

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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8 February 2021

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Dear Mr. Erdoğan and Mr. Gül,

Re: International law obligations to release arbitrarily detained lawyer Mr. Aytaç Ünsal

We write on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders (defenders), the integrity of legal systems, and the rule of law through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations (UN).

LRWC is alarmed by Turkish authorities' unlawful rearrest, arbitrary detention, torture and ill-treatment, and refusal of adequate health care in the case of human rights lawyer Mr. Aytaç Ünsal, in violation of Turkey's international human rights obligations. This rearrest also appears to be in violation of a 3 September 2020 order of Turkey's Supreme Court of Cassation for Mr. Ünsal's provisional release from prison on grounds of his fragile health.

LRWC and other human rights organizations have previously expressed grave concern about Mr. Ünsal's arbitrary detention and the health issues arising from his imprisonment after a conviction based on an unfair trial on charges that are illegitimate at international law.¹ This letter urges your government immediately and unconditionally to release Mr. Ünsal and all other arbitrarily detained human rights lawyers and defenders, including journalists imprisoned for reporting on human rights issues.² LRWC is particularly concerned about the context Mr. Ünsal's situation, which is part of an alarming, ongoing pattern of systemic, arbitrary detention of defenders in Turkey that has escalated since July 2016.

¹ Bar Human Rights Committee of England and Wales et al, Turkey: Lawyers on hunger strike near death, demanding fair trials and administration of justice in Turkey, 12 August 2020, available at: <https://www.lrwc.org/turkey-lawyers-on-hunger-strike-near-death-demanding-fair-trials-and-administration-of-justice-in-turkey-joint-statement/>; Turkey Human Rights Litigation Support Project, LRWC et al, Turkey: Urgent letter to UN Special Procedures on arbitrary detention of lawyers Ebru Timtik and Aytaç Ünsal, currently near death, 18 August 2020, available at: <https://www.lrwc.org/turkey-urgent-letter-to-un-special-procedures-on-arbitrary-detention-of-lawyers-ebru-timtik-and-aytac-unsal-currently-near-death/>

² UNOHCHR, Who is a defender, available at: <https://www.ohchr.org/en/issues/srhrdefenders/pages/defender.aspx>.

1. Background

Mr. Aytaç Ünsal is a human rights lawyer, a member of The People's Law Firm (Halkın Hukuk Bürosu), and a member of the Progressive Lawyers' Association (Çağdaş Hukukçular Derneği - ÇHD). He is well-known for representing persons perceived as critical of the Government of Turkey.

a. 2017: Arbitrary detention and unfair trial on illegitimate charges

Mr. Ünsal (along with 18 other lawyers) was arrested in September 2017 and charged with being a member of a terrorist organization under Turkish legislation that was found to be in violation of international human rights law by the UN Working Group on Arbitrary Detention (WGAD).³ Mr. Ünsal was convicted after an unfair trial based on untested testimony of a secret witness who reportedly has been used by the prosecution in a number of cases against defenders. Following the trial, Mr. Ünsal was sentenced by an İstanbul court on 20 March 2017 to 10 years and 6 months imprisonment.

b. 2020: Hunger strike in support of demands for fair trial rights in Turkey

On 5 February 2020 Mr. Ünsal and several of his colleagues, including human rights lawyer Ms. Ebru Timtik, announced they were going on a hunger strike to support their demands for fair trials for their clients and themselves. On 5 April 2020, which was Lawyers' Day in Turkey, Mr. Ünsal and Ms. Timtik decided to turn their hunger strike into an indefinite death fast.

Ms. Timtik died in Silivri Prison on 28 August 2020 as a result of her hunger strike. Her death resulted in international condemnation of Turkey, including a statement by thirteen UN Human Rights Council Special Procedures mandate holders who expressed "dismay" at her "entirely preventable" death, emphasising that "[n]o one should have to die in pursuit of a fair trial; it is a fundamental human right."⁴

c. September 2020: Provisional release on grounds of health

On 3 September 2020, Turkish authorities announced that Aytaç Ünsal would be provisionally released on health grounds after 213 days of his hunger strike. The Supreme Court of Cassation ruled that he should be returned to prison only after his medical treatment had been completed. The next day, 4 September 2020, Mr. Ünsal announced that he was ending his hunger strike.

d. December 2020: Rearrest and beating

On 10 December 2020, the suspension of Mr. Ünsal's prison sentence was cancelled on the grounds that he had allegedly breached the conditions of the suspension by travelling from Istanbul to Edirne. Mr. Ünsal was taken into police custody in Edirne. The Minister of the Interior stated that Mr. Ünsal was arrested in order to prevent him from "fleeing abroad." According to information received by LRWC, leaving Istanbul did not constitute a breach of the

³ HRC, Working Group on Arbitrary Detention, Opinion No. 41/2017 concerning 10 individuals associated with the newspaper *Cumhuriyet* (Turkey), 26 July 2017, A/HRC/WGAD/2017/41, para. 101, available at: https://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_41_EN.docx&action=default&DefaultItemOpen=1.

⁴ UNOHCHR, Turkish human rights lawyer dies after hunger strike, 2 September 2020, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26203&LangID=E>.

conditions of the suspension of his prison sentence. We understand that this matter is now pending before the Istanbul Regional Appeals Court.

Mr. Ünsal was reportedly beaten and punched during his rearrest and detention in Edirne Type F Prison on 10 December 2020.⁵ It is also reported that he was deprived of his necessary medication.⁶ He has not yet fully recovered his health from his hunger strike. Therefore, his present return to prison is contrary to the terms set by the court that suspended his imprisonment.

2. Legal analysis and context

a. Turkey's duty to prevent, investigate, and prosecute all allegations of torture and ill-treatment

LRWC is alarmed by reports that Mr. Ünsal was subjected to torture and ill-treatment by authorities during the December 2020 arrest and detention in Edirne. Such treatment violates treaties binding at international law on Turkey, including the *International Covenant on Civil and Political Rights* (ICCPR), article 7,⁷ the *UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (UNCAT).⁸ Torture and ill-treatment also violate the *UN Standard Minimum Rules for the Treatment of Prisoners* (Nelson Mandela Rules).⁹ The UNCAT provides that Turkey must not only prevent torture and ill-treatment, it must conduct immediate, effective, impartial, and independent investigation of all reported incidents of torture or ill-treatment and ensure the prosecution and sentencing of all perpetrators in fair trials before independent and impartial tribunals.

b. COVID-19: Turkey's duty to ensure health care for prisoners

Due to the dangers posed by the COVID-19 pandemic to both the prison population and society in general, on 13 April 2020 Turkey passed an enactment to allow the temporary release of 45,000 prisoners and the permanent release of an additional 45,000. However, more than 50,000 prisoners convicted or charged under Turkey's illegitimate "terrorism" offences (discussed below) were excluded from release, including hundreds of arbitrarily detained human rights lawyers and other defenders.

Given Mr. Ünsal's precarious state of health and the fact that he has not fully recovered from his hunger strike, he is at great risk of serious illness or death if he is kept in prison at this time. We

⁵ Stockholm Centre for Freedom, Lawyer Aytac Ünsal re-arrested and beaten by police during detention, 11 December 2020, available at: <https://stockholmcf.org/lawyer-aytac-unsal-re-arrested-and-beaten-by-police-during-detention/>; International Association of Democratic Lawyers, Report on the situation of our colleague Aytac Ünsal, unjustly detained lawyer in Turkey, 21 December 2020, available at: <https://iadllaw.org/2020/12/report-on-the-situation-of-our-colleague-aytac-unsal-unjustly-detained-lawyer-in-turkey/>

⁶ *Ibid.*

⁷ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

⁸ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, United Nations, Treaty Series, vol. 1465, p. 85, available at: <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>.

⁹ UN, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <https://undocs.org/A/RES/70/175>. For a summary of international human rights standards on treatment of prisoners, see LRWC, *Prisoners: The Right to Medical Treatment – International Law Provisions*, Draft, 19 March 2019, available at: <https://www.lrwc.org/prisoners-the-right-to-medical-treatment-international-law-provisions-report/>.

remind the Government of Turkey of its obligation to ensure adequate health care of all prisoners pursuant to the UN *Basic Principles for the Treatment of Prisoners*, Article 9¹⁰ and the Nelson Mandela Rules.¹¹

c. Systematic pattern of prolonged arbitrary detention of human rights defenders

The case of Aytaç Ünsal exemplifies the situation hundreds of Turkish human rights lawyers and other defenders and journalists who have been detained, arrested, charged, and/or imprisoned in violation of Turkey's international human rights law obligations and Turkey's own Constitution.

Communications to the Government of Turkey have been made by LRWC regarding the cases of: Tahir Elçi, Vahit Bıçak, Özgür Urfa, Selçuk Kozağaçlı, Şebnem Korur Fincancı, Ramazan Demir, Erin Keskin, Mustafa Aydın, Can Tombul, Taner Kılıç and numerous other Turkish lawyers. LRWC has also prepared or participated in public statements, submissions to UN Human Rights Council Special Procedures, and oral and written statements to the UN Human Rights Council¹² regarding the systematic and widespread persecution in Turkey of lawyers, journalists, and other defenders through wrongful prosecutions and convictions, arbitrary detention, and other grave rights violations.

As of this date, more than 1,500 lawyers have been prosecuted, 615 sent to pre-trial detention, and 450 sentenced to often-lengthy prison terms, principally on the grounds of membership in an armed terrorism organization or spreading terrorist propaganda.¹³ The laws under which these lawyers and others have been charged have been used as a tool to discourage lawyers from representing politically unpopular defendants, discourage other human rights defenders from campaigning for the enforcement of internationally recognized human rights standards, and undermine the rule of law in Turkey. All persons accused of crimes have the right to legal representation, regardless of the seriousness or nature of those crimes. Contrary to international human rights standards discussed below, these prosecutions charge lawyers with the same offences as their clients and punish them for simply doing their jobs.

d. Abuse of anti-terrorism laws

Targeting lawyers and other human rights defenders for prosecution has become common since the attempted coup in July 2016. Most of the detained lawyers have been sentenced for “willingly and knowingly aiding terrorist organization,” contrary to Articles 314-3 and 227-2 of the Turkish Penal Code. Such charges are commonly made against lawyers who are defending persons accused of being members of an armed terrorist organization.

¹⁰ UN General Assembly, *Basic Principles for the Treatment of Prisoners*, resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111, available at: <https://www.ohchr.org/en/professionalinterest/pages/basicprinciplestreatmentofprisoners.aspx>.

¹¹ Mandela Rules, *supra* note 9.

¹² E.g. LRWC and Lawyers for Lawyers, Turkey: Continued Deterioration of the Rule of Law and Persecution of Lawyers and Human Rights Defenders. Joint Written statement to the 46th session of the UN Human Rights Council, 2 February 2021.

¹³ Arrested Lawyers Initiative, Report Update: Mass Prosecution of Lawyers in Turkey (2016-2021), 18 January 2021, available at: <https://arrestedlawyers.org/2021/01/18/report-update-mass-prosecution-of-lawyers-in-turkey-2016-2021/>.

In other words, merely by fulfilling what is internationally recognized as a lawyer's duty to provide a defence for accused persons, these lawyers are charged with being members of the same organization as their clients. The criminalization of lawyers' professional obligations is contrary to the UN *Basic Principles on the Role of Lawyers* which were welcomed by the General Assembly by consensus in 1990.¹⁴ Criminalization of the lawful work of lawyers is also contrary to the UN Declaration on Human Rights Defenders adopted by consensus of the General Assembly in 1999.¹⁵ These instruments are based on principles and rights set out in international human rights treaties to which Turkey is bound at international law, including the ICCPR.¹⁶

The 10-year prison sentence to which Mr. Ünsal has been subjected is, in addition to being wholly unwarranted and based on untested evidence, grossly excessive. The sentence appears to be designed to discourage lawyers from representing clients accused of terrorism-related or political crimes. In addition to violating Turkey's international human rights law obligations, it is contrary to Turkey's Constitution, which guarantees the rights of all accused persons to legal representation.

e. Unfair trials and violation of the presumption of innocence

Many convictions under in Turkey's anti-terrorism laws, including that of Mr. Ünsal, are founded on a lack of compelling evidence of criminal activity or any acts that could reasonably be defined as terrorism. Also, the practice of holding individuals charged with terrorism offenses in prolonged pretrial detention raised concerns that it has become a form of summary punishment.¹⁷ Excessive use of pre-trial detention also violates the presumption of innocence guaranteed by ICCPR Article 14.

LRWC has been unable to find reports of any persuasive evidence presented in court against Mr. Ünsal or other Turkish human rights lawyers that would support a conviction of an internationally recognized criminal offence by an independent, impartial tribunal as required by the ICCPR, Article 14. The Government of Turkey has systematically undermined Turkey's judicial system to the point that its courts cannot now be considered independent tribunals.

¹⁴ UN, *Basic Principles on the Role of Lawyers*, 7 September 1990, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>. The UN General Assembly welcomed the Basic Principles in Resolution 45/166, 18 December 1990, adopted without a vote.

¹⁵ UN General Assembly, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, resolution / adopted by the General Assembly, 8 March 1999, A/RES/53/144, available at: <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>, adopted without a vote.

¹⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, entered into force 23 Mar. 1976, available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

¹⁷ Human Rights Watch, Turkey: Events of 2018, *World Report 2019*, February 2019, available at: <https://www.hrw.org/world-report/2019/country-chapters/turkey>.

f. Turkey's vague and overbroad anti-terrorism laws violate the principle of legality

Turkey's anti-terrorism provisions are too vague to constitute crimes and violate the international criminal law principle of legality.¹⁸ At international law, no crime or punishment can lawfully exist without a valid legal ground (*nullum crimen sine lege*).¹⁹ The principle of legality includes the requirement of certainty that a person may be held criminally responsible only for acts that have already been determined in law to be a crime and for which there already exists a penalty.

Persons must be able to know in advance what is unlawful so that they can inform their actions. The concept of *nullum crimen sine lege* overlaps with the principle of notice. A person cannot be convicted for acts against which there are no clear, enforceable laws²⁰ (and thus no capability of having notice of what is unlawful.) The European Court of Human Rights (ECtHR) applies an "accessibility and foreseeability" test; in order for an offence to be knowable to an offender, the provisions must be both "foreseeable" and "accessible."²¹ See the *Kononov* case,²² the *Lubanga* case²³ and the *Vasiljevic* case.²⁴ Where ambiguity exists in the definition of an offense, it must be interpreted in the interest of the defendant.²⁵ The principle of legality is binding on Turkey as a general principle of international law²⁶ and a principle of customary international law.²⁷ The principle of legality has also been codified in many international instruments, including the:

- *Universal Declaration of Human Rights* (UDHR) (1948), Article 11(2);²⁸
- *International Covenant on Civil and Political Rights* (ICCPR) (1966), Article 15;²⁹
- *European Convention on Human Rights and Fundamental Freedoms* (ECHR) (1950), Article 7;³⁰
- *Rome Statute of the International Criminal Court*, Article 22.³¹

¹⁸ Crisan, Iulia, The Principle of Legality "*Nullum crimen, nulla poena sine lege*" and Their Role, *Effectus Newsletter*, Issue 5 (2010); Olasolo, Hector, A Note on the Evolution of the Principle of Legality in International Criminal Law *Criminal Law Forum* 18:301-319 (2007)

¹⁹ Lincoln, Jennifer, *Nullum Crimen Sine Lege* in International Criminal Tribunal Jurisprudence: the problem of the residual category of crime, *Eyes on the ICC* 7 (2010-2011) 137

²⁰ Habibzadeh, Mohammad Ja'far, Nullum Crimen, *Nulla Poena Sine Lege*: with an approach to the Iranian legal system, *International Journal of Political Science* 2 (2006) 33.

²¹ van der Wilt, Harmen, *Nullum Crimen* and the International Criminal Law: The Relevance of the Foreseeability Test, *Nordic Journal of International Law* 84 (2015) 515-531.

²² *Kononov v. Latvia*, 24 July 2007, ECtHR, no. 36376/04, 9 EHRC, Vol. 11, 129.

²³ *Prosecutor v. Lubanga*, Decision on the Confirmation of Charges, 29 January 2007, ICC, No. ICC-01/04-01/06.

²⁴ *Prosecutor v. Vasiljevic*, 29 November 2002, ICTY Trial Chamber (TC), no. it-98-32-T.

²⁵ Sekuloski, Branko, International Criminal Court, *European Scientific Journal*, vol.9, no. 28 (2013)

²⁶ *Ibid.*

²⁷ Wharton, Sara, The Evolution of International Criminal Law: Prosecuting "New" Crimes Before the Special Court for Sierra Leone, *International Criminal Law Review* 11 (2011) 217-239

²⁸ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <https://www.refworld.org/docid/3ae6b3712c.html>. Article 11 states: "No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed."

²⁹ *Supra* note 7.

³⁰ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <https://www.refworld.org/docid/3ae6b3b04.html>.

Neither the Turkish Penal Code nor Turkey's *Law to Fight Terrorism* (Act No. 3713)³² define what constitutes an armed terrorist organization or the criteria for membership. Absent any definition, it can be, and has been, arbitrarily used to criminalize a wide range of lawful activities, including the exercise of internationally protected rights. Act No. 3713 is illegitimate by any international standard.

In a 2017 opinion concerning Turkey, the WGAD found that the investigation and prosecution of 10 individuals associated with the Turkish daily newspaper, *Cumhuriyet*, under Act No. 3713, for "aiding terrorist organizations, in accordance with the organizational aims of these organizations, without being a member," violated the principle of legality due to the vagueness of the provision.³³ The WGAD warned that:

Vaguely and broadly worded laws have a chilling effect on the exercise of the right to freedom of expression with its potentials for abuse as they violate the principle of legality as codified in article 11 (2) of the Universal Declaration of Human Rights and [ICCPR] article 15 (1)....

[and that] anti-terrorism laws 'by using an extremely vague and broad definition of terrorism, bring within their fold the innocent and the suspect alike and thereby increase the risk of arbitrary detention' with the consequence that '[l]egitimate democratic opposition, as distinct from violent opposition, becomes a victim in the application of such laws'.³⁴

The Turkish Penal Code has been used to arbitrarily arrest, detain, and convict lawyers acting for clients or causes unpopular with the authorities or otherwise seen as government critics. The vague formulation and broad interpretation of the law by the Turkish prosecutors and courts puts all lawyers and other human rights defenders at risk of arbitrary detention.

Turkey is obliged to ensure freedom from prosecution for charges that fail to comply with international requirements of certainty and legality and contravene the requirement under the ICCPR of notice.

g. International Criticism of Turkey's Abuse of Anti-terrorism Legislation

Several international bodies have criticized the way in which Turkey has applied its anti-terrorism laws to target human rights defenders. For example, the ECtHR considered the issue in the 2017 and 2018 cases of *Isikirik v Turkey*³⁵ and *Imret v Turkey*.³⁶ The Court decided that Article 220 § 6-7 of the Turkish Penal Code did not afford legal protection against arbitrary interference to the ECHR³⁷ Article 11, THE right to freedom of assembly and association. An

³¹ Sekuloski, *supra* note 25; Olasolo, Hector, A Note on the Evolution of the Principle of Legality in International Criminal Law, *Criminal Law Forum* 18:301-319 (2007)

³² Law to Fight Terrorism, Act No. 3713 as amended, Article 7(2).

³³ *Supra* note 3, para. 101.

³⁴ *Supra* note 3, paras. 98-99. See also, Human Rights Council Working Group on Arbitrary Detention, Opinion No. 20/2017 concerning Musallam Mohamed Hamad al-Barrak (Kuwait), 19-28 April 2017, A/HRC/WGAD/2017/20, paras. 50-51.

³⁵ *Isikirik v Turkey* [2017] ECHR 1007, available at: <http://hudoc.echr.coe.int/eng?i=001-178506>.

³⁶ *Imret v Turkey* [2018] ECHR 597, available at: <https://www.bailii.org/eu/cases/ECHR/2018/597.html>.

³⁷ *Supra* note 30.

interference constitutes a breach of Article 11 unless it is, *inter alia*, “prescribed by law” (*Isikirik* § 55, *Imret* § 41). This requires that the law in question be accessible to the accused and foreseeable as to its effects (*Isikirik* § 57; *Imret* § 42-43). In the ECtHR’s view, paragraphs 6 and 7 of Article 220 of Turkey’s Penal Code tie the status of membership of an illegal organization to the mere facts of a person having acted “on behalf” of that organization or “aided an illegal organization knowingly and willingly” respectively, without the prosecution having to prove material elements of actual membership. Neither section defines the meaning of “on behalf of” or “aiding knowingly and willingly” (*Imret* § 49). As the ECtHR concluded that Article 220 § 6-7 are not “foreseeable”, the resulting interference was not prescribed by law, and accordingly Article 11 of the Convention had been violated (*Isikirik* § 70, *Imret* § 59).

In the 2019 case of *Parmak and Bakir v. Turkey*,³⁸ the ECtHR dealt with Article 314 § 2 of the Penal Code, Turkey’s main anti-terrorism provision. The Court examined the interpretation of this provision by Turkish courts in the context of Article 7: no punishment without law. After summarizing the amendments made to Turkey’s anti-terrorism provisions over 2003 to 2010, the ECtHR concluded that:

The essence of the offence of membership of a terrorist organization is to join an association whose goal and mode of operation is to resort to the criminal use of force, violence and mass intimidation in order to advance certain political or ideological causes. The fact that the law-makers chose to single out the use of violence as a necessary means with which to commit terrorism... lends support to the conclusion that actual violence, or the intent to use such violence, is central to the definition of the offence (*Parmak and Bakir* § 68).³⁹

The defenders who have been imprisoned for alleged violation of these laws have neither condoned nor used violence and, therefore, should have been found not guilty on all charges.

h. The UN *Basic Principles on the Role of Lawyers*

Turkey is also in violation of the UN *Basic Principles on the Role of Lawyers* (Basic Principles).⁴⁰ Article 16 of the Basic Principles states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 18 states: “Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.”

³⁸ *Parmak and Bakir v. Turkey* [2019] ECHR 861, available at: <https://www.bailii.org/eu/cases/ECHR/2019/861.html>.

³⁹ Yildiz, Ali, and Leighann Spencer, The Turkish Judiciary’s Violations of Human Rights Guarantees: The ECtHR’s Recent *Parmak & Bakir* Judgment and Turkey’s Post-Coup Terrorism Trials, *Verfassungsblog*, 9 January 2020, available at: <https://verfassungsblog.de/the-turkish-judiciarys-violations-of-human-rights-guarantees/>.

⁴⁰ *Supra* note 14.

In Turkey, it has become common for lawyers defending journalists, human rights lawyers, and other defenders, to be charged with terrorist-related crimes. It appears that these lawyers have been targeted, charged, convicted, and sentenced for doing nothing more than fulfilling their duties as lawyers, which is to advocate on behalf of their clients. According to Human Rights Watch, “[p]rosecutions and convictions of lawyers, including some focused on human rights, stood out as exemplifying the abusive use of terrorism charges.”⁴¹

3. Conclusion and recommendations

LRWC appeals to the Government of Turkey to respect all rights Turkey has undertaken to respect, protect and fulfil through the human rights treaties it has ratified, customary international law, and other human rights standards. Given the precarious health of Mr. Ünsal and the fact that he has not fully recovered from his hunger strike, he is at great risk of serious illness or death if he is kept in prison at this time. We appeal to your government for his release on the grounds of humanity⁴² and human dignity.⁴³

LRWC urges the Government of Turkey to:

- a. Vacate all convictions against Mr. Ünsal and all other defenders, including lawyers, who have been convicted of terrorism-related offences, and if any of them are still in detention, immediately release them;
- b. Put an end to all harassment against Mr. Ünsal, his colleagues, and all other defenders;
- c. Immediately release all other defenders, including lawyers, journalists, politicians, and other political prisoners from detention;

Ensure that the treatment of prisoners is in accordance with the Nelson Mandela Rules, and that every allegation of torture and ill-treatment is investigated promptly, effectively, and impartially and that the perpetrators are brought to justice in accordance with the recommendations to Turkey made by UN Committee against Torture in their 2016 Concluding Observations;⁴⁴

- d. Ensure that all lawyers, journalists, and other defenders in Turkey can carry out their professional duties and activities without fear of reprisals, physical violence, or other human rights violations; and
- e. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments, including the ICCPR and the ECHR.

⁴¹ Human Rights Watch, Turkey: Events of 2019, *World Report 2019*, February 2020, available at: <https://www.hrw.org/world-report/2020/country-chapters/turkey#981f12/>.

⁴² Mandela Rules, *supra* note 9, Article 46.

⁴³ *Ibid*, Article 60; UDHR, *supra* note 28, preamble.

⁴⁴ UN Committee against Torture, Concluding observations on the fourth periodic report of Turkey, CAT/C/TUR/CO/4, 2 June 2016, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT/C/TUR/CO/4&Lang=en.

Thank you for your prompt attention to this important matter.

All of which is respectfully submitted:

[signed]

[signed]

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