

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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Item 4 – Human rights situations that require Council's attention

Written Statement by Lawyers' Rights Watch Canada, an NGO in Special Consultative Status, to the 37th Session of the United Nations Human Rights Council

The situation of lawyers and other human rights defenders in Turkey since July 2016

This submission focuses on the situation of lawyers and other human rights defenders in the Republic of Turkey ("Turkey") since the attempted coup d'état on 15 July 2016. Violations by Turkey of its international human rights law obligations have increased since July 2016. Lawyers and human rights defenders (HR Defenders) have been subjected to arbitrary arrests and detentions. Many have been arrested, prosecuted, convicted and imprisoned for peacefully exercising internationally protected rights to freedoms of expression, association, assembly, to participate in public affairs and to engage in lawful advocacy both as a lawyer and as a HR Defender.¹ Events from July 2016 to the present demonstrate widespread and systematic human rights abuses against lawyers and other HR Defenders, amongst others, in violation of international human rights law.²

Turkey is party to sixteen international human rights instruments, including the International Covenant on Civil and Political Rights (ICCPR,) and the Convention Against Torture (CAT),³ and therefore has legal obligations to respect and protect for all individuals within its territories and subject to its jurisdiction, the rights and freedoms guaranteed by, inter alia, the ICCPR, to equality (Article 7, 2, 10), liberty (Article 3), expression (Article 19), association and assembly (Article 20), as well as freedom from arbitrary detention (Article 9), remedies for violations (Art. 8) and the right to legal representation (Art. 14(3)). Discharge of these obligations entails ensuring the right to legal representation, (Art. 14(3) (d), which the Human Rights Committee (HR Committee) determined applies to both criminal and civil proceedings.⁴ The state's specific duty to protect the independence and the personal and professional safety of lawyers is integral to compliance with duties to ensure rights, prevent violations and provide access to adequate.

¹ See, for instance, 2015 UPR, Joint submission by Lawyers for Lawyers Foundation, The Law Society of England and Wales, Lawyers' Rights Watch Canada and Fair Trial Watch, Amsterdam, (Netherlands), available at: <http://www.advocatenvooradvocaten.nl/wp-content/uploads/UPR-Submission-Turkey-final-draft-1.pdf> and European Association of Judges, 'Resolution on the Situation of the Judiciary in Turkey' (16 May 2015), available at: http://www.ekou.ee/doc/2015-0529_EAJ-pressrelease-Turkey.pdf

² The primary target of the state anti-democratic movement in Turkey at the present time is the Gulenist movement, or Hizmet (the 'Service'), characterised by Turkey as the 'Fetullahçı Terör Örgütü, FETO' ('Fethullahist Terrorist Organization (FTO)'), or the 'Parallel Devlet Yapılanması (PDY)' (the 'Parallel State Structure').² Hizmet is not a political party but a broad-based movement with sympathizers in institutions from schools and institutions of government, the police and security services, the judiciary and political parties. Hizmet worked until 2013 with President Erdogan, who in May, 2016 declared it to be a terrorist organisation. In July 2016 a coup attempt was carried out, by a small number of individuals in the military. The perpetrators were apprehended and a state of emergency was declared. Since then, tens of thousands of people who had nothing to do with the coup attempt are reported to have been arrested, detained, abused, tortured, and subjected to criminal investigation. –Summary from UK Home Office April 2017, paragraphs 1.2.1 and 2.2.1 – 2.2.9.

³ United Nations Human Rights, Office of the High Commissioner, Status of Ratification Interactive Dashboard, <http://indicators.ohchr.org>, retrieved 20 January 2018. ICCPR: General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. CAT: General Assembly resolution 39/46 of 10 December 1984, entry into force 2 June 1987.

⁴ UN Human Rights Committee (HRC), General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, para 10.

The Basic Principles on the Role of Lawyers (Basic Principles) describes specific state duties widely accepted as necessary to ensuring rights to legal representation, to protect lawyers from interference, harassment and reprisals by state and non-state actors. State compliance with the Basic Principles is a fundamental pre-condition to independent legal representation, which is essential to ensuring equal and effective protection and enforcement of rights and access to remedies for violations.

The ICCPR allows for derogation of some protected rights by a state party, when “strictly required by the exigencies of the situation” and with certain reporting requirements.⁵ No exceptional circumstances whatsoever may justify, *inter alia*, rights to life, freedom from torture and, freedom from *ex post facto* prosecution.⁶

Turkey has a constitution which provides for equality before the law. It guarantees other substantive rights and freedoms, such as freedom of expression and dissemination of thought (Constitution Article 26) and governance by the rule of law (Article 2). Further, it states that “[e]veryone possesses inherent fundamental rights and freedoms which are inviolable and inalienable.” The Constitution allows for declaration of a state of emergency for six months by the Council of Ministers acting with the President, renewable for four months at a time, with no limit provided.⁷

Within days of the failed coup attempt, however, Turkey is reported to have submitted a formal notice of derogation of the ICCPR (and the ECHR,) and issued a Decree which imposes restrictions on rights to counsel and solicitor/client privilege, and authorises detention without access to a judge for up to thirty days.⁸

Some reported incidents post-coup:

It is not possible to document all incidents; we note that Turkey has closed 130 media outlets, and that as of January 2018, 160 journalists are reported in jail.⁹ However, the following allegations are taken from credible sources, which are footnoted below.

On July 16, the day after the attempted coup, the Higher Council of Judges and Prosecutors issued a list of 2,745 judges and prosecutors, as well as 48 members of the Council of State, Turkey's highest administrative court, two members of the Constitutional Court, 140 members of the Court of Cassation, and four members of the Higher Council of Judges and Prosecutors – all suspended on suspicion of membership in organizations identified as terrorist such as the Fetullah Terrorist Organization and the Democratic Union Party. A further 543 judges and prosecutors were dismissed by 1 September 2016. Individual assessments were not carried out in all cases. Only 198 judges and prosecutors were reinstated by October 2016.¹⁰

On July 19, 2016, the Ankara prosecutor's office announced a decision to detain 2,740 judges and prosecutors, and by July 27, 1,684 judge and prosecutors had been jailed. By October 26, 2016, 202 lawyers had been placed in pre-trial detention on suspicion of involvement in the coup attempt or links to the Gulen movement. Lawyers who were not detained were discouraged from or fearful of representing those who were detained, as they may then be arrested themselves.¹¹

⁵ ICCPR Article 4, ECHR Article 15.

⁶ CAT Article 2(2).

⁷ The Constitution, Articles 10 and 12, 120 and 121, http://www.hri.org/docs/turkey/part_iii_2.html retrieved 20 January 2018.

⁸ Council of Europe, Statement by the Commissioner for Human Rights, “Measures Taken Under the State of Emergency in Turkey,” 27 July 2016. Decree “Kanun Hükmünde Kararname”, KHK/667.

⁹ Reuters World News, 15 January 2018: “Lawyer for jailed journalist says Turkey faces ‘constitutional crises’”, <https://www.reuters.com/article/us-turkey-security-journalists-lawyer/lawyer-for-jailed-journalist-says-turkey-faces-constitutional-crisis-idUSKBN1F424F>.

¹⁰ Reporters Without Borders. ‘Turkey: State of Emergency, State of Arbitrary,’ 19 September 2016 (pages 6 to 7), https://rsf.org/sites/default/files/turquie.etatdurgence.eng_.def_.pdf, BBC. ‘See also Turkey coup attempt: 543 more court officials sacked,’ 1 September 2016, <http://www.bbc.co.uk/news/world-europe-37248016>. See also European Commission. ‘Commission staff working document; Turkey 2016 report, 9 November 2016 (page 64). http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_turkey.pdf.

¹¹ Human Rights Watch, “Turkey: Judges, Prosecutors Unfairly Jailed,” 05 August 2016

Lawyers report that their clients were being held without charge and incommunicado, unable to phone or see a lawyer until shortly before their court appearance, and without being advised of the charges against them. Numerous allegations of torture and other ill-treatment have been reported by credible sources.

The Special Rapporteur on torture noted that the conditions were present for torture to be practiced, including: the extension of the period of custody without judicial review to 30 days, the extension of the period without access to a lawyer to five days; the denial of confidential exchange between inmates suspected of terrorist crimes and their lawyers, and the introduction of immunity from criminal prosecution for forces conducting counter-terrorist operations in the Southeast.¹²

The situation through 2017 continued under severely repressive conditions, challenging the rule of law outright, as well as subjecting individuals to substantive violations of fundamental rights. The Constitutional Court has been under attack since the attempted coup, and earlier this year when it ordered the release of two journalists detained for more than a year, lower penal courts reversed their decision with impunity.¹³ Reports indicate that more than 110,000 public officials have had their employment terminated since July 2016. Arrests continue, with at least 50,000 remanded to pre-trial detention and many more prosecuted since the failed coup. Dozens of journalists are facing terrorism-related charges. Authorities frequently impose arbitrary bans on public assemblies and violently disperse peaceful demonstrations. In September 2017, 16 lawyers representing a teacher and an academic were detained and 14 subsequently remanded to prison. In November, their lead defense lawyer, head of the Contemporary Lawyers Association, was also arrested. Under the state of emergency in Turkey over 500 lawyers have been jailed pending trial, and over 1,000 prosecuted. Most lawyers facing prosecution are accused of alleged FETÖ links. The head of Amnesty International Turkey was arrested and jailed on frivolous and politically-motivated claims regarding ByLock, an amateurish encryption app for cell phones. In July, ten HR Defenders were detained during a routine meeting in Istanbul, and accused of aiding unnamed terrorist organizations. Eight were remanded to pre-trial detention; a court ordered their release on bail. The trial continued. Cases of torture and ill-treatment in police custody were widely reported through 2017, including of police beating detainees, subjecting them to prolonged stress positions and threats of rape, threats to lawyers, and interference with medical examinations. There have been reports of possible enforced disappearances.¹⁴

Conclusions

Turkey is no stranger to these issues. As noted by the European Court of Human Rights (ECtHR) in 1998 *Aksoy v. Turkey*,

...Contracting Parties do not enjoy an unlimited discretion. It is for the Court to rule whether, inter alia, the States have gone beyond the 'extent strictly required by the exigencies' of the crisis. The domestic margin of appreciation is thus accompanied by a European supervision. In exercising this supervision, the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation and the circumstances leading to, and the duration of, the emergency situation...¹⁵

¹² All from Office of the United Nations High Commissioner for Human Rights (OHCHR). 'Preliminary observations and recommendations of the United Nations Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Mr Nils Melzer on the official visit to Turkey – 27 November to 2 December 2016,' dated 2 December 2016. See also Human Rights Watch. 'Turkey: Emergency decrees facilitate torture,' 25 October 2016.

¹³ Reuters World News, 15 January 2018: "Lawyer for jailed journalist says Turkey faces 'constitutional crisis'", <https://www.reuters.com/article/us-turkey-security-journalists-lawyer/lawyer-for-jailed-journalist-says-turkey-faces-constitutional-crisis-idUSKBN1F424F>.

¹⁴ All from Human Rights Watch, World Report 2018, "Turkey: Events of 2017."

¹⁵ European Court of Human Rights, Strasbourg, *Demir & Others v. Turkey*, (71/1997/855/1062–1064), 23 September 1998, paras. 43 and 57: The Court was "not convinced that the applicants' incommunicado detention for at least sixteen or twenty-three days, without any possibility of seeing a judge or other judicial officer, was strictly required by the crisis relied on by the Government," found a violation of the ECHR, and made an award of damages accordingly. Note the detentions for either sixteen or twenty-three days were less than the thirty days provided for in the current Decree, issued pursuant to the state of emergency.

There is no credible evidence produced by Turkey that the tens of thousands of citizens subjected to human rights violations that include: arrest, politically motivated prosecutions, illegitimate charges, arbitrary detention, tortured and other prohibited treatment. Victims include: lawyers, prosecutors and judges.

LRWC requests the Human Rights Council to urge Turkey to:

- repeal the state of emergency declaration and the Decree;
- release all those arbitrarily detained and those held in incommunicado detention; and,
- restore and maintain the independence of the judiciary and the rights of lawyers, prosecutors and judges to their professions practice without interference.

LRWC also urges the Special Rapporteur on the Independence of Judges and Lawyers to make an official visit to Turkey, and carry out a comprehensive investigation and make recommendations pertinent to the independence, liberty and safety of jurists in Turkey.