



Association européenne pour  
la défense des droits et des libertés

STRASBOURG, 21 May 2021

---

**SUBMISSION OF THE ASSEDEL RELATING TO  
THE LIST OF ISSUES PRIOR TO REPORTING  
FOR THE REPUBLIC OF TURKEY  
132ND SESSION (28 JUNE TO 23 JULY 2021)  
OF THE UNITED NATIONS HUMAN RIGHTS  
COMMITTEE**

---

---

Table des matières

<b><i>Introduction and background</i></b> .....	<b>2</b>
<b>I. Detention of opposition party deputies after being stripped of parliamentary immunity</b> .....	<b>3</b>
Violations of Turkey under the ICCPR provisions .....	4
Suggestions for the List of Issues Prior to Reporting .....	6
<b>II. Enforced disappearances</b> .....	<b>6</b>
Violations of Turkey under the ICCPR provisions .....	9
Suggestions for the List of Issues Prior to Reporting .....	9
<b>III. Dismissal of public servants with emergency decree-law</b> .....	<b>10</b>
Violations of Turkey under the ICCPR provisions .....	13
Suggestions for the List of Issues Prior to Reporting .....	19
<b>IV. Arbitrary Detention of Masses</b> .....	<b>20</b>
Violations of Turkey under the ICCPR provisions .....	21
Suggestions for the List of Issues Prior to Reporting .....	23

---

## Introduction and background

Turkey's regression in the international human rights indicators continued to plummet in recent years following the coup attempt in 2016. Immediately afterwards of the coup attempt and until today, Turkey undergoes a massive crackdown, which led to the prosecution of thousands of people on trumped-up terrorism charges.

In his statement on 15 July 2020, Interior Minister Süleyman Soylu noted that 99.066 operations were carried out, 282.790 people were detained, and 94.975 arrests were made in the last four years in cases linked to the Gülen movement. Kurds and LGBT communities are also amongst the repressed groups in Turkey.

Over the last ten years, Turkey's freedom score is declined more than any country except one, and it is classed as a "not free country" by U.S. based NGO "Freedom House"<sup>1</sup>. Also, according to Paris based NGO "Reporters Without Borders"<sup>2</sup> Press Freedom Index, Turkey ranks 153th out of the 180 countries<sup>2</sup>.

Serious backsliding of Turkey in respect of democratic standards has also been noted by several international organizations. The European Commission<sup>3</sup> pointed out that many of the measures introduced during the state of emergency remained in force and continued to have a profound and devastating impact. The Parliamentary Assembly of the Council of Europe urged Turkey in its recent report<sup>4</sup> (dated 21 April 2021) to reverse the worrying trend and put an end to the judicial harassment of the opposition and dissenting voices by seizing the opportunity of implementing the Human Rights Action Plan.

Nevertheless, recent developments illustrate the inconsistency of the steps taken by the Turkish Government. Just days after President Erdoğan's declaration of the new human rights action plan,<sup>5</sup> Turkey announced on 20 March its withdrawal from the Istanbul Convention<sup>6</sup> with a Presidential Decree. In parallel, on 17 March, a deputy from the Turkish Peoples' Democratic Party (HDP), Ömer Faruk Gergerlioğlu, has been stripped of his parliamentary membership because of a conviction for a social media posting.<sup>7</sup> Former co-chair of HDP

---

<sup>1</sup> <https://tr.euronews.com/2021/03/04/freedom-house-raporu-turkiye-195-ulkenin-bulundugu-ozgurluk-s-ralamas-nda-146-s-rada>

<sup>2</sup> <https://rsf.org/fr/turquie>

<sup>3</sup> Council of Europe, "The functioning of democratic institutions in Turkey" Report, Doc. 15272, 21 April 2021 [https://ec.europa.eu/council-of-europe/presscorner/detail/en/country\\_20\\_1791](https://ec.europa.eu/council-of-europe/presscorner/detail/en/country_20_1791)

<sup>4</sup> <https://www.ecoi.net/en/file/local/2050294/doc.+15272.pdf>

<sup>5</sup> <https://www.france24.com/en/live-news/20210302-erdogan-unveils-turkish-human-rights-action-plan>

<sup>6</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence.

<sup>7</sup> <https://www.hrw.org/news/2021/03/16/turkey-dont-expel-opposition-deputy-parliament>

Selahattin Demirtaş remains in prison, despite two European Court of Human Rights (ECtHR) rulings in favor of his release.

In this respect, through the present submission ASSEDEL respectfully draws the attention of the Human Rights Committee of the UN, to a number of human right issues which needs to be addressed urgently.

## **I. Detention of opposition party deputies after being stripped of parliamentary immunity**

As the Parliamentary Assembly of the Council of Europe recalled in its report of 22 January 2019 on Turkey, political opposition in and outside parliament is an essential component of a well-functioning democracy.<sup>8</sup> Parliamentary immunity, in accordance with the standards of the European Commission for Democracy through Law (the Venice Commission), is a fundamental prerequisite and the guarantee of the independence of elected representatives.

Since 2016 there are several measures taken by the AKP government, which aim to further repress the political pluralism in Turkey. In May 2016, Turkey's parliament approved a bill to amend the constitution to strip MPs of immunity from prosecution, a move that paves the way for the trials of pro-Kurdish HDP and other opposition legislators. Turkey has definitively abandoned the framework of democracy and is following a path towards presidential dictatorship.

Selahattin Demirtaş, former HDP co-chair, have been arbitrarily and unjustly deprived of their liberty since 4 November 2016, despite the binding decisions of ECtHR<sup>9</sup>.

It is not only the politicians who are targeted by this type of measures. Non-governmental organizations, civil-society movements and human right activists are also oppressed by the Government. Human right activist Osman Kavala has been detained since November 2017 on the accusation of organizing the nationwide Gezi Park protests in 2013. The ECtHR held

---

<sup>8</sup> Council of Europe, "The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?", Report, Doc. 14812, 22 January 2019. <https://assembly.coe.int/nw/xml/XRef/Xref-XHTML2HTML-en.asp?fileid=25349&lang=en>

<sup>9</sup> Selahattin Demirtaş v. Turkey (No. 2), Application no. 14305/17, 22 December 2020. "the Grand Chamber of the European Court of Human Rights, found violations of Article 10 (freedom of expression), Article 5(1) and 5(3) (right to liberty and security), Article 18 (limitation on use of restrictions on rights) taken together with Article 5, and Protocol no. 1 Article 3 (right to free elections) of the European Convention on Human Rights Finding that Mr Demirtaş's detention had "pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society", the court requested individual measures and ordered the Government of Turkey to "take all necessary measures to secure [his] immediate release."

that there had been a violation of Article 5 and 18 of the consideration that the ultimate purpose of his detention was to have a dissuasive effect on the work of human rights defenders.<sup>10</sup>

While thousands of people, including intellectuals, politicians and journalists, judges, academics, are behind bars despite rulings from the European Court of Human Rights for their immediate release, President Recep Tayyip Erdoğan announced long-awaited Action Plan on Human Rights in a public meeting on 2 March 2021<sup>11</sup>

Another striking example concerns the stripping of immunity and loss of the mandate of HDP parliamentarian occurred two weeks after Erdogan's Action Plan on Human rights. A long-standing human rights defender, former president of the Association for Human Rights and Solidarity for the Oppressed (MAZLUMDER), Ömer Faruk Gergerlioğlu, who served as a Member of Parliament from 2018 until March 2021, was stripped of his parliamentary seat on 17 March 2021.<sup>12</sup> Since he was elected to parliament in 2018, he has continuously advocated for the human rights of various individuals, including those who survived torture and ill-treatment by security officials as well as the civil servants. He is one of the most outspoken critics of President Erdogan's Government's appalling record on human rights. Recently, he had brought the practice of strip searches of women in custody to the attention of the parliament.<sup>13</sup>

Mr. Gergerlioğlu is condemned to 2,5 years in prison for “making propaganda for a terrorist organization” after re-tweeting a news article – who was not incriminated – in August 2016. Following the approval of this conviction by the Supreme Court in February 2021, Mr Gergerlioğlu lost his mandate on 17 March 2021, and he was detained<sup>14</sup>.

Hugh Williamson, Europe and Central Asia director at Human Rights Watch, stated that *Any move to strip Ömer Faruk Gergerlioğlu of his parliamentary seat as a prelude to jailing him would look like a reprisal by the Erdogan government for his brave and vocal stance in support of thousands of victims of human rights violations. Gergerlioğlu's conviction is a blatant violation of his right to free speech, and using it as a pretext to expel him from parliament would show deep disdain for democratic norms and the right to political association.*<sup>15</sup>

### ***Violations of Turkey under the ICCPR provisions***

---

<sup>10</sup> Kavala v. Turkey (application no. 28749/18), 10 December 2019.

<sup>11</sup> <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

<sup>12</sup> Council of Europe, “The functioning of democratic institutions in Turkey” Report, Doc. 15272, 21 April 2021.

<sup>13</sup> <https://stockholmcf.org/jailed-rights-advocate-says-he-found-document-detailing-strip-searches/>

<sup>14</sup> <https://ahvalnews.com/omer-faruk-gergerlioglu/hdps-gergerlioglu-sent-prison-following-angiography-hospital>

<sup>15</sup> <https://www.hrw.org/node/378221/printable/print>

According to **Article 2** of the ICCPR, each State Party to the Covenant should adopt laws and other measures to give effect to the rights recognized in it. **Article 9** ruled that everyone has the right to liberty and security of person and no one shall be subjected to arbitrary arrest or detention. Non-execution of both the Demirtaş and Kavala cases of the ECtHR by the Turkish Government also violates the right not to be subjected to arbitrary detention, protected under article 9 of the ICCPR. The purpose of this refusal to give effect to this decision of the court is to silence human rights and other activists, to stifle pluralism and to limit freedom of political debate by utilizing pre-trial detention as a method of arbitrary punishment.

In line with this strategy which seeks to silence the critics and oppositions, Mr. Gergerlioglu has been stripped from his parliamentary immunity and deprived of his right to liberty in breach of Article 9 of the ICCPR. On top of that, he was expelled from the parliament and detained in a dawn raid in an inhuman and degrading manner before the cameras<sup>16</sup> which constitutes the violation of **Article 10** of the ICCPR.

Gergerlioglu's conviction on the ground of a re-tweet in 2016 breaches **articles 14 and 15** of the ICCPR, according to which everyone shall be entitled to a fair hearing by an independent and impartial tribunal. No one shall be held guilty of any criminal offence on account of any act which did not constitute a criminal offence. Gergerlioglu's conviction and detention are politically motivated.

The tweet which has been a basis for the condemnation of Mr .Gergerlioglu is titled "*PKK: Peace would arrive in a month if the state takes a step*" (*PKK: Devlet adım atarsa barış bir ayda gelir*) Gergerlioglu's tweet consists of a link to the story along with his comment: "*This call should be properly considered. There is no end to this issue..!*" (*Bu çağrı hakkında değerlendirilmeli, bu işin sonu yok..!*). This tweet, as a call for peace, must be considered the exercise of the right to freedom of thought and expression protected under **articles 18 and 19** of the ICCPR. On top of that, a deputy is supposed to make sure that every citizen could effectively use their freedom of expression by bringing their complaints to the parliament. Therefore, silencing a deputy, which is one of the rare outspoken critics who act as a sound of oppressed minorities, violates freedom of expression.

Again, in line with the previous consideration, interference to a deputy's democratic function by removing its parliamentary immunity violates **Article 25** of the ICCPR, which provides for a right to vote and guarantees free expression of the will of the electors. Addressing the serious violations of human rights and civil liberties in his country is both the fundamental purpose of a deputy and the will of the people who vote for him.

---

<sup>16</sup> <https://stockholmcf.org/expelled-lawmaker-ordered-to-surrender-to-judicial-authorities-in-10-days/> , <https://www.youtube.com/watch?v=A1qiUjSgKow>

### *Suggestions for the List of Issues Prior to Reporting*

1. What measures will it take to prevent the HDP from being banned and its Members politically persecuted?
1. How does the parliamentary immunity of an opposition party ensure in all circumstances that deputies of a party are able to carry out their legitimate activities without any hindrance and fear of reprisals?
2. What steps should be taken to prevent the repression of political pluralism in Turkey and to guarantee civil liberties? What concrete measure will be/is taken in this regard concerning the HDP deputy Omer Faruk Gergerlioglu?
3. What action should be taken to address the serious violations of human rights and civil liberties taking place in Turkey?
4. What measures should be taken by the Turkish Government to execute the decisions of the ECtHR concerning the Selahattin Demirtas and Osman Kavala?

## **II. Enforced disappearances**

Turkey has a long history of state-sponsored abductions and enforced disappearances, particularly in the 1980s and 1990s. Even though the fall of the number of disappearances during the negotiation period for the EU membership, there are still 40 individuals have been subjected to enforced disappearance, mostly abducted off the streets or from their homes all over the world, and in multiple instances along with their children.<sup>17</sup>

Under this chapter, we would like to draw the attention of the Committee to two issues:

- enforced disappearances carried out within Turkey since 15 July 2016, and

---

<sup>17</sup> Letter of Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 34/21, 40/16 and 34/19, 5 May 2020.



- the systematic practice of state-sponsored extraterritorial abductions and forcible return of Turkish nationals from multiple States to Turkey recognized by international authorities, especially UN OHCHR reports<sup>18</sup>.

Pursuant to Article 2 of the *International Convention for the Protection of all Persons from Enforced Disappearance*<sup>19</sup>, there should be no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, which can be invoked as a justification for enforced disappearance.

Turkey is bound by the prohibition of enforced disappearances derived from the rights provided under other international human rights treaties, such as under the European Convention for Human Rights<sup>20</sup> or the International Covenant on Civil and Political Rights<sup>21</sup>.

Almost all of the enforced disappearance cases target the suspected members of the Gulen movement. The Government's effort has been confirmed in July by Foreign Minister Mevlut Cavusoglu in his affirmation that the National Intelligence Organization (MIT) had "facilitated" the return of more than 100 alleged "FETO" (classified by the Government of Turkey as 'Gülenist Terror Organization) members from 18 countries.<sup>22</sup>

According to Working Group's Letter of 5 May 2020, extraterritorial abductions and forcible return of Turkish nationals are conducted with the direct participation, support or acquiescence of other States. For certain countries, Turkey has concluded bilateral agreements which are devised to bypass the conditions and safeguards provided under regular extradition and deportation processes. The terms "combating terrorism" or "security risk" have been a suitable pretext for these forcible repatriations. It should be borne in mind independently from the justification ground for the measures taken by the Government; there is not a human rights-free zone where the right to due process, procedural guarantees could be ignored. It is

---

<sup>18</sup> Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, Opinion No. 51/2020 concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group (Malaysia and Turkey); Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 5 May 2020

<sup>19</sup> <https://www.ohchr.org/en/hrbodies/ced/pages/conventionced.aspx>

<sup>20</sup> Varnava et al v Turkey

<sup>21</sup> 2019 Kandel v Nepal

<sup>22</sup> Letter of Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 36/6, 34/21, 40/16 and 34/19, 5 May 2020



more concerning when the rights in question are non-derogable rights, including torture, inhuman and degrading treatment in the process of disappearance, or return to Turkey.

All of the extraterritorial abduction have been carried out without any legal basis; the arresting officers did not identify themselves; no arrest warrants were presented; no explanations were provided to explain or justify the arrests; the persons were taken by force from their home or in the street; they were blindfolded, hooded and handcuffed; their families were/are not informed at all, and the effort of the families can take years. Under this type of incommunicado detention conditions, the victims are deprived of any guarantee against torture and inhuman treatment.

The call of the victims' families to find the culprits are not responded by the Government. Even after the abducted person is miraculously found in some police headquarter one day, any effective investigations are not conducted by Turkish authorities into the alleged abuses resulting from internal or extraterritorial abductions.

Victims and their families are denied the right to an effective remedy, which should look at minimum guarantee cessation of violations, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

The UN Working Group on Arbitrary Detention states that when imprisonment or other severe deprivation of liberty is committed in a widespread or systematic manner, this situation may constitute crimes against humanity<sup>23</sup>. However, it is regrettable that a culture of impunity prevailing over these violations of the core international human rights which, for sure, non-derogable under any circumstances whatsoever.

The following is a partial list of abducted and still missing peoples (and the date of disappearance)<sup>24</sup> :

Ayhan Oran (1 October 2016), Mustafa Özgür Gültekin (21 December 2016), Durmuş Ali Çetin (17 May 2017), Hüseyin Kötüce (28 February 2017), Mesut Geçer (26 March 2017), Turgut Çapan (31 March 2017), Önder Asan (1 April 2017), Cengiz Usta (4 April 2017), Mustafa Özben (9 May 2017), Fatih Kılıç (14 May 2017), Cemil Koçak (5 June 2017), Murat Okumuş (16 June 2017), Enver Kılıç (30 September 2017), Hıdır Çelik (6 December 2017), Ümit Horzum (6 December 2017), Ayten Öztürk (13 March 2018), Orçun Şenyücel (21 April 2018), Hasan Kala (20 July 2018), Fahri Mert (12 August 2018), Yusuf Bilge Tunç (6 August 2019), Gulistan Doku ( 5 January 2020), Mehmet Bal (24 January 2020), Hürmüz Diril (11 January 2020), Hüseyin Galip Küçüközyiğit ( 29 December 2020).

---

<sup>23</sup> Human Rights Council, Working Group on Arbitrary Detention, Opinions adopted by the Working Group on Arbitrary Detention at its eighty-eighth session, 24–28 August 2020, Opinion No. 51/2020 concerning Arif Komiş, Ülkü Komiş and four minors whose names are known to the Working Group (Malaysia and Turkey)

<sup>24</sup> <https://stockholmcf.org/enforced-disappearances-in-turkey-2/>

### *Violations of Turkey under the ICCPR provisions*

The practice of enforced disappearances constitutes above all violations of **articles 6, 7 and 9** of the ICCPR. Some of the abducted persons are missing since 2016, and their whereabouts and fates remain unknown which must be considered as violation of right to life.

Those who have been found after months reveals how they have been tortured during the time of their disappearance and deprivation of liberty. Gökhan Türkmen is just an example of this. He alleged in a court hearing on 10 February 2020 that;

*“ he was abducted by state actors on 7 February 2019, held in an unknown place of detention and tortured over nine months before being transferred to police custody and jailed. He also alleges that he was visited in prison and threatened by officials identifying themselves as intelligence officers to retract his allegations.”<sup>25</sup>.*

Extraterritorial abductions and forced return also violate **article 13** of the ICCPR, which provides for certain guarantees in conformity with the non-refoulement principle. Namely, every person who risks being expelled for the reason of security should be allowed to submit the reasons against his expulsion. Whereas, in the absence of an international arrest warrant which is issued and executed in conformity with the international human right standards, Turkey and third country which facilitate the abduction violate their obligations under the article 13 of the ICCPR.

Enforced disappearances and extraterritorial abductions amount to place the detainee outside the protection of the law, including the right to take proceedings before an independent and impartial court to review the lawfulness of detention, right to a fair hearing, presumption of innocence, right to prepare a defense and make known the risks incurred in case of refoulement which is all protected under the **article 14**.

### *Suggestions for the List of Issues Prior to Reporting*

1. Are the enforced disappearances registered by several international organizations perpetrated by security services or clandestine groups with the approval or knowledge of the public authorities?
2. Are the operations for the arrest and deportation of Turkish nationals residing in third countries are compatible with Turkey's international legal obligations under the conventions it has ratified?

---

<sup>25</sup> <https://www.hrw.org/news/2020/04/29/turkey-enforced-disappearances-torture>

3. What are the existing legal framework, procedures and institutional arrangements in place to guarantee the right to life, to liberty, to personal security, to physical and psychological integrity, to due process and to an effective remedy, with a view to prohibiting and preventing enforced and involuntary disappearances of individuals residing in Turkey?
4. Are the security co-operation agreements signed by Turkey with the third countries compatible with Turkey's international human rights obligations, in particular the principle of non-refoulement ?
5. What is the role of Turkey's National Intelligence Organization (MIT) with regard to extraterritorial abductions and forcible return of Turkish nationals living in foreign countries? What oversight mechanism –judicial, parliamentary or others – exercises oversight and control of its activities in this regard?
6. Have independent investigations by competent authorities been conducted into allegations of enforced disappearance, torture and other ill-treatment of Turkish nationals at the hands of security personnel, whether for the enforced disappearances carried out within Turkey or international or extraterritorial abductions and forcible return of Turkish nationals from multiple States?
7. What are concrete measures taken to find Hüseyin Galip Küçüközyiğit, who is missing since 29 December 2020?
8. What are concrete measures taken to find Yusuf Bilge Tunç, who is missing since August 2019?

### **III. Dismissal of public servants with emergency decree-law**

Another pressing human rights issue that needed to be addressed urgently is the dismissal of hundreds of thousands of public servants from their position immediate aftermath of the coup attempt in July 2016. During the early hours of the coup attempt, Erdogan declared the coup perpetrators were Gulenist, signaling that the Gulen Movement would be destroyed completely. The declaration of the state of emergency as well as the measurements were taken during its course mainly sought to eradicate this Movement.

According to the Activity Report<sup>26</sup> of the State of Emergency Inquiry Commission published in January 2020, 131 922 "measures" were taken with the decrees issued under the state of emergency. During the state of emergency, at least 125 678 public officials were dismissed, 270 people were dismissed from being students, 2 761 institutions and organizations were closed, 3 213 personnel were recruited.

While these dismissals applied to all institutions and professions, the top victims were, respectively, teachers, police officers and members of the judiciary. The dismissed civil servants were not given a chance to make a defense statement as no investigation or legal action was brought against them. Thus, it is enough for a person to be named in a list annexed to a state of emergency decree-law in order to be dismissed from public office and banned from any public office in the future.

Minister of National Defense Hulusi Akar said that within the scope of the fight against FETO in the Turkish Armed Forces, 20 777 terrorists have been purged from us, and the ranks of one thousand 243 people have been regained." *During the state of emergency, a total of 204 media organizations were closed. The decision to close 25 of them was cancelled.*

The State of Emergency Decree-Law No. 667 shut down hundreds of associations, foundations and trade unions and confiscated their assets by announcing their names in the lists attached thereto. Many other civil society organizations (CSOs) have been shut down by other decree-laws issued during the state of emergency. Thus, 1,597 associations, 122 foundations and 24 trade unions have been closed down in total during the two-year period. These institutions have been shut down on the grounds that they "belong, connected or linked to the Gulenist Terror Organization (FETÖ/PDY) which is found to pose a threat to the national security of the state" or they "belong, connected or linked to the terrorist organizations or the structures, formations and groups which are defined by the National Security Council as acting against the national security of the state."

No court decision has ever been issued against them, and even no investigation has ever been launched against them. These civil organizations had been operating legally under the supervision of the public authorities. Even after they were closed down, no evidence could be obtained showing that they had been engaging in unlawful activities. Furthermore, the founders and members of these civil society organizations had been charged with membership to a terrorist organization, and many people have been sentenced to various prison terms.

Whereas, actually, in Turkey, adherence to a trade union created in accordance with the law is considered as one of the main proof of the link between a terrorist organizations.<sup>27</sup> Among the 179 media organizations closed, there are 53 newspapers, 37 radio stations, 34 televisions,

---

<sup>26</sup> <https://ohalkomisyonu.tcgb.gov.tr/>

<sup>27</sup> <https://stockholmcf.org/closure-of-trade-unions-dismissal-of-workers-over-gulen-links-violated-freedom-to-associate-right-to-organize-un-body-says/>

29 publishing houses, 20 magazines and six news agencies.<sup>28</sup> 4000 judges and prosecutors by the Council of Judges and Prosecutors (HSK) in the immediate aftermath of the 2016 coup attempt<sup>29</sup> According to the Turkey Media Ownership Monitoring report<sup>30</sup>, 6081 academics and 1427 administrative personnel were removed from their positions in universities.

As it was indicated in a UN letter<sup>31</sup> sent to the Turkish Government, the accusation of "membership to an armed terrorist organization" is being manipulated in order to oppress the critics directed to current Government's policies. Working Groups urged the Turkish Government to ensure that counter-terrorism legislation is limited to criminalizing conduct that is properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. Furthermore, Turkey has followed a strategy of transposing emergency powers to ordinary laws through Law No. 7145, which is also severely criticized by the Venice commission because of its incompatibility with fundamental rights.<sup>32</sup>

Even though the term "Membership to a terrorist organization" is defined in the criminal laws, the notions such as "allegiance or connection to a terrorist organization" or "contact with a terrorist organization" are not defined in the criminal laws. Therefore, these terms refer to an ambiguous sphere, and it is possible to redefine all sorts of the relationship as falling under these descriptions.

International Labor Organization, on 24 March 2021, published a report<sup>33</sup> In which it draws attention to the fact that membership in a trade union, without any further need for proof, can establish an affiliation with a "terrorist organization". In other words, workers were punished for having exercised their right to join organizations of their own choosing guaranteed by Article 2 of Convention No.87 without any possibility of review of their individual situation.

Furthermore, they were dismissed without due process, their passports were annulled, their contracts were terminated without any indemnities, entitlements under the health, unemployment, and they were stripped of the pension systems. All of the dismissed persons with the government decrees are also deprived of every single job opportunity because they are not only banned from the public service for their whole life, they cannot be employed in

---

<sup>28</sup> <https://turkey.mom-rsf.org/en/findings/shutdown-media/>

<sup>29</sup> <https://www.hurriyetdailynews.com/4000-judges-and-prosecutors-dismissed-justice-minister-says-113591>

<sup>30</sup> <https://turkey.mom-rsf.org/en/findings/shutdown-media/>

<sup>31</sup> <https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>

<sup>32</sup> Working Group on Arbitrary Detention, the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Letter to the Turkish Government, 10 November 2020

<sup>33</sup> European Commission for Democracy Through law (Venice Commission) Compilation of Venice Commission Opinions and Reports on States of Emergency 16 April 2020 CDL-P (2020) 0003

<sup>33</sup> International Labor Organization, Governing Body (Institutional Section), 341st Session, Geneva, March 2021.

the private sector either. Because of the tagging as “dismissed from public sector” on their social security records, private sector companies are also intimidated by the political discourse.

Taking into consideration the above-mentioned non-exhaustive consequences of collective dismissals, it can be easily stated that nearly all of the people dismissed from their jobs through the state of emergency decrees are being exposed to “civil death” throughout the years following the coup attempt on 15 July 2016, as it was mentioned in the 2020 report<sup>34</sup>.

The measures taken are not affecting solely the person dismissed but also his family. Article 5 of the Law-Decree No. 667 make it possible to cancel the passports of their spouses by the Ministry of Interior on the same date if they are found to be objectionable in terms of public security as well.” Those whose passports have been cancelled in this manner have been prohibited from travelling abroad. Moreover, those measures have been taken by bypassing the normal law-making processes of the parliament. Passport Law, which applies to normal periods, has been amended by a decree-law to introduce abstract concepts of “belonging, connection, or link to terrorist organizations,” which cannot be reviewed, and eventually, freedom of movement has been restricted.

### *Violations of Turkey under the ICCPR provisions*

According to **article 2** of the ICCPR, as a state party, Turkey undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of political or another opinion. Pursuant to the third paragraph of the same article, any person whose rights or freedoms as herein recognized are violated shall have an effective remedy. Like will be illustrated, the dismissal of public servants and secondary measures taken by the Turkish Government since 2016 violates several articles of the ICCPR.

According to **Article 4** of the Covenant, in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the Covenant may take measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

Under this Article, the States Parties may derogate from their obligations under the Covenant only if there an extraordinary threat to the life of the nation and the existence of such a threat is officially declared. The Article also sets forth that the measures to be taken in such a case

---

<sup>34</sup> Commissioner For Human Rights Of The Council Of Europe, Country Report, p.23, paragraph 87, 19 February 2020



must not involve discrimination, and their extent should be proportional to the exigencies of the situation.

When we assess the measures taken against freedoms with the above-mentioned decree-laws during the state of emergency in terms of their compliance with Article 4 of the Covenant, we can easily conclude that they fail to fulfil the conditions given in Article 4. Here is the bit:

It is beyond dispute that the coup attempt threatened the democratic order. It was quite normal to declare a state of emergency to avert this threat. But it is neither legal nor legitimate to maintain the state of emergency after this threat has been averted.

Furthermore, the possibility of a party state taking measures, in time of public emergency, derogating from their obligations to the extent strictly required by the exigencies of the situation does not involve discrimination.

On the night of 15 July, President Recep Tayyip Erdogan said, "*The coup is a blessing for us from God,*" and as it can be understood from this remark, the ruling party actually sought to use the coup attempt as a pretext to purge its opponents. On the same night, Erdogan declared the Gulen movement as responsible for the coup attempt. The state of emergency was declared in order to create a suitable environment for realizing this aim.

Although the state of emergency was seemingly declared to deal with a coup attempt, the measures were taken during the state of emergency target civilians, and hundreds of thousands of people were dismissed from the civil service, numerous companies had been seized, many newspapers and TV channels were shut down, and their property was confiscated, and many schools and universities were closed down, and many associations, foundations and trade unions were shut down without investigating any involvement, albeit indirectly, in the coup attempt, and this is proof that the Government's intention was to silence opposition. For this reason, it cannot be said that the state of emergency was declared to avert any threat to the life of the nation.

All this indicate that Erdogan is acting with a personal grudge and hatred to destroy a social group which he sees as his enemy and use the coup attempt as a pretext to this end. Therefore, the principle that extraordinary measures should "not include discrimination," given in Article 4 of the Covenant, has been blatantly violated.

Presumption of innocence is safeguarded under **Article 14** of the Convention. The article in question reads: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

More than 150,000 people were dismissed from public office by listing their names in the annexes to certain Decree-Laws issued during the state of emergency. The following provision was stated in all these Decree-Laws: "Those who have any membership, allegiance or connection to the terrorist organizations or the structures, formations and groups which are defined by the National Security Council as acting against the national security of the state and who are given in the list ... attached hereto have been dismissed from civil service, the



organization of ... without any further action. No additional notice shall be made to these people."

It is enough for a person to be named in a list annexed to a decree law in order to be dismissed from public office. There is no need to launch an investigation or action against this person. In these Decree-Laws, these people were charged with being connected to terrorist organizations or "other objectionable groups", and they were found guilty of these charges and removed from public office. In addition, there were other sanctions imposed on them.

*The additional measures are as follows: "These people shall be stripped of their ranks and/or civil service statuses, and these people shall not be re-admitted to the organizations where they were serving; they shall not be employed at civil service, and they shall not be assigned to such service directly or indirectly; their membership to any board of trustees, board, commission, executive board, inspection board, or liquidation board or any related offices shall be deemed to be terminated. Also, their passports, gun licenses, and pilot's licenses shall be terminated, and they shall be made to evacuate the public housings where they reside within fifteen days. These people shall not be allowed to work as founders, partners or employees of private security companies. Those who have been dismissed from civil service shall not be able to use such titles as an ambassador, and governor or professional titles or attributes as undersecretary and district governor, and they shall not be able to benefit from the rights granted in connection with such titles, attributes or professional titles."*

Clearly, thousands of public officials were accused of being connected to terrorist organizations under decree-laws and found guilty for these charges, and, as a result, dismissed from public office and subjected to various sanctions. In other words, the authorities of independent and impartial judicial organs for "raising charges," "prosecuting", and "punishing" were employed by the executive.

As noted above, during the preparation of the lists annexed to the Decree-Laws in question, no investigation or prosecution was performed, and no objective criteria were taken as reference. It is not known who prepared those lists and under what criteria. Although there were ongoing criminal investigations against some public officials, they were dismissed from civil service without waiting for the outcome of these investigations. Indeed, numerous people who had been dismissed from civil service with terrorism charges under certain Law-Decrees were later acquitted by the courts.

All lists of the people to be dismissed from civil service annexed to Law-Decrees were promulgated in the Official Gazette. In addition, these lists are readily available in visual and print media and on the Internet. The manner by which the government-controlled media outlets reported dismissal stories and the hostile remarks made by the members of the ruling party have created the public perception that those who are dismissed from civil service are criminals.

Also an annotation "*Dismissed from civil service under the Decree-Law*", has been attached to the social security records of the people who were dismissed from civil service, and this makes it virtually impossible for them to find jobs in the private sector.

Due to the negative perceptions created in public and the obstacles in question, the dismissed people either were unable to find a job or had to work at menial jobs that hardly met their qualifications at very low wages.

The lists annexed to the Decree-Laws failed to specify who were dismissed on charges of "membership" and who were dismissed on accusations of "connection/link," and all of the dismissed people have come to be seen as "terrorists," also due to the manipulated public perceptions. Eventually, these people can be deemed to have been declared as terrorists with a decision by the executive without a court decision.

The State of Emergency Decree-Laws will be remembered in history with the damage they did to the principle of presumption of innocence. Imagine a state which has declared hundreds of thousands of citizens as terrorists with a legal rule and without investigation or prosecution whatsoever. It is the first in history that citizens were declared as terrorists by a government instead of courts, and they were doomed to civil death.

In addition to violation of right to fair hearing and presumption of innocence, paragraph 7 of article 14 is breached by the dismissal measures. This paragraph stipulates that No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country. In several examples, a person who has been acquitted after a criminal proceeding before the courts can be considered as a member of a terrorist organization by the State of Emergency Inquiry Commission with the same accusations brought before the court. And even after a decision of acquittal, thousands of public servants dismissed by the Decree-Law's and their families cannot apply for a visa, neither can they be returned to their former positions.

Dismissal by the Decree-Laws constitutes a breach of **article 15**, according to which no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. To clarify what constitutes a criminal offence, article 15 provide for also "principle of legal certainty". This principle requires that criminal laws are sufficiently precise so that it is clear what types of behavior and conduct constitute a criminal offence and what would be the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse. States parties must ensure that their counter-terrorism and national security legislations are sufficiently precise in order to comply with the principle of legal certainty in order to prevent the possibility that it may be used to target civil society on political or other unjustified grounds.

The introduction of terms like "allegiance or connection to a terrorist organization" or "contact with a terrorist organization", which are not defined in the criminal laws previously and which constitute a factual ground for the dismissal, violates the principle of legal certainty.

Among the reasons on which the accusation of membership to a terrorist organization is based on there are following indicators: having an account in a legal bank named BankAsya, subscribing to Zaman daily, mostly circulated Newspaper in Turkey, using the ByLock mobile

app downloaded from the Google Play Store, and enrolling children to legally operating schools linked to Gülenists, reading Gülen's books, assisting charitable activities, and finally membership to a particular trade union or association. Subjected to dismissal and all other restrictions on these bases constitute the violation of the principle according to which no one should be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed.

The measures taken by the Decree-Laws constitute a violation of **Article 12**, which provide for the right *to leave any country, including his own*. As stated clearly in the Article, freedom of movement is an essential right, and certain strict conditions should be fulfilled in order to restrict this freedom. First of all, the reasons for restriction should be objective and concrete. Restricting freedom of movement with abstract and ambiguous concepts is a breach of the Covenant.

In compliance with this provision of the Covenant, Article 23 of the Constitution of the Republic of Turkey has clearly defined the conditions under which freedom of movement can be restricted and how. The relevant parts of the Article are as follows:

*"Freedom of movement may be restricted by law for the purpose of investigation and prosecution of an offence, and prevention of offences. A citizen's freedom to leave the country may be restricted only by a court decision based on criminal investigation or prosecution."*

In breach of the Covenant and the Constitution, no court decision has been sought for the cancellation of passports or ban on travel abroad; only administrative decisions have been passed, instead. Moreover, arbitrariness in this regard has been so high that the spouses and children of everyone who have been dismissed from the civil service or against whom administrative or legal investigations have been launched during the state of emergency have been prohibited from travelling abroad with an administrative decision. Hundreds of thousands of people have been affected by this practice. Objections filed by these people have been rejected.

Dismissal of the public servants with the Decree-Law breaches **article 22** of the convention. This article introduces the freedom to establish trade unions or associations, become a member of them or terminate membership to them, and then proceeds to describe the situations under which this right can be restricted. Thus, no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. Furthermore, the Article introduces special guarantees for trade unions and asserts that these restrictions cannot be construed in a manner to contradict the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize.

During the two-year state of emergency, numerous associations and trade unions have been shut, although the conditions set forth in the Covenant have not been fulfilled. The Government has shut down hundreds of associations and dozens of trade unions with a short

article in a decree-law and without bothering to demonstrate whether the civil society organizations in question had any ties with the coup attempt or a terrorist organization or what those ties were or whether the conditions for restricting the use of this right were fulfilled. Just eight days after the coup attempt, 1,125 associations and 19 trade unions were shut down by the Law-Decree No. 667.

So far, the Government has failed to produce any concrete evidence that these civil society organizations have done anything that would threaten public security, public order or public health. No court decision has ever been issued against them, and even no investigation has ever been launched against them. These civil organizations had been operating legally under the supervision of the public authorities. Even after they were closed down, no evidence could be obtained showing that they had been engaging in unlawful activities.

Therefore, the only conclusion is that the closure of these civil organizations in the wake of the coup attempt was politically motivated. The Government chose to abuse the power it had mustered following the coup attempt and opted for destroying the civil organizations, which is considered as dissidents as it did in other areas as well.

Furthermore, the founders and members of these civil society organizations had been charged with membership to a terrorist organization, and many people have been sentenced to various prison terms. Unfortunately, the Turkish courts took the MGK's decision to declare the Gulen Movement as a terrorist organization as a final judgment and relied on it to treat being a founder or member of these legally established and operating civil society organizations as evidence of membership to a terrorist organization just because they are affiliated with the Movement.

Collective dismissals constitute a violation of **article 25** of the Covenant which provides every citizen right and the opportunity, without unreasonable restrictions to have access, on general terms of equality, to public service in his country.”

This Article provides international guarantees for being employed at the public service. However, this right of more than 150,000 people has been violated as they have been dismissed from public office and prohibited from being employed at public office forever in breach of the state of emergency boundaries defined in domestic and international law.

The Government has failed to demonstrate an objective or legal basis for the dismissals from public office and tried to justify them with certain ambiguous charges, as noted above. In this way, the civil servants who are political dissidents have been purged from the civil service by using the coup attempt as an excuse. In this process, the fans of the Gulen Movement, the left-leaning people, those who support the pro-Kurdish political movement and the academics who have undersigned the Peace Declaration have been dismissed without citing any grounds or bringing any action or investigation against them.

Finally, the measures taken under the Decree-Law's violates **Article 26** of the Covenant, which guarantees that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and

guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or another status.

The Government has violated Article 26 of the Covenant by purging hundreds of thousands of civil servants on the ground that they do not support it and doing so using the coup attempt as a pretext.

### *Suggestions for the List of Issues Prior to Reporting*

1. Taking into consideration the extremely short period between the Coup attempt and the massive dismissal of the public servants by the government decrees (8 days), how the Turkish Government has guaranteed the certainty and accuracy of the dismissal of more than 150.000 public servants and other individual measures?
2. What are the measures taken to guarantee the institutional independence of the State of Emergency Inquiry Commission?
3. Does the State of Emergency Inquiry Commission take into consideration the judicial decisions taken with regard to a concerned individual? Are there any cases where a person is dismissed from his position whereas the same person is acquitted by the judicial mechanism before which the same grounds for accusation are presented? If not, what are the concrete measures taken by the Government to make sure that a person cannot be liable to be tried or punished for an offence for which he has already been finally acquitted?
4. Are the families of the dismissed public servants also deprived of their right to freely move, including out of the country? Are the persons who have been dismissed by the Decree-Laws can obtain their passports after being acquitted by the criminal court or if there is any criminal pursuit against them?
5. What are the measures taken to guarantee the right to freedom of association and freedom to join a trade union if an association/trade union is initially authorized by the state? Can enjoyment of this right constitute a factual ground to dismiss public servants or accuse them of terrorism?
6. How Turkish Government addresses the Venice commission's observations on the fact that Turkey transposed emergency measure to ordinary laws? How a transposing an emergency measure to a permanent law can be considered in conformity with the principle of article 4 of the ICCPR, according to which these measures should be limited to strictly required by the exigencies of the situation?

7. Is a dismissed public servant can be identified by its social security number? If yes, to what end this measure serves in this context? Is any public servants who have been dismissed from his position for a reason different from decree-law can be identifiable as well, or this practice is only applicable to those who have been dismissed after 2016?
8. What are the measures taken by the Turkish Government to prevent ill-defined and/or overly broad counter-terrorism and national security legislation which are open to arbitrary application and abuse?

#### **IV. Arbitrary Detention of Masses**

During a TV program on 10 March 2019, Interior Minister of Turkey, Suleyman Soyly has announced the actual number of detained and arrested people because of their alleged links to the Gülen movement.

*“Since 15 July 2016, 237.000 people were detained in total. But this is only the Interior Ministry's records. The actual number stands at 511.000. The difference is because of our records. In addition to our record, prosecutors keep their own records. Taking both accounts into consideration, we can say 511.000 people were detained.”*

Among more than half a million investigated and detained people, 96,885 have been arrested and jailed because of their alleged links to the Gülen movement. In addition to this, after the massive crackdown subjected by the Gulen movement after the coup attempt, 3,003 schools, dormitories and universities were shut down, 150,348 public servants were dismissed; 6,021 academics lost their jobs; 4,463 judges, prosecutors were dismissed; 189 media outlets were shut down 319 journalists were arrested.

Almost all of detentions based on a couple of alleged quotidian activities which are amounted to a criminal act after the coup attempt on 15 July 2016, such as; being a member of the staff at a Gülen movement-affiliated institution, school, association, trade union, having a bank account at Bank Asya, a Gülen movement-affiliated financial institution that was one of Turkey's biggest commercial banks, installing and using the ByLock, a mobile application of communication downloaded on Playstore, and so forth. But none of these detentions was based on credible evidence to reasonably implicate the individuals “in specific violent or criminal acts that pose threats to the rights and freedoms of others, morality, public order and the general welfare.

In addition to this being a member of the Gulen movement is considered as a "Crime against the security of the state (Turkish criminal code: Arts. 302, 303, 304, 307, 308)" under article 100 of the Turkish Criminal Procedure Code and therefore fall within "Catalogue crimes" for which a pre-trial detention decision can be taken.



These lengthy pre-trial detentions constitute another form of persecution against the individual, which is suspected in the Gulen related cases. In several cases, the individuals are arrested without their indictments were submitted, and this procedure can take months, sometimes years.

The same ground (Crime against the security of the state) has been invoked in order to refuse the amnesty law to political prisoners, primarily the cases linked with the Gulen movement and Kurds.

### *Violations of Turkey under the ICCPR provisions*

Above all, this practice constitutes a blatant violation of the right to liberty under article 9 of the ICCPR.

Being a member of an affiliated association, trade unions, foundations, and other institutions or society which are all legally established, allowed and audited by the Government before 15 July 2016 is a legal activity and protected under articles 18, 19, 21, 22 and 26 of the Covenant. These activities were not defined as criminal offences by law, and neither are they related to any terrorist action.

Another ground for accusation is to install and use the ByLock mobile application, which can be downloaded by every smartphone users for communication long before 15 July 2016. In any of the Gulen movement-related cases, a specific explanation of how the alleged mere use of ByLock constituted a criminal activity by the individual concerned. The Working groups have noted in its several reports that these alleged activities have nature to tie a person to the Gulen movement, but that none of these actually proves a criminal responsibility for taking part in or aiding or abetting the attempted coup of 15 July 2016. In its recent rapport, the Working Group addressed the fact that its views in its previous opinions have not been respected by the Turkish authorities and that there are still complaints that follow the same pattern. Therefore, deprivation of liberty without invoking any legal basis constitutes arbitrary detention in violation of article 9 of the ICCPR.

Secondly, the authorities are obliged to inform anyone arrested or detained on a criminal charge of the reasons for his arrest and to bring the suspect promptly, typically within 48 hours, before a judicial authority, so that the accused can challenge the legality of his/her detention before a court as envisaged by the Covenant. Failure to inform promptly at the time of arrest violates article 9 of the Universal Declaration of Human Rights and Article 9 (2) of the Covenant, as well as principle 10 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and renders her arrest devoid of any legal basis.



In addition to this, detentions in cases linked to Gulen movement are incompatible with domestic law (namely articles 91 (2) and 100 (1) of the Turkish Criminal Procedure Code). According to the before-mentioned provisions, detention should be applied when judicial control is not sufficient. But in several examples, very aged, ill, the women who have recently given birth have been detained to penalize them, whereas a judicial control would have been sufficient.

Detention categorically the persons suspected of membership to Gulen movement violates also the right to a fair trial and the principle of the presumption of innocence in the sense of article 14 of the ICCPR. Most of the individuals arrested after the coup of 15 July 2016 had no connection to it, who has never participated in any armed or unarmed illegal activities arrested without any precise proof demonstrating a crime.

None of the accusations was based on any concrete facts or findings that make the detention necessary. In most of the case, a person arrested in his house told only that the arrest was related to the "Fethullah terrorist organization/Parallel State Structure", and they wait for their indictment for months, sometimes for years in prison. Non-compliance with this practice has been recognized by the UN's working groups on arbitrary detention in different cases, which presents the same characteristics.

The right to be heard before an independent and impartial tribunal is also violated in these cases. Dissident individuals who are tagged as Gulen movement supporters are being targeted on the basis of their political or other opinions, and they are subjected to systematic discrimination on the basis of their political opinion in violation of articles 14 (1-2), 2 (1) and 26 of the Covenant.

Right to legal assistance is procedurally inherent in the right to liberty and security, and the prohibition of arbitrary detention and access to legal counsel should not be unlawfully or unreasonably restricted. This right which is protected under article 14 (d) of Covenant, is also systemically violated when it comes to the individuals who are accused in politically motivated cases. Meetings between legal counsel and its client were recorded and monitored by prison officers, making it impossible for them to discuss mistreatment in prison or any details about their legal case. Moreover, her lawyer was subjected to full body searches before the visits and was unable to bring in any legal documents or leave any reading materials or notes.

Another form of discrimination and persecution against the detainees is the refusal to access the case file (related to the detention and presented to the court), in violation of article 153 of the Turkish Criminal Procedure Code and articles 14 (1) and (3) (b) of the Covenant. Access to the case file must be granted to the detained person from the outset in order to allow him/her to prepare a defence adequately and to challenge the charges against him/her sufficiently.

Also, detained and accused persons cannot contest this decision effectively because neither the courts of the first instance which issues the arrest warrants nor the judicial oversight

mechanisms provide a sufficient and relevant ground for refusal and satisfactory reasoning. Instead, the entire reasoning is composed of general information and explanation on the Gulen movement from the Government's perspective. This situation has also been observed by the Working Group in its opinion No. 78/2018:

*“...The Government, in its response, provides no details concerning the specific situation of Ms Yasar, but sets out an explanation of the devastating impact of the Hizmet movement in Turkey. The Working Group regrets that the Government has not availed itself of the opportunity to respond to the specific allegations concerning Ms Yasar's case.”*

Taking all into consideration, right to liberty, right to a fair trial, principle of non-discrimination, freedom of association, freedom to take part in the conduct of public affairs and freedom of opinion and expression were the rights which have been violated from several aspects by the Turkish authorities.

### ***Suggestions for the List of Issues Prior to Reporting***

1. What are the time limits in which the detainee can access his indictment?
2. Can the detainee access the entire of his indictment in order to allow him to prepare a defence?
3. On which legal basis, an individual is held in prison in the following situations; after serving their full sentence, despite an amnesty law applicable to him?
4. Concerning the detention decision, is the mechanism of control of compatibility with domestic law under article 100 of the Turkish Criminal Procedure Code can be used effectively? Which authorities are competent to ensure the judicial oversight of this decision? What are the time limits and average duration of this procedure? What is the probability of success of an application? Is this likelihood vary with respect to cases linked to the Gulen movement? In case of a favorable decision for the detainee (establishing the incompatibility with article 100 of the Criminal procedure Code) can the individuals whose rights are violated seek redress from the court and how effective this mechanism is used in the cases linked to Gulen movement?
5. What are the legal provisions which assure the respect of the privacy and confidentiality of legal counsel-detainee communications? Are the communications between legal counsel and its client recorded? What are the control mechanisms of the effective implementation of these providers in prisons and in detention centers? Are the legal counsel's subjected to full-body search? In affirmative, what are the legal bases for this full-body research practice?

6. What restrictions have been brought to the enjoyment of the right to legal counsel in the context of Covid? Do detainees and prisoners can still talk to their legal counsels under the conditions guaranteeing the confidentiality of the communication in the context of Covid?
7. What is the probability of success of an individual application of a detained/arrested person before the constitutional court of Turkey? Is this likelihood vary with respect to cases linked to the Gulen movement? How elaborated the reasoning and grounds of a decision in these cases? Among the criteria of compatibility of detention, are there "conformity of due process", "reasonable doubt that an act is committed in the light of the proofs."
8. Whether any action has been taken to implement the recent opinions adopted by the Working Group on Arbitrary Detention in its rapports to remedy the situation of persons arbitrarily deprived of their liberty?

**ASSADEL**

**STRASBOURG, 21 May 2021**