-harassment-of-ms-eren-keskin>

Peace award in 2004<sup>19</sup> , and was the 2018 finalist of Martin Ennals Award for Human Rights Defenders<sup>20</sup>.

Due to her work as a human rights defender, Keskin has been targeted, threatened, attacked, and imprisoned numerous times. There are currently 122 criminal cases filed against her in Turkey, with sentences adding up to 17 years, two months and 20 days in prison and a monetary fine of TRY 359 912 (approx. € 41 300)<sup>21</sup>. In August 2018, the Office of the President of Turkey filed an application with the Istanbul Bar Association requesting a disciplinary investigation against Ms. Keskin, which could result in her disbarment and prevent her from continuing her work as a human rights lawyer. On 21 May 2019, the İstanbul 14<sup>th</sup> Heavy Penal Court convicted Ms. Eren Keskin for “propaganda on behalf of a terrorist organization”, namely the Kurdistan Workers Party (PKK), under Article 7(2) of the Anti Terror Law No. 3713, and sentenced her to three years and nine months of prison. The sentence will be appealed at the Regional Court of Appeal, and if the Court upholds it, Ms. Keskin will be imprisoned<sup>22</sup>.

### **Response to 5th Question**

Considering the above facts and referring to the to international human rights law which cites international human rights instruments and standards,

- The Special Rapporteur may request a detailed explanation and report from the Turkish authorities on what steps have been taken to end the hunger strike initiated by human rights defender and lawyer Ebru Timtik for the right to a fair trial. In this report, it should be questioned whether the administrative and judicial authorities have fulfilled their duties and responsibilities, whether Mr. Timtik's demand for a fair trial has been evaluated as she was going to death day by day, and how the Turkish authorities have taken on the issue. The Special Rapporteur should also contact Ebru Timtik's lawyer, relatives, national, and international organizations that followed the incident, and members of the press, to understand the issue more clearly, and contribute to the understanding of the deplorable incident.
- The Special Rapporteur may request a detailed explanation of the reason for Osman Kavala's detention, despite the ECtHR's decision in favor of him. The Special Rapporteur may also question how the request for the trial with an aggravated 20-year prison sentence was justified under international human rights law for Osman Kavala, whose immediate release was confirmed by the ECtHR decision<sup>23</sup>.

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<sup>19</sup> <https://www.frontlinedefenders.org/en/profile/eren-keskin>

<sup>20</sup> <https://www.fidh.org/en/issues/human-rights-defenders/turkey-continuing-judicial-harassment-of-ms-eren-keskin>

<sup>21</sup> <https://www.atlaswomen.org/profiles/2020/3/19/eren-keskin>

<sup>22</sup> Mandates of the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on minority issues.

<sup>23</sup> <https://bianet.org/english/law/216909-ecthr-release-osman-kavala-immediately>

- The Special Rapporteur may request a detailed explanation and report from Turkish officials how the charges against, and conviction of Ms. Eren Keskin are compatible with Turkey's obligations under international human rights law, in particular with articles 14 and 19 of the International Covenant on Civil and Political Rights. The Special Rapporteur can also question Turkish authorities if the measures have been taken to ensure that trials are conducted in a free and fair manner, in compliance with Turkey's obligations under international human rights law. Additionally, the situation of lawyers, journalists, and human rights defenders, including all those who work and advocate for the rights of national or ethnic, religious, and linguistic minorities can be questioned if they can carry out their legitimate professional duties and activities without fear of reprisals, physical violence or other forms of intimidation and threats.

## Conclusion

Human rights issues in Turkey fade away and gradually turns into an area that is overlooked by society. The regime does not care about the passive citizens who form the majority of the population; besides, as a result of arbitrary practices, it chases after or punishes the citizens who ask for their democratic rights. As such, the regime protects a narrow circle that is on its side, offers them through the channels of interest it has and does business together. The regime targets educated and enlightened groups that are not in its narrow circle or do not want to be a part of it, target their lives and try to get tired of the struggle.

In brief, the Turkey regime exhibits an unfavorable attitude towards individuals and groups who demand democracy. It responds with a variety of courts, arrests, prisons, and ill-treatment against individuals and groups who strive independently for the good of their country. Lawyers and human rights defenders who put themselves forward to defend the rights of these individuals and groups face the same fate and face various intimidation procedures.

Human rights defenders are increasingly condemned to loneliness and desolation by the regime. The last and striking example is that at the time this report was written, MP Ömer Faruk Gergerlioğlu, who was the only human rights defender in the parliament, was expelled from the Parliament **based on a tweet he posted**<sup>24</sup>. As a human rights defender and member of parliament, court orders were issued that he would serve 2.5 years in prison<sup>25</sup>.

We expect the Special Rapporteur to raise these important issues at the Human Rights Council in March and at the General Assembly in September.

Sincerely

**ASSEDEL**, L'Association européenne pour la défense des droits et des libertés  
**assedel.org**

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<sup>24</sup> <https://www.dw.com/tr/gergerlio%C4%9Flu-tbmmde-adalet-n%C3%B6betinde/a-56919544>

<sup>25</sup> <https://www.dw.com/tr/gergerlio%C4%9Flu-aymye-ba%C5%9Fvurdu/a-56782275>