

# Lawyers' Rights Watch Canada



## Turkey

### Briefing to the Human Rights Committee, 106<sup>th</sup> Session

(15 Oct. – 2 Nov.) Geneva

The failure by the Republic of Turkey (Turkey) to comply with obligations under the International Convention on Civil and Political Rights to protect and ensure the right to pre-trial release in a case involving the arrest and detention and subsequent prosecution of 50 persons including 46 lawyers, three law office employees and one journalist in Turkey.

From

**Lawyers' Rights Watch Canada**

**&**

**The Observatory for the Protection of Human Rights Defender (FIDH – OMCT)**

## Summary

This report, presently jointly by Lawyers Rights Watch Canada (LRWC) <sup>1</sup> and the Observatory for the Protection of Human Rights Defenders (FIDH-OMCT),<sup>2</sup> examines the failure of the Republic of Turkey (Turkey) to comply with its obligations under Articles 9 and 14 of the *International Covenant on Civil and Political Rights* (ICCPR) to protect and ensure the right to pre-trial release and the presumption of innocence in a case involving the prosecution of 46 lawyers, three law office employees, and one journalist in Turkey. These lawyers, who have acted on behalf of several members of the Kurdish political movement were detained and charged as a result of their legal representation of their clients.

This report does not examine other ICCPR violations in this case, including, *inter alia*, Turkey's failure to protect and ensure: (1) the right to a fair trial before a competent, independent and impartial tribunal, (2) the right to disclosure and to make full answer and defence, and (3) freedom from malicious prosecutions and prosecutions based on illegitimate charges.

An examination of the available facts<sup>3</sup> and relevant law indicates that 41 lawyers were arrested during November and December 2011 and that 36 of those lawyers and one journalist have since been subjected to excessive pre-trial detention in violation of their rights to liberty and procedural fairness protected by the ICCPR.

On July 18, 2012, nine of the lawyers were released on conditions, leaving 27 lawyers and one journalist in custody. The trial of the lawyers and others has been adjourned to November 6, 2012.

LRWC and FIDH-OMCT urge the Human Rights Committee to recommend that: (1) Turkey abide by its obligations under the ICCPR by observing the presumption of innocence and releasing the defendant lawyers and journalist, (2) compensating them for the breach of their rights, and (3) ensuring that any court proceedings are conducted with the use of Kurdish language interpreters for the defendants and members of the Court.

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<sup>1</sup> LRWC is a committee of lawyers who promote human rights by protecting advocacy rights and engaging in research, education and cooperation with other human rights organizations. LRWC has Special Consultative status with the Economic and Social Council of the United Nations.

<sup>2</sup> Created in 1997 by the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), the Observatory for the Protection of Human Rights Defenders (OBS) is one of the leading global programmes for the protection of human rights defenders.

<sup>3</sup> The organizations presenting this report have been unable to confirm the facts as reported by official documents because of: (1) lack of proper notice of the charges to the accused; (2) language barriers; (3) failure of the Court to provide individual reasons for the continued detention of each of the parties that were refused pre-trial release; and (4) failure to provide an adequate courtroom facility for the July 16, 2012 commencement of the trial with proper translation of the proceedings. Notwithstanding, the organization is confident that the facts reported fairly represent the ICCPR violations alleged.

## Introduction

1. Turkey signed the ICCPR on 15 August 2000 and ratified the ICCPR on 23 September 2003 with one reservation concerning Article 27 on the right of minorities.<sup>4</sup> Turkey ratified the *Optional Protocol to the International Covenant on Civil and Political Rights* on 24 November 2006 and the *Second Optional Protocol to the International Covenant on Civil and Political Rights* was ratified by Turkey on 2 March 2006. Both Optional Protocols entered into force on 24 February 2007. Turkey is also a signatory to the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the *European Convention on Human Rights* (ECHR).
2. As a signatory to the ICCPR, Turkey is legally obligated to ensure that individuals within its territory enjoy, without discrimination, the right to be presumed innocent, the right not to be arbitrarily arrested or detained, the right to pre-trial release and to be brought to trial within a reasonable time, and the right to obtain a remedy in relation to any violation of these rights. As Turkey is a member of the Council of Europe, the relevant recommendations of the Committee of Ministers on pre-trial detention and release apply.
3. Excessive use of pre-trial detention is a significant hindrance to Turkey's compliance with the tenets of the ICCPR. This report focuses on Turkey's violations of Articles 9 and 14 of the ICCPR.
4. In its 13 April 2011 Initial Report to the Human Rights Committee (HRC) pursuant to Article 40 of the ICCPR (the "Initial Report")<sup>5</sup>, Turkey states:

According to article 90 of the Turkish Constitution, international agreements duly put into effect bear the force of law and no appeal to the Constitutional Court can be made with regard to these agreements on the grounds that they are unconstitutional. Once the ratification process is completed, international agreements become part of the domestic legislation and applicable in national law. As such, the Covenant has direct effect in Turkish law and its provisions may be directly invoked before national courts. Besides, in case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and domestic law due to differences in provisions on the same matter, the provisions of international agreements shall prevail.
5. Turkey's Initial Report contains almost no explanation of how Turkey has implemented Arts. 9 and 14.<sup>6</sup> Indeed, in light of the statement above that the ICCPR provisions in the area of fundamental rights and freedoms take precedence over domestic law, it is troubling that the Initial Report proceeds in apparent disregard of that assertion.

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<sup>4</sup> "The Republic of Turkey reserves the right to interpret and apply the provisions of Article 27 of the International Covenant on Civil and Political Rights in accordance with the related provisions and rules of the Constitution of the Republic of Turkey and the Treaty of Lausanne of 24 July 1923 and its Appendixes."

<sup>5</sup> CCPR/C/TUR/1, at paragraph 2.

<sup>6</sup> Initial Report, paragraph 130ff.

6. In its Initial Report, Turkey states that the right of everyone to liberty and security set out in ICCPR Article 9 is “guaranteed by article 19 of the Constitution”<sup>7</sup> but does not elaborate upon how this guarantee is observed or given substantive application. Rather, a series of exceptions to the right are set out, as contained in Article 19 of the Turkish Constitution.<sup>8</sup> The Initial Report proceeds to describe the ways in which lengthy periods of pre-trial detention are authorized under various sections of the Code of Criminal Procedure (No. 5271).
7. The Initial Report highlights the difficulties with Turkey’s implementation of the ICCPR, in that the domestic legal framework does not in fact ensure the guarantee of the rights enshrined in the ICCPR. This situation is evident in the circumstances of the group of lawyers arrested in November 2011 who remain in detention in contravention of the ICCPR guarantees of procedural rights and fundamental freedoms.
8. Turkish lawyers who defend their client’s civil and political rights in politically sensitive cases are frequently subjected to judicial harassment because the state wrongly identifies them with their clients or their clients’ causes.<sup>9</sup> “Sensitive” issues include, “in particular expressing alternative identities (ethnic and religious minorities’ rights, particularly the Kurdish issue, and sexual minorities), and criticising the State and its institutions (the functioning of the institutions, including the independence of the judiciary and the impunity of the State and the army for human rights violations).”<sup>10</sup>
9. Defence lawyers representing imprisoned Kurdistan Workers Party (PKK) leader, Mr. Abdullah Öcalan, have been particularly at risk. At least 68 of them have been the subject of more than one hundred criminal cases since 2005 that accuse them of violating Article 314 of the Turkish Penal Code (TPC) and Articles 6 and 7 of the *Anti-Terrorism Law* (ATL), and of “complicity with a terrorist organisation.”<sup>11</sup>
10. Recently, and most seriously, in November and December 2011, a police operation aiming to dismantle an alleged terrorist network known as the Kurdish Communities Union (KCK) – an organization said to be the “urban branch” of the PKK – was commenced. The operation targeted lawyers involved or believed to be involved in providing legal services to Abdullah Öcalan. A total of 41 lawyers were arrested and subsequently charged as part of this police operation. Three persons employed by the accused lawyers were also arrested. The law offices and houses of the lawyers were searched. Confidential files were consulted by the police and some were sealed.
11. A total of 46 lawyers (inclusive of the detained lawyers), 3 legal workers and 1 journalist have been collectively charged and are being tried together (Prosecution of Kurdish Lawyers). All the parties charged are either of Kurdish origin or represent clients in cases

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<sup>7</sup> Initial Report, paragraph 130.

<sup>8</sup> Initial Report, paragraph 131.

<sup>9</sup> The Observatory for the Protection of Human Rights Defenders, Turkey: Human Rights Defenders, Guilty Until Proven Innocent: International Fact-Finding Mission Report (May 2012,) at p. 36.

<sup>10</sup> *Ibid.*, at p. 5.

<sup>11</sup> *Ibid.*, at 36.

related to the Kurdish issue, and the accusations and charges are all founded on the legal representation of Abdullah Öcalan. A list of the names, detention status, places of detention, charges against, and Bar Association affiliations of all defendants is attached as Appendix I.

12. On 26 November 2011, the detained lawyers were brought before the court. For 33 of the detained lawyers provisional release was refused and the others were released. However, the public prosecutor objected to the provisional release of Mr. Mehmet Ayata and Mr. Mahmut Alınak, the Court issued detention orders and these lawyers were rearrested on 8 December 2011. Mr. Mehmet Sabir Tas, who was abroad when the arrests occurred, was arrested and detained when he went to the public prosecutor to give his statement on 30 November 2011, leaving 36 lawyers and one journalist in custody as of December 8, 2011.
13. There has apparently been a failure to give adequate notice to the people accused in the Prosecution of Kurdish Lawyers case throughout. Following their arrest, copies of warrants for their arrest and the search of their homes and offices were not provided to the detained lawyers or to their legal representatives. Defense lawyers were denied disclosure of documents that were necessary to know the charges against their clients and prepare their defense. In a decision banning defense counsel from access to the case file, the Court concluded that *“representatives could hand over the documents to the illegal organisation and share information with them...”*. Apparently Article 10(b) (d) of the Law on Fight Against Terrorism, a 2006 amendment allowing waiver of defence rights in terrorism related offenses, had been relied upon. However, some documents that were not released to defense counsel were, according to defense lawyers, apparently released to the press.
14. An indictment collectively charging all the accused in the Prosecution of Kurdish Lawyers case was presented to the Court on 6 April 2012 and approved by the Court on 18 April 2012. The indictment has been criticized as failing to identify the constitute elements of each offence and to specify the allegations against each of the accused. In addition, though the indictment is 891 pages long and 220 annexes were appended to it, 12 days was deemed enough by the court to approve it. All parties are apparently charged collectively with:
  - membership in an illegal organization (KCK and PKK)<sup>12</sup>;
  - directing an illegal organization (KCK)<sup>13</sup>; and
  - passing orders of Abdullah Öcalan.
15. The trial of the Prosecution of Kurdish Lawyers case commenced on July 16<sup>th</sup> at Istanbul’s Çağlayan courthouse. There were approximately 100 lawyers representing the accused in addition to dozens of lawyers from 27 countries present to observe the proceedings. Crowding prevented proper representation, with lawyers having to take turns entering the courtroom and often having to shout above the noise.

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<sup>12</sup> Turkish Penal Code, Article 314 (1) – Alliance for offence: If two or more persons make a deal to commit any one of the offenses listed in fourth and fifth sections of this chapter by using suitable means, the offenders are sentenced to imprisonment from three years up to twelve years, depending on the quality of offense.

<sup>13</sup> *Ibid.*

16. On 18 July 2011, after 3 days of preliminary applications, another 9 of the accused were released on conditions that they were not to leave Turkey and report weekly to a police station. Defense lawyers had asked for unconditional release on the grounds that the prosecution was politically motivated, and the investigation violated solicitor-client privilege and contravened the right and duty of lawyers to perform their profession. They further submitted that there was no basis for imposing conditions on release. Twenty-seven lawyers and one journalist remain in detention.
17. The trial of the Prosecution of Kurdish Lawyers case was adjourned to 6 November 2012 over objections from defense counsel and will recommence at the larger Silivri courthouse.

## **Arrests**

18. Separate warrants were issued authorizing arrest, search, and seizure of each of the people arrested in the lawyers' case. All the warrants cited the same grounds, namely 'conducting activities in PKK/KCK terrorist organization.' There was no known evidence before the judge authorizing the warrants that any of the lawyers were likely to abscond, commit a serious offence, or interfere with the administration of justice. Some of the lawyers targeted for arrest had been previously charged with similar offences arising from their legal representation of Abdullah Öcalan with no such occurrences.
19. Most of these warrants were authorized by Judge Mehmet Ekinci, as a member of the 11<sup>th</sup> Specialised Heavy Penal Court. Judge Ekinci is now the President of the 16<sup>th</sup> Specialized Heavy Penal Court and is presiding over the trial of the lawyers and other defendants. Defense lawyers have requested Judge Mehmet to recuse himself from the case on the basis of actual or perceived bias.
20. Representatives for the detained lawyers and the journalist have continued to make applications for release. For example, on 5 December 2011, representatives of 20 detained lawyers<sup>14</sup> submitted separate letters to the Court for the release of their clients.
21. Throughout the proceedings, during questioning in police custody, and during court proceedings the parties have been refused the opportunity to speak in the Kurdish language. During the July 16-18 proceedings, when the defendants replied in Kurdish, they were advised that they 'could not be understood.' This demonstrates violations of ICCPR Article 14, particularly clauses (a) and (f).

## **Violations of the ICCPR**

22. While there are many evident violations of the ICCPR with respect to the detained parties that are apparent from the facts summarized, this report focuses solely on Turkey's violations of Articles 9 and 14 of the ICCPR. The HRC, in its May 2012 List of Issues to be taken up in connection with the consideration of Turkey's Initial Report, requested with respect to

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<sup>14</sup> İbrahim Bilmez, Fuat Coşacak, Sabahattin Kaya, Mensur Işık, Mehmet Nuri Deniz, Serkan Akbaş, Aydın Oruç, M. Sani Kızılkaya, Şaziye Önder, Muharrem Şahin, Yaşar Kaya, Mehmet Bayraktar, Servet Demir, Hüseyin Çalışıcı, Mizgin Irgat, Aydın Oruç, Bedri Kuran, Veysel Vesek, Hakzan Sadak and Hadice Korkut

Articles 9, 10 and 14 that the state party “indicate the steps undertaken to bring an end to excessive pre-trial detention and overcrowding in places of detention as well as to improve prison and police station infrastructure against abuses.”<sup>15</sup>

## International Provisions

23. Pre-trial detention is viewed in international law as an option to be used only when strictly necessary and as a last resort. A presumption in favour of pre-trial release is based on the presumption of innocence and the right to liberty and security of the person, and must be afforded to all persons equally. Pre-trial detention is permitted by international law, only under certain limited circumstances and its use must be consistent with the following fundamental principles:
- the right to liberty and security of the person;
  - the right not to be arbitrarily detained or imprisoned;
  - the right to know the reasons for arrest and to promptly challenge the legitimacy of detention;
  - the right to trial within a reasonable time or release;
  - a presumption in favour of pre-trial release (with or without conditions); and
  - the right to a remedy for unlawful deprivation of liberty.
24. This section provides a general overview of the international legal standards surrounding the right to pre-trial release.<sup>16</sup>
25. The relevant international instruments applicable to arbitrary arrest and detention in Turkey include: the *Universal Declaration of Human Rights* (UDHR)<sup>17</sup>, *International Covenant on Civil and Political Rights* (ICCPR),<sup>18</sup> *Optional Protocol to the International Covenant on Civil and Political Rights*,<sup>19</sup> the *Convention on the Rights of the Child* (CRC),<sup>20</sup> *International*

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<sup>15</sup> CCPR/C/TUR/Q/1 (May 4, 2012) at paragraph 17.

<sup>16</sup> This section is based largely on (and with permission, directly copies text from) the 14 August 2012 report “Arrest and Detention of Lawyers in Turkey: The Right to Pre-Trial Release at International Law” prepared by Lois Leslie, B.Soc. Sc. (Hons), LL.B, LL.M for LRWC. Useful sources consulted in the preparation of this section include: Office of the UN High Commissioner for Human Rights in association with the International Bar Association (2003), *Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers* (United Nations), particularly, Chapter 5, “Human Rights and Arrest, Pre-trial Detention and Administrative Detention”; UN Centre for Human Rights (1994) Professional Training Series No.3: *Human Rights and Pre-trial Detention – A Handbook of International Standards relating to Pre-trial Detention* (United Nations); and American Bar Association Rule of Law Initiative, *Handbook of International Standards on Pretrial Detention Procedure* (2010).

<sup>17</sup> *Universal Declaration of Human Rights*, adopted 10 Dec. 1948, online at: <http://www.un.org/en/documents/udhr/index.shtml>.

<sup>18</sup> *International Covenant on Civil and Political Rights*, 16 Dec. 1966, U.N. Doc. A/6316, 999 U.N.T.S. 171, entered into force 23 March 1976, online at: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>19</sup> *Optional Protocol to the International Covenant on Civil and Political Rights*, adopted 16 December 1966, 999 U.N.T.S. 171, entered into force 23 March 1976, online at: <http://www2.ohchr.org/english/law/ccpr-one.htm>.

<sup>20</sup> *Convention on the Rights of the Child*, adopted 20 Nov. 1989, entered into force 2 Sept. 1990, UN Doc. A/44/49, at 166 (1989), online at: <http://www2.ohchr.org/english/law/crc.htm>.

*Convention on the Elimination of All Forms of Racial Discrimination (CERD),<sup>21</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>22</sup> Standard Minimum Rules for the Treatment of Prisoners (“Standard Minimum Rules”),<sup>23</sup> United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (“Body of Principles”),<sup>24</sup> United Nations Standard Minimum Rules for Non-custodial Measures (“The Tokyo Rules”),<sup>25</sup> United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”),<sup>26</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (“The Bangkok Rules”),<sup>27</sup> United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“Havana Rules”),<sup>28</sup> and Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (“Basic Principles and Guidelines on the Right to a Remedy and Reparation”).<sup>29</sup>*

26. Regional instruments include the *European Convention on Human Rights*<sup>30</sup> (ECHR), *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the*

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21 *International Convention on the Elimination of All Forms of Racial Discrimination*, adopted 21 December 1965, entered into force 4 January 1969, 660 U.N.T.S. 195, online at: <http://www2.ohchr.org/english/law/cerd.htm>.

22 *Convention on the Elimination of All Forms of Discrimination against Women*, adopted 18 December 1979, entered into force 3 September 1981, UN Doc. A/34/46, at 193 (1979), online at: <http://www2.ohchr.org/english/law/cedaw.htm>.

23 *Standard Minimum Rules for the Treatment of Prisoners*, United Nations Secretariat, Report of First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, Switzerland (Aug. 22-Sept. 3, 1955), annex I.A. Approved by Economic and Social Council, E.S.C. Res. 663C XXIV (July 31, 1957). Amended by the Economic and Social Council, E.S.C. Res. 2076 LXII (May 13, 1997), online at: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>.

24 *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. Res. 43/173, U.N. Doc. A/RES/43/173 (Dec. 9, 1988), online at: <http://www2.ohchr.org/english/law/bodyprinciples.htm>.

25 *United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)*, G.A. Res. 45/110, U.N. Doc. A/RES/45/110 (Dec. 14, 1990), online at: <http://www2.ohchr.org/english/law/tokyorules.htm>.

26 *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")*, G.A. Res. 40/33, U.N. Doc. A/RES/40/33 (Nov. 29, 1985), online at: <http://www2.ohchr.org/english/law/beijingrules.htm>.

27 *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)*, adopted by General Assembly Resolution 65/229 of 21 December 2010, online at: <http://daccess-ods.un.org/TMP/7960160.97068787.html>.

28 *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules)*, G.A. Res. 45/113, U.N. Doc. A/RES/45/113 (Dec. 14, 1990), online at: [http://www2.ohchr.org/english/law/res45\\_113.htm](http://www2.ohchr.org/english/law/res45_113.htm).

29 *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005, online at: <http://www2.ohchr.org/english/law/remedy.htm>.

30 *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, 213 U.N.T.S. 222, entered into force 3 September 1953, online at: <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CM=7&DF=24/07/2012&CL=ENG>.



*European Prison Rules* (“Council of Europe, Recommendation (2006)2”),<sup>31</sup> *Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse* (“Council of Europe, Recommendation (2006)13”),<sup>32</sup> and *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures* (“Council of Europe, Recommendation (2008)11”).<sup>33</sup>

## **Presumption of Innocence**

27. Turkey is obligated to respect the presumption of innocence, as set out in Article 11(1) of the *Universal Declaration of Human Rights* (UDHR), Articles 10(2) (a) and multiple other international instruments. Article 14(2) of the ICCPR provides that: “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.”

28. In *CCPR General Comment No. 32*, the HRC states at paragraph 30:

According to article 14, paragraph 2 everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to law. The presumption of innocence, which is fundamental to the protection of human rights, imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle...<sup>34</sup>

29. The continued pre-trial detention of the lawyers detained in November 2011 without cause violates the presumption of innocence.

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31 *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, adopted by the Committee of Ministers on 11 January 2006, online at:

[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations\\_en.asp](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations_en.asp).

32 *Recommendation Rec(2006)13 of the Committee of Ministers to member states on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse*, adopted by the Committee of Ministers on 27 September 2006, online at:

[http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations\\_en.asp](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations_en.asp).

33 *Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures*, adopted by the Committee of Ministers on 5 November 2008, online at: [http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations\\_en.asp](http://www.coe.int/t/DGHL/STANDARDSETTING/PRISONS/Recommendations_en.asp).

34 UN Human Rights Committee (HRC), *CCPR General Comment No. 32: Article 14 (Right to equality before courts and tribunals and to a fair trial)*, 23 August 2007, CCPR/C/GC/32, para. 30, online at: <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

## **Right to Liberty and Security of the Person – freedom from arbitrary arrest and detention**

30. All persons in Turkey have an internationally-protected right to liberty and security of the person, which includes the right to be free from arbitrary arrest and detention. To be lawful under international human rights law, arrests and detentions must be carried out in accordance with both formal and substantive rules of domestic and international law, including the principle of non-discrimination, and must not be arbitrary.
31. The prohibition against “arbitrary” detention requires that the circumstances and procedures under which a person can be lawfully detained must be enshrined in domestic law. Detention decisions should be made according to established criteria.

32. As enshrined in Articles 3 and 9 of the UDHR, ICCPR Article 9(1) states:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

33. These principles are repeated in a myriad of other instruments.<sup>35</sup> Article 5(b) of CERD provides:

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:...

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution...

34. The HRC, in *CCPR General Comment No. 8*, states, at paragraph 1, that Article 9(1) “is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.”<sup>36</sup> In any event, the exercise of a lawyer’s professional obligations to represent clients surely falls within the purview of Article 9.
35. The HRC has held that the obligation to ensure security of the person includes an obligation to protect non-detained individuals from threats made by persons in authority.<sup>37</sup> This is an important holding because when lawyers are detained apparently merely for acting for their clients, this can be perceived as a severe and chilling threat to other lawyers representing

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<sup>35</sup> See, for example: *Body of Principles*, Principles 9, 12, 13, 36(2); *The Tokyo Rules*, Rule 3; *Havana Rules*, Rule 68 and 70; *ECHR*, Article 5; *Council of Europe Recommendation (2006)13*, paragraph 8(1); *Council of Europe Recommendation (2008)11*, paragraph 3

<sup>36</sup> UN Human Rights Committee (HRC), *CCPR General Comment No. 8: Right to liberty and security of persons* (Art. 9), 30 June 1982, Sixteenth session, 1982, para. 1, online at: <http://www.unhchr.ch/tbs/doc.nsf/%28Symbol%29/f4253f9572cd4700c12563ed00483bec?Opendocument>.

<sup>37</sup> Communication No. 449/1991, *Barbarin Mojica v. Dominican Republic*, at para. 5.4; Communication No. 314/1988, *Bwalya v. Zambia*, at para. 6.4.

clients or causes unpopular with the state.

**“In accordance with the law”**

36. The HRC has held that Article 9(1) of ICCPR requires that the grounds for arrest and detention must be clearly established by domestic legislation and made in accordance with that law.<sup>38</sup>
37. The European Court of Human Rights has held that the requirements in Article 5(1) of the ECHR that arrest or detention be “lawful” and “in accordance with a procedure prescribed by law”:

...stipulate not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of Article 5 and not arbitrary... In addition, given the importance of personal liberty, it is essential that the applicable national law meet the standard of “lawfulness” set by the Convention, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail...<sup>39</sup>

**“Arbitrary”**

38. With respect to “arbitrary arrest”, the HRC has explained that:

The drafting history of article 9, paragraph 1, confirms that “arbitrariness” is not to be equated with “against the law”, but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances. Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.<sup>40</sup>

39. The continued pre-trial detention of the lawyers detained in November 2011 falls within the ambit of arbitrariness as defined by the HRC, and is neither reasonable nor necessary in all the circumstances.
40. Pre-trial detention that is excessive, set according to the length of potential sentence or applied automatically, may also be a violation of the right to liberty and the presumption of innocence.<sup>41</sup> In *Salim Abbassi v. Algeria*, the HRC recalled its jurisprudence that, “in order to avoid a characterization of arbitrariness, detention should not continue beyond the period for

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38 Communication No. 702/1996, *Clifford McLawrence v. Jamaica*, at para. 5.5; Communication No. 770/1997, *Dimitry L. Gridin v. Russian Federation*, at para 8.1.

39 Eur. Court HR, *Steel and Others v. the United Kingdom* (App. No.67/1997/851/1058), at para. 54.

40 Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, at para. 9.8, reaffirmed, *inter alia*, in Communication No. 1085/2002, *Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi v. Algeria*, at para. 8.3, and Communication No. 1128/2002, *Rafael Marques de Morais v. Angola*, at para. 6.1. [footnote omitted]

41 Human Rights Committee (2006) Concluding Observations: Italy (CCPR/C/ITA/CO/5), at para. 14.

which the State party can provide appropriate justification.”<sup>42</sup> Instances where individuals have been arrested without warrant or summons and kept in detention without a court order have been found to violate the right to freedom from arbitrary arrest and detention in Article 9(1).<sup>43</sup> The case law indicates that detention should not be of a punitive character.<sup>44</sup>

41. The period of time for which the detained lawyers have been detained far exceeds any justifiable or appropriate amount of time and constitutes a clear violation of their fundamental rights.
42. The European Court of Human Rights has stated that the “reasonableness” of the suspicion on which an arrest must be based forms an essential safeguard against arbitrary arrest and detention because:

...having a "reasonable suspicion" presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence. What may be regarded as "reasonable" will however depend upon all the circumstances.<sup>45</sup>

43. Such facts or information do not appear to exist with respect to the detained lawyers. Rather, an objective observer would not consider that the exercise of professional obligations to a client constitutes a reasonable suspicion forming the basis for an arrest.

### **Right to be informed of reasons for arrest and of any charges**

44. Turkey is obligated to promptly inform persons arrested and detained of the reasons for an arrest and of any charges in a language which they understand and in sufficient detail so as to enable them to take proceedings to have the lawfulness of their detention decided speedily. Articles 9(2) and 14(3) of the ICCPR provide:

9. (2) Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

14. (3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

These principles are echoed in various other international instruments.<sup>46</sup>

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<sup>42</sup> Communication No. 1172/2003, *Salim Abbassi v. Algeria*, at para. 8.4.

<sup>43</sup> Communication No. 90/1981, *Luyeye Magana ex-Philibert v. Zaire*, at para. 8.

<sup>44</sup> *de Morais v. Angola*, *supra*, note 38, at para. 6.1.

<sup>45</sup> Eur. Court HR, *Fox, Campbell and Hartley v. The United Kingdom* (App no. 12244/86, 12245/86, 12383/86), at para. 32.

<sup>46</sup> See, for example: *Body of Principles*, Principles 10 and 12; *Tokyo Rules*, Rule 7.1; ECHR, Article 5(2); *European Convention on Human Rights*, Article 5(2).

45. The HRC, in *CCPR General Comment No. 32*, states, at paragraph 31:

The right of all persons charged with a criminal offence to be informed promptly and in detail in a language which they understand of the nature and cause of criminal charges brought against them, enshrined in paragraph 3 (a), is the first of the minimum guarantees in criminal proceedings of article 14. This guarantee applies to all cases of criminal charges, including those of persons not in detention, but not to criminal investigations preceding the laying of charges.<sup>60</sup> Notice of the reasons for an arrest is separately guaranteed in article 9, paragraph 2 of the Covenant.<sup>61</sup> The right to be informed of the charge “promptly” requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law,<sup>62</sup> or the individual is publicly named as such...<sup>47</sup>

46. In *Campbell v. Jamaica*, the HRC has held that “one of the most important reasons for the requirement of “prompt” information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority.”<sup>48</sup> An arrest and detention for a “presumed connection with subversive activities” is not sufficient for the purposes of the ICCPR, including Article 9(2), without an explanation as to “the scope and meaning of ‘subversive activities’ that constitute a criminal offence under the relevant legislation,” particularly where the right to freedom of expression is implicated.<sup>49</sup>

47. The indictment was not presented to the Court until 6 April 2012 and was not approved by the court until 18 April 2012. It appears that when the lawyers were arrested, they were only aware that they had been arrested as part of a KCK/PKK related operation. The case file was closed to review by the accused and their legal representatives. The exact charges were not known until April 2012 when the prosecutor concluded the indictment. The indictment charges the accused collectively and does not indicate particulars or dates of the criminal acts or omissions of which each person stands accused. Therefore, each of the accused in this case were not and have not been informed of the allegations against him/her with sufficient particularity to enable him/her to either prepare a defense or obtain pre-trial release.

48. Regarding ICCPR Article 14, LRWC notes that the state party cites Article 36 of the Turkish Constitution as providing the right to a fair trial (paragraph 173 of the Initial Report) and Article 37 for the right not to be considered guilty until proven guilty (paragraph 175).

49. It appears that Article 202 of the Constitution has been violated in the cases of the lawyers referred to herein, since according to paragraph 184 of the Initial Report, Article 202(1) provides that:

If the accused or the victim does not know sufficient Turkish to explain his plight, during the hearing the essential points of the prosecution and defence shall be interpreted by an interpreter to be appointed by the court.

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47 CCPR General Comment No. 32, *supra* note 27, at para. 31.

48 Communication No. 248/1987, *Campbell v. Jamaica*, at para. 6.3.

49 Communication No. 33/1978, *Carballal v. Uruguay*, at paras. 12-13.

50. LRWC submits that the hearing of July 18 shows clear violations of ICCPR Article 14, particularly clauses (a) and (f), given the repeated references to defendants addressing the Court in the Kurdish language and the Court reporting that the defendants could not therefore be understood.

**Right to be promptly brought before a judge or other judicial officer and to trial within a reasonable time or release**

51. Individuals arrested in Turkey must be brought promptly before a judicial authority so that the court may determine whether an initial detention was justified and whether or not the accused shall be remanded in custody pending trial. An individual detained is entitled to be tried within a reasonable time, or release pending trial. The judicial authority reviewing the arrest and detention must be independent of the executive, must personally hear the person concerned, and must be empowered to direct pre-trial detention or release the person arrested. The Courts must give reasons for decisions imposing pre-trial detention or refusing a request for release. Detainees should have the right, contained in law, to appeal to a higher judicial or other competent authority a decision to detain or to revoke conditional release.

52. ICCPR, Article 9(3) provides that: “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release...”<sup>50</sup>

**Purpose of requirement to be brought before a judicial officer**

53. The HRC has stated that the purpose of the first sentence of Article 9(3) is to bring the detention of a person charged with a criminal offence under judicial control. “A failure to do so at the beginning of someone's detention, would thus lead to a continuing violation of article 9(3), until cured.”<sup>51</sup>

54. In view of the apparent failure of the Court to: examine separately or at all each application for pre-trial release; provide reasons, citing the relevant facts and applicable law, for refusing release in reference to each detained person; inquire adequately or at all into the public need and/or legal justification for detention or release; and defense counsel’s submission of bias, the detention of each of the detained people cannot be said to have yet been brought under judicial control.

**“Automatic”**

55. Under the ICCPR, the duty to bring a detainee promptly before a judicial authority applies regardless of whether a detainee requests it.<sup>52</sup>

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<sup>50</sup> For similar provisions, see also: *Body of Principles*, Principles 11, 37, 38; *Tokyo Rules*, Rule 6.3; *The Beijing Rules*, Rule 7.1; *Havana Rules*, Rule 70; *ECHR*, Article 5(3); *Council of Europe, Recommendation (2006)13*, paragraphs 14-16 and 18

<sup>51</sup> Communication No. 521/1992, *Vladimir Kulomin v. Hungary*, at para. 11.3.

<sup>52</sup> Human Rights Committee, Concluding Observations: Republic of Korea, CCPR/C/79/Add.114, 1 November 1999, at para. 13. Similarly, the European Court of Human Rights has ruled that the review must be automatic and

## Right to Release Pending Trial

56. As noted in ICCPR, Article 9(3): “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial...”. All of the standards are based on the principle that pre-trial detention should be minimized whenever possible and should be used only as a last resort. International and regional standards suggest that pre-trial detention can only be justified when used to prevent the accused from absconding, committing a serious offence, or interfering with the administration of justice. Whatever the justification, detention should be used only as a last resort, when, following a consideration of the widest possible range of alternatives, the Court determines that detention remains necessary to address the risk identified.
57. These considerations have not been explored with respect to the detained lawyers in any observable way and the reasons that might justify their continued detention are not in evidence.

## Pre-trial detention as a last resort

58. The HRC states in *CCPR General Comment No. 8*, that “Pre-trial detention should be an exception and as short as possible.”<sup>53</sup> Similarly, the relevant international instruments emphasize noncustodial measures for the avoidance of the unnecessary use of imprisonment, and the use of pre-trial detention as a means of last resort.<sup>54</sup>
59. The Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders, expressed serious concern about delays in the criminal justice process and the high proportion of pre-trial detainees among the prison population and recommended that Member states use pre-trial detention only if circumstances make it strictly necessary and as a last resort in criminal proceedings.<sup>55</sup> Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerougi, has stated that a system of mandatory denial of pre-trial release for certain crimes may, by definition be arbitrary, “since it does not allow the decision maker to take the individual circumstances into account.”<sup>56</sup>
60. Under the ICCPR, detention before trial must be lawful, reasonable, and necessary in all the circumstances, “for example, to prevent flight, interference with evidence or the recurrence

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cannot depend on the application of the detained person: Eur. Court HR, Case of *McKay v. the United Kingdom* (App. No. 543/03), at para. 34.

<sup>53</sup> CCPR General Comment No. 8, supra note 31, at para. 3.

<sup>54</sup> See: *Body of Principles*, Principle 39; *The Tokyo Rules*, Rules 2.3, 3.1, 3.4, 3.5, 5.1, 6; *The Beijing Rules*, Rule 13 and 19; *Havana Rules*, Rules 1 and 2; *The Bangkok Rules*, Rule 58; *ECHR*, Articles 5(1)(c) and 5(3); *Council of Europe, Recommendation (2006)13*, paragraphs 3-7.

<sup>55</sup> Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August – 7 September, 1990, A/Conf.144/28/Rev.1, p.158.

<sup>56</sup> Laurel Townhead, “Pre-Trial Detention of Women and its Impact on their Children”, February 2007, Quaker United Nations Office, Women in Prison and Children of Imprisoned Mothers Series, at p. 13, citing comments on mandatory sentencing made by Leila Zerougi, Chairperson-Rapporteur of the Working Group on Arbitrary Detention, during the second regular session of the Human Rights Council, 20 December 2006, online: <http://www.quano.org/humanrights/women-in-prison/womenPrisonLinks.htm>.

of crime”.<sup>57</sup> In *Aleksander Smantser v. Belarus*, the HRC reaffirmed its jurisprudence that pre-trial detention should remain the exception and that bail should be granted:

...except in situations where the likelihood exists that the accused would abscond or tamper with evidence, influence witnesses or flee from the jurisdiction of the State party”.... The mere assumption by a State party that the author would interfere with the investigations or abscond if released on bail does not justify an exception to the rule in article 9, paragraph 3, of the Covenant.<sup>58</sup>

61. The HRC has held that the mere fact that the accused is a foreigner does not of itself imply that he may be held in detention pending trial”.<sup>59</sup> In *Case of Case of Grishin v. Russia*, the European Court reiterated that, under the second limb of Article 5(3):

...a person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify his continuing detention. The domestic courts must, paying due regard to the principle of the presumption of innocence, examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying a departure from the rule of respect for individual liberty and must set them out in their decisions on the applications for release”.<sup>60</sup>

62. The European Court of Human Rights has ruled that the burden is on the state to show why the defendant cannot be released.<sup>61</sup> The mere absence of a fixed residence does not give rise to a danger of flight.<sup>62</sup> The danger of an accused person’s absconding “cannot be gauged solely on the basis of the severity of the sentence risked”, but “must be assessed with reference to a number of other relevant factors which may either confirm the existence of a danger of absconding or make it appear so slight that it cannot justify detention pending trial.”<sup>63</sup> In *Case of Grishin v. Russia*, the European Court stated that the risk of flight “should be assessed with reference to various factors, especially those relating to the character of the person involved, his morals, his home, his occupation, his assets, his family ties and all kinds of links with the country in which he is being prosecuted”.<sup>64</sup>

63. The domestic courts must explain why there is a danger of absconding and not simply to confirm the detention using “identical stereotyped terms, such as ‘having regard to the nature of the offence, the state of the evidence and the content of the case file’.”<sup>65</sup> The European Court of Human Rights held, in *Case of Cahit Demirel v. Turkey*, that the multiple, consecutive detention periods served by the applicant should be regarded as a whole when assessing the reasonableness of the length of detention under Article 5(3) of the

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<sup>57</sup> *Mukong v. Cameroon*, *supra* note 38, at para. 9.8.

<sup>58</sup> Communication No. 1178/2003, *Aleksander Smantser v. Belarus*, at para. 10.3.

<sup>59</sup> Communication No. 526/1993, *Hill v. Spain*, at para. 12.3.

<sup>60</sup> Eur. Court HR, *Case of Case of Grishin v. Russia* (App No. 14807/08), at para. 139.

<sup>61</sup> Eur. Court HR, *Case Of Ilijkov V. Bulgaria* (App No. 33977/96), at para. 85.

<sup>62</sup> Eur. Court HR, *Case of Sulaoja v. Estonia* (App No. 55939/00), at para. 64.

<sup>63</sup> Eur. Court HR, *Case of Tomasi v France* (App No 12850/87), at para. 98.

<sup>64</sup> *Grishin v. Russia*, *supra* note 77, at para. 143.

<sup>65</sup> Eur. Court HR, *Case of Cahit Demirel v. Turkey* (App No. 18623/03), at paras. 24-25.



Convention.<sup>66</sup> While the Court acknowledged that the “state of the evidence” may be relevant to the “existence and persistence of serious indications of guilt” and that the severity of the sentence faced is a relevant element in the assessment of the risk of absconding, “neither the state of evidence nor the gravity of the charges can by themselves serve to justify a length of preventive detention of over six years and four months”.<sup>67</sup> The Court further noted that:

...the Diyarbakır State Security Court failed to indicate to what extent the applicant’s release would have posed a risk after the passage of time, in particular in the later stages of the proceedings. Furthermore, the first-instance court never gave consideration to the application of a preventive measure, such as a prohibition on leaving the country or release on bail, other than the continued detention of the applicant...<sup>68</sup>

64. The existence of a strong suspicion of the involvement of the person concerned in serious offences, while constituting a relevant factor, cannot alone justify a long period of pre-trial detention.<sup>69</sup> When release pending trial is refused on the basis that the defendant may commit further offences prior to trial, the national court must be satisfied that the risk is substantiated. A reference to a person’s antecedents cannot suffice to justify refusing release.<sup>70</sup>

65. With respect to the risk of pressure being put on witnesses, the European Court of Human Rights states:

...for the domestic courts to demonstrate that a substantial risk of collusion existed and continued to exist during the entire period of the applicant’s detention, it did not suffice merely to refer to an abstract risk unsupported by any evidence. They should have analysed other pertinent factors, such as the advancement of the investigation or judicial proceedings, the applicant’s personality, his behaviour before and after the arrest and any other specific indications justifying the fear that he might abuse his regained liberty by carrying out acts aimed at the falsification or destruction of evidence or manipulation of witnesses...<sup>71</sup>

66. In *Case of Öcalan v. Turkey*, the European Court of Human Rights affirmed its earlier rulings regarding detention of persons suspected of terrorist offences. It recognized that while “the investigation of terrorist offences undoubtedly presents the authorities with special problems...[t]his does not mean, however, that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism is involved”.<sup>72</sup>

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66 *Ibid*, at para. 23.

67 *Ibid*.

68 *Ibid.*, at para. 26.

69 *Eur. Court HR, Case of Van Der Tang v. Spain* (App No 19382/92), at para. 63. See also *Case Of Ilijkov V. Bulgaria* (App No. 33977/96), at para. 81.

70 *Eur. Court HR, Case of Muller v. France* (App No. 21802/93), at para. 44.

71 *Grishin v. Russia*, *supra* note 77, at para. 148.

72 *Case of Öcalan v. Turkey*, (App No 46221/99), at para. 104.

67. Given that the detained lawyers are members of the legal profession in Turkey, it would seem to an outside observer unlikely that they would constitute a flight risk, or likely to tamper with evidence or intimidate witnesses. Lawyers typically have ties to the local communities in which they have established their practices.

### **Duty to consider alternatives**

68. Under Article 5(3) of the ECHR, when deciding whether a person should be released or detained, the authorities have an obligation under that Article to consider alternative measures of ensuring his or her appearance at the trial.<sup>73</sup> Where the risk of absconding is deemed to exist, the authorities are under a duty to consider alternatives to detention that will ensure the defendant appears at trial.<sup>74</sup>
69. When fixing a financial surety as a condition of release pending trial, the national authorities must take as much care in fixing appropriate bail as in deciding whether or not the accused's continued detention is indispensable.<sup>75</sup>

### **Conclusions**

70. The pre-trial detention of 36 people from November and December 2011 to July 18 and the continued detention of 28 of those people is unreasonable and unnecessary to prevent flight, reoccurrence, and interference with the administration of justice. The detention is also excessive, in that it has been applied collectively and without consideration of the facts relevant to each individual.
71. As such the detentions constitute a violation by Turkey of Article 9 of the ICCPR and fall within the ambit of arbitrariness as defined by the HRC.
72. The prolonged pre-trial detention also violates the presumption of innocence enshrined in Article 14(2) of the ICCPR.
73. The hearing on July 16-18, 2012 exhibited clear violations of ICCPR Article 14, particularly clauses (a) and (f), given the repeated references to defendants addressing the Court in the Kurdish language and the Court reporting that the defendants could not therefore be understood. We respectfully suggest that the Court ensure the presence of qualified interpreters for all of its proceedings related to these defendants.

### **Recommendations**

74. Considering Turkey's obligations under the ICCPR and the facts regarding the arrest, prolonged detention, and delayed trial, the organization presenting this report urges the Human Rights Committee to recommend that Turkey take the remedial and preventative measures listed in the following paragraphs:

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73 Eur. Court HR, Case of Yevgeniy Kuzmin v. Russia (App No. 6479/05), at para. 34.

74 Eur. Court HR, Case of Khodorkovskiy v. Russia (App No. 5829/04), at para. 186.

75 Eur. Court HR, Case of Mangouras v. Spain (App No. 12050/04), at para. 37.

75. Ensure the presence of qualified interpreters for all of its proceedings related to these defendants.
76. Ensure that all the parties detained in this case be promptly released in accordance with their rights protected by the ICCPR to liberty and presumption of innocence and that only those condition be imposed on release that are found to be necessary to prevent the risks, if any, of flight, commission of a serious offence or tampering with evidence established before the Court. That Turkey further ensure full disclosure to each of the accused.
77. Amend the Anti-Terror Law, Penal Code, and other legislation so as to end the practices of indefinite pre-trial detention and prosecution of thousands of peaceful Kurdish movement activists as “terrorists”, and ensure that non-violent discussion of Kurdish issues is not punished by law, as recently recommended by the International Crisis Group<sup>76</sup>:
78. Ensure that Article 102 of the Turkish Code of Criminal Procedure (No. 5271), which provides for extremely lengthy pre-trial detention is amended to comply with the ICCPR.
79. Ensure the release of all parties detained in this case, pending completion of the trial.
80. Provide compensation to the accused who were detained, including those who were granted provisional release on 18 July 2012, for the losses suffered in respect of the pre-trial detention, including their lost livelihoods, reputations, family life, and liberty.
81. Amend the Advocacy Law and set out strict conditions for starting an investigation against a lawyer for any act(s) carried out in the performance of his/her professional duties.
82. Ensure that Article 58 of the Advocacy Law, which provides that approval of the Ministry of Justice is required to start such investigations, is strictly enforced for all investigations, including ones concerning alleged terrorism related offences.
83. Comply with the other international standards relevant to the case: namely the Basic Principles on the Role of Lawyers adopted at the 8<sup>th</sup> UN Congress in 1990 (the Havana Principles), EC General Principles on the Roles of Lawyers and Recommendation No 21 of the Committee of Ministers to Member States on the Freedom of Exercise of Profession of Lawyer adopted by the European Council in 2000.

All of which is respectfully submitted.

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<sup>76</sup> International Crisis Group *Turkey: The PKK and a Kurdish Settlement* Europe Report N°219 (11 September 2012) paragraph 4. [http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/turkey/219-turkey-the-pkk-and-a-kurdish-settlement.aspx?utm\\_source=turkeyreport&utm\\_medium=1&utm\\_campaign=mremail](http://www.crisisgroup.org/en/regions/europe/turkey-cyprus/turkey/219-turkey-the-pkk-and-a-kurdish-settlement.aspx?utm_source=turkeyreport&utm_medium=1&utm_campaign=mremail)

## APPENDIX I

### 1. List of lawyers detained

	Names	Bar Association	Place of Detention	Charge
01	Şaziye ÖNDER	Ağrı	Bakırköy Kapalı Kadın Cezaevi / İstanbul	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
02	Muhdi ÖZTÜZÜN	Batman	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
03	Mehmet Deniz BÜYÜK	Bursa	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
04	Faik Özgür EROL	Diyarbakır	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
05	Muharem ŞAHİN	“	Kandıra 1 Nolu F Tipi Cezaevi /KOCAELİ	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
06	Serkan AKBAŞ	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
07	Fuat COŞACAK	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
08	Mehmet AYATA	“	Silivri 2 Nolu L Tipi Kapalı Cezaevi /İstanbul	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
09	Davut UZUNKÖPRÜ	Hakkari	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
10	İbrahim BİLMEZ	İstanbul	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
11	Emran EMEKÇİ	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
12	Cengiz ÇİÇEK	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
13	Asya ÜLKER	“	Bakırköy Kapalı Kadın Cezavi	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
14	Doğan ERBAŞ	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
15	Hatice KORKUT	“	Bakırköy Kapalı Kadın Cezaevi	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
16	Ömer GÜNEŞ	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
17	Mehmet Sani KIZILKAYA	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
18	Mehmet BAYRAKTAR	İzmir	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
19	Servet DEMİR	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

20	Mizgin IRGAT	“	Bakırköy Kapalı Kadın Cezaevi	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
21	Bedri KURAN	Mersin	Kandıra 2 nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
22	Mensur IŞIK	Muş	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
23	Şakir DEMİR	Siirt	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
24	Mehmet Sabır TAŞ	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
25	Mustafa ERARSLAN	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
26	Sabahattin KAYA	Van	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
27	Cemal DEMİR	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

## **2. Lawyers released after the hearing of 16- 18 July 2012:**

	<b>Names</b>	<b>Bar Association</b>	<b>Status</b>	<b>Charge</b>
01	Mahmut ALINAK	Kars	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
02	Mehmet Nuri DENİZ	Diyarkabir	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
03	Veysel VESEK	Şırnak	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
04	Cemo TÜYSÜZ	Urfa	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
05	Yaşar KAYA	Ardahan	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
06	Aydın ORUÇ	Denizli	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
07	Osman ÇELİK	Diyarbakir	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
08	Hüseyin ÇALIŞCI	Istanbul	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
09	Hakzan SADAK	”	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

## **3. Other lawyers prosecuted:**

	<b>Names</b>	<b>Bar Association</b>	<b>Status</b>	<b>Charge</b>
01	Ümit SİSLİGÜN	Istanbul	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
02	Erdal SAFALI	Hakkari	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
03	Ayşe BATUMLU KAYA	Bursa	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
04	Nevzat ANUK	Hakkari	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
05	Baran PAMUK	Diyarbakir	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

06	Ergün CANAN	Hakkari	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
07	Nezahat PAŞA BAYRAKTAR	Izmir	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
08	Meral ATASOY ATAN	Diyarbakir	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
09	Fırat AYDINKAYA	Istanbul	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
10	Yalçın SARITAŞ	Van Bar	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

#### **4. Non-lawyers prosecuted in the same case:**

	<b>Names</b>	<b>Occupation</b>	<b>Status</b>	<b>Charge</b>
1	Cengiz KAPMAZ	Journalist	Detained in Kandira F Type Prison.	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
2	Sabahat Zeynep ARAT	Legal secretary of Asrin Law Firm	Last arrest of warrant not executed yet.	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
3	Hüseyin KARASU	Driver in Asrin Law Firm	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
4	Sıdık BAL	Driver in Asrin Law Firm	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code