

I. RIGHT TO LIFE :

1. Article 121 of the Decree-Law no. 696¹ states that individuals who act within the scope of the crackdown on the coup attempt and related activities that followed it in its aftermath would not have legal, administrative, financial or criminal liability. The article, found to be contrary to the positive obligations of the state in terms of protection of the right to life, may also lead to a perception of impunity and prevalence of hate crimes.
2. The rate of femicide and violence against women has not abated despite the national legislation and Istanbul Convention of which Turkey is a party.
3. There continue to be complaints that most work accidents are caused by negligence and a lack of supervision and that investigations into accidents are not effectively conducted when public authorities may have liability².

II. PROHIBITION OF TORTURE AND ILL TREATMENT:

4. It is a positive development that Article 9/1-b of the Decree-Law No. 682 identifies commission of torture as grounds for dismissal from civil service. Nonetheless, safeguards against torture and ill treatment have been undermined by Emergency Decrees (decrees with the force of law adopted during the state of emergency), which extended the detention periods and restricted the communication between detainees and their attorneys and/or their relatives.
5. Meetings with attorneys reveal that, particularly during the State of Emergency, people charged with crimes under the Anti-Terrorism Law no. 3713 have had their visiting rights restricted; that they have been denied health services and access to common space in prisons such as library, computer rooms and recreational rooms. The Directorate General of Prisons and Detention Houses declined the Center's official requests to visit prisons for inspection. Nevertheless, meetings were held between attorneys and inmates who had sent letters to the Bar Association. Inmates reiterated these allegations at meetings with attorneys.
6. The allegations of torture and kidnapping have been on the rise nationwide. Ankara Bar Association has published a Press Statement³ and a Monitoring Report⁴ on this matter. The Center received, through an attorney, an allegation by an individual (A.Ö.), detained at Lebanon Airport and brought to Turkey, of being subject to severe physical, sexual and psychological torture for 6 months at a basement of an official institution. A.Ö. reiterated the allegation during trial, as a result of which, an investigation was launched but ended in a verdict of non-prosecution.
7. The Union of Turkish Bar Associations (UTBA) and the Bar have taken action following the media coverage of serious allegations that an attorney registered with the Bar has been subject to torture and ill treatment by security officers of the Presidency.
8. Foreign nationals pending deportation are held in custody at Foreigners Departments under the Directorate General of Security (Turkish National Police), which is a practice in contravention of the procedures and periods defined by the Law on Foreigners and International Protection no. 6458. Foreigners and those detained in connection with ordinary crimes are kept in the same lock-ups at law enforcement units under the Directorate General of Security. Foreigners Departments do not usually have rooms available for attorney-client meetings and

¹ <http://www.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm>.

² Around 2000 workers were died at work accidents in 2018. For statistics on work accidents in 2018, please see: <http://www.guvenliscalisma.org/19796-hangi-savasta-bu-kadar-arkadasimizi-kaybediyoruz-2018-yilinda-en-az-1923>.

³ The Press Statement is available at : http://www.ankarabarsu.org.tr/HaberDuyuru.aspx?BASIN_ACIKLAMASI=&=3099.

⁴ The Monitoring Report is available at: <http://www.ankarabarsu.org.tr/HaberDuyuru.aspx?DUYURU=&=3214>.

foreign nationals face difficulty in communicating with their attorneys or any other outside contacts. Keeping foreigners in custody by law enforcement units, without any legal basis, pending their transfer to Removal Centers and subjecting them to such treatment by law enforcement officials indicate a serious lack of safeguards against ill treatment.

9. Workshops, held with the participation of attorneys experienced in the field, point to specific problems concerning administrative detention of foreigners at Removal Centers such as lack of interpreters and lack of information on voluntary repatriation and legal assistance. The effectiveness of annulment actions initiated against the deportation orders has been diminished by a Decree-Law. All this, coupled by the lack of concrete individual assessments on deportation decisions, have seriously undermined the procedural guarantees for the principle of non-refoulement. Official visits were organized as a result of complaints voiced at meetings with attorneys about the overcrowd at removal centers. The information collected from the Removal Centers reveal that the space per head varies from 3.3 to 3.7 m² at these centers. Still, foreign nationals who are denied access to common space in winter have to spend all day at these rooms, which is problematic in terms of adequate living conditions. However, there are not any quarantine procedures in place to contain the spread of contagious diseases in case of a communicable disease outbreak. Nevertheless, it has been reported that removal centers had been audited and found clear of any contagious diseases. Internal complaint and supervision mechanism needs to be more effective in responding to allegations of torture and ill treatment. Written complaints must be conveyed to relevant authorities and an effective mechanism must be in place for follow-up in order to ensure that all allegations are adequately investigated. In practice, a Power of Attorney (**POA**) is not required at removal centers; however POA is considered mandatory at the Directorate of Migration Management, it becomes problematic especially when people need to have their applications registered immediately.

III. RIGHT TO FREEDOM AND SAFETY

10. Attorneys stated that their defense arguments at courts have constantly been restricted; they have been associated with types of crimes charged in connection with terrorism and organized crimes; they have been subject to home/office/body searches just like their clients, several investigations and criminal charges were made against them in connection with cases they have undertaken as legal counsel; and they have been denied the opportunity to discuss their cases with Public Prosecutors/ Judges especially after the declaration of the State of Emergency. Attorneys have expressed that their faith for their profession has shaken and their hopes have been dashed as a result of these experiences⁵.

11. People get detained although detention conditions specified in article 100 of the Criminal Procedures Law (**CPL**) are not satisfied. Detentions are conducted on grounds of monotone reasons, by repeatedly invoking the relevant article and connecting the detention to catalogue crimes. Similarly, judicial control measures are taken without trial and in absente reo under article 109 of CPL, thus excessively interfering with rights concerning privacy and family life which also negatively affects freedom of travel. Furthermore, local courts do not adhere to the relevant rulings of the European Court of Human Rights (**ECHR**) and the Constitutional Court (**CC**) although these rulings are binding. This is quite problematic in terms of binding judicial decisions and the principle of the rule of law. Similarly, detention decisions taken by magistrate

⁵ Consequently, the Day of the Endangered Lawyer marked on 24 January has been dedicated to lawyers in Turkey two years in a row. UTBA press release to mark the 24 January the Day of the Endangered Lawyer : <https://www.barobirlik.org.tr/Haberler/bugun-24-ocak-tehlikedeki-avukatlar-gunu-39337>.

Istanbul Bar Association press release:

<https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=14135&Desc=24-Ocak-Tehlikedeki-Avukatlar-G%C3%BCn%C3%BC>.

courts can only be appealed through a magistrate court next in line, which indicates a lack of an effective appeal procedure.

12. The Constitutional Court stated in its judgment on İrfan Gerçek that individuals claiming to have unlawful warrants for their arrest and detention must first apply to the compensation mechanism under the article 141 of the Criminal Procedures Law without holding up for their trial to be completed. Nevertheless, local courts have been rejecting compensation lawsuits filed against unlawful arrests and detentions as well for incompliance with the reasonable-time requirement on grounds that trial is not completed and defendant is not acquitted; which reveals that defendants are coerced into exhausting a procedure that is set for failure.

IV. RIGHT TO A FAIR TRIAL

13. During the State of Emergency, the practice of restricting access to investigation files that fall under the Counter Terrorism Law has also been adopted for almost all investigation files regardless of the type of crime. Attorneys do not have access to files at the prosecutor's office neither can they readily meet with officials at the prosecutor's office or at the offices of high criminal courts. As a consequence of this practice of denying attorney access to case files, even though files may be about their clients, attorneys and suspects do not even know what charges are filed during the investigation or how the investigation is carried out and or on what evidence it is based. Hence, the appeal process, including appeals against detention during investigation, is not working well. Attorney access to casefiles can only be granted if indictment is accepted; however, indictments have not been issued for a long time for restricted investigation files.

14. Another problem is the delay in drafting indictments for restricted investigation files. The investigation on Gezi Park Protests on 2013 was kept restricted and the indictment finally filed following a long investigation was accepted by court only on 4 March 2019. Although the defense had previously argued that police wiretapping was against the law, the wiretaps were again included in the indictment 6 years after the incident, as part of the re-assessment of the case. The indictment made charges against members of the civil society and right advocates for attempting to overthrow the government under article 312 of the Criminal Procedures Law; which consequently puts pressure on the civil society and becomes problematic as the State has positive obligations, safeguarded by international instruments, such as to create a healthy environment for the civil society to operate in and to protect the civil society from judicial harassment.

15. Attorneys whose clients were charged with terrorism-related offenses have been prosecuted for their defense arguments during trials or for having their clients invoke the right to remain silence. Courts passed imprisonment sentences of various lengths to these attorneys held on remand. These sentences have been deterrent on efforts to seek justice. Whatever the charges may be, defendants, particularly during the state of emergency, have not been properly enjoying the right to the guarantees of procedural fairness and due process of law or the right to request that the essence of the defense be not interfered with.

16. Even though Turkish criminal system adopts oral proceedings at trials, the Courts have been interrupting the defense counsel frequently on grounds of heavy workload or time constraints. There have been attorneys who were sentenced to imprisonment or taken to hospital, by interlocutory court decision, for mental examination because of their defense argument at court hearings. Furthermore, there have been complaints that evidences are not adequately considered and that defense counsels are not given enough time to present their final arguments in criminal cases.

17. Decree-Law⁶ no 676, adopted during the state of emergency, states that meetings in prisons between attorneys and their clients who are detainees or convicts charged with "terrorism

⁶ See article 6 at <http://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>.

offenses” would be recorded in audio and visual formats upon prosecutor’s decision. The Decree-Law also allows prison guards to examine the documents attorneys bring with them in advance of meetings and be present in the room during meetings and seize any notes or documents if necessary. The Bar has received reports that attorney-client meetings had been limited to an hour once a week during the first months of the state of emergency.

V. THE RIGHT TO OPINION AND EXPRESSION

18. In 2015, a petition was launched, titled “we will not be party to this crime”, to protest the curfew declared in the east of the country as well as the operations led by security forces. 2212 signatories to the petition, also known as “Academics for Peace”, were charged with propagandizing for a terrorist organization and degrading the Republic of Turkey and were given imprisonment sentences without any option of sentence postponement or alternative sanctions. During the prosecution, they were dismissed from their jobs by Decree-Laws and had their passports revoked. These measures can be regarded as violations of academics’ private and family lives as well as their academic freedoms.

19. Articles 301, 220, 299, 314, 312 of the Turkish Penal Code and Articles 6 and 7 of the Counter-Terrorism Law invoked for people enjoying their freedom of expression are problematic in terms of predictability because of their extensive and vague wording.

20. The Criminal Records Statistics reveal that as many as 6033 people were prosecuted only in 2017 for “insulting the President”, 2099 of which were convicted. Although arrest of defendants during trial is prohibited by legislation when a crime is punishable by a short term imprisonment, which was the case in this prosecution, most people have still been held in detention for various lengths during trial.

VI. THE RIGHT TO ASSEMBLY AND DEMONSTRATION MARCHES

21. Lawyers carried out an 85-week Justice Watch before Istanbul Caglayan Justice Palace to support 570 colleagues detained since 5 April 2018 and journalists detained under the investigation into Cumhuriyet Daily. Turkish law does not require permission to hold assemblies; however, some lawyers who joined the vigil on 6 July 2017 were taken into custody all the same. Several lawyers were wounded, and a lawyer had his lower back broken during police interference. A public prosecution case was lodged against lawyers in custody for incompliance with the Law no. 2911 on Assemblies and Demonstrations; but they were later acquitted in court.

22. Peaceful demonstrations/marches that have long become traditional such as Saturday Mothers Protests, March 8 Feminist Night March, Pride March, peaceful demonstrations on 1 May at Taksim Square have been banned on legally baseless grounds.

23. The Law no. 2911 gives extraordinary powers to law enforcement, suspending safeguards for the right to assembly and demonstrations. Similarly, amendments introduced by Emergency Decrees have made it significantly difficult to enjoy this right.

VII. RECOMMENDATIONS

24. First of all, we welcome the new judicial reform strategy document announced by the President on May 30. The document includes several goals to be achieved in order to enhance the judicial system and human rights. However, we would like to emphasize that the mentioned document is not legally binding and the legislature has not enacted necessary legislation since the date on which the document was announced. Indeed, a possible judicial reform could not be achieved without an inclusive mentality focused on the rule of law, democracy and human rights.

25. Below are our recommendations on how to resolve the above-mentioned problems faced in the field of human rights:

- **Right to life and the Prohibition of Torture and Ill Treatment:** Standards of state protection and effective investigation must be satisfied in compliance with international obligations in order to end violations of the right to life and the prohibition of torture and ill treatment. At this point, the police supervision commission established by the law is welcomed however it shall be immediately brought into force. Training must be provided for law enforcement on how to act in compliance with international and national obligations; and more frequent supervision is needed. Legal guarantees must be in place for foreign nationals kept in custody at law enforcement units under the Directorate General of Security, supervision must be exercised over law enforcement and living conditions at these units must be improved. In addition, an effective complaint mechanism must be established to tackle with allegations of ill treatment at removal centers; and follow up work on such allegations must be transparent and a functional supervision of law enforcement must be in effect. Procedural guarantees for the principle of non-refoulement must be implemented in practice. We welcome the recent judgment of CC on the recall of the suspensive effect of the annulment actions in deportation cases.

- **Right to Freedom and Safety and Right to a Fair Trial:** Investigations and prosecutions must be carried out lawfully to end violations of the right to freedom and safety and of the right to a fair trial. It is important that all proceedings be transparent and effectively supervised by independent authorities. Members of the judiciary must enjoy legal guarantees for judges and prosecutors and their professions must not be compromised because of their decisions. The requirements for judicial control must be changed. Article 100 of the Criminal Procedures Law must be revised and updated to comply with the ECHR case-law. Binding decisions of CC and ECHR must be respected, and the first instance courts must take the case law into consideration.

- **The Freedom of Opinion and Expression and the Right to Assembly and Demonstrations:** Articles of the Turkish Penal Code and the Counter-Terrorism Law must be implemented in accordance with ECHR case law in order to end violations of the freedom of opinion and expression and the right to assembly and demonstrations. It is important that articles problematic in terms of the principle of predictability be revised. Academic freedom of scholars must be safeguarded. First instance courts must abide by the case law on the protection of expressions, which do not contain hate speech or incitement to violence, as a part of the freedom of expression. To solve the problems faced in the exercise of the freedom of assembly, the notification procedure specified by law must be put into practice and steps must be taken to abolish the requirement of permission. Legal regulations in line with ECHR case law must be introduced on the use of force by law enforcement and training must be provided to law enforcement officers in this regard.