

# **State of Emergency in Turkey**

A Collection of Available Resources, Reports,  
Case Law, and other Relevant Materials<sup>1</sup>

Turkey Human Rights Litigation Support Project  
University of Middlesex School of Law

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<sup>1</sup> This research covers the time period between 15 July 2016 (the date the attempted coup took place in Turkey resulting in the subsequent declaration of the state of emergency) and 13 June 2018. At the time of the conclusion of this work the emergency state was still in place. Only resources available in English and French have been made subject of this work.

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## Introduction

After the attempted *coup d'état* the political and legal spheres in Turkey changed dramatically. On 15 July 2016, a considerably large group within the military, claiming to be part of the outlawed Gulenist movement, attempted to take over the government. The coup attempt failed, leaving more than two hundred civilians dead and many more injured. On 20 July 2016, the Cabinet of Ministers chaired by the President declared a three month state of emergency extending throughout the whole country – de facto transferring legislative power from the parliament to the executive. Subsequently, notifications concerning derogation from the European Convention on Human rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) were communicated to the Council of Europe and the United Nations. Since then, emergency rule has been renewed at three-month intervals, officially culminating on 18 July 2018. During this period, the Government adopted more than 30 decrees, which have had the effect of seriously limiting, and in some cases totally waiving, numerous fundamental rights and freedoms. While the state of emergency has ended, many of the legislative measures adopted during this time have been transferred into permanent legislation, leading many to argue that serious limitations on the enjoyment of fundamental rights and freedoms in Turkey still persist.

In response, a group of leading academics, human rights lawyers, and researchers came together to provide legal resources and create a support network for Turkish litigators, human rights defenders and civil society organisations in their struggle against human rights violations taking place under the state of emergency. These efforts led to the creation of the “*Turkey Human Rights Litigation Support Project*” (the project)<sup>2</sup> established under the Law Faculty of Middlesex University with Professor Philip Leach of Middlesex University, Professor Helen Duffy of Human Rights in Practice and the University of Leiden, and lawyers Ayse Bingol Demir, Saniye Karakas and Senem Gurol (the project team).

The project aims to encourage the use of strategic litigation as a tool to counter the ongoing trends of systemic and large scale human rights violations in Turkey, and to provide sustainable support to lawyers, persons whose rights have been affected, and relevant human rights groups, in order to achieve positive outcomes concerning litigation arising from state of emergency related decisions and policies.

In pursuit of this effort, this research has been carried out by Holly Huxtable with the support of the project team and contains a list of all available written resources regarding the human rights situation in Turkey following the attempted coup in 2016. In particular, this collection concerns the human rights impact of the declared state of emergency and the related emergency legislation enacted after the attempted coup. Each source is briefly summarised to indicate the major themes dealt with by the author, and a full reference is provided so that they can be easily accessed. The first section presents a timeline of events and key legislation. The second provides a link to the notices of derogation lodged by Turkey at the Council of Europe and the United Nations. The third contains information regarding cases lodged before the European Court of Human Rights (ECtHR). The fourth, deals with reports filed by international monitoring bodies, namely the UN Human Rights Council (and associated monitoring bodies), the Council of Europe and The European Union. The fourth is a collection of reports and briefings authored by major NGOs. Lastly, journal articles and academic commentary are collected from a variety of sources such as scholarly journals and blogs.

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<sup>2</sup> <https://www.mdx.ac.uk/our-research/research-groups/human-rights-litigation-support-group-for-turkey>

All views expressed in the document are those of the authors and do not reflect the opinion of the drafter or the official position of the project.

## Time Line of Events and Key Legislation<sup>3</sup>

15 July 2016	Attempted Coup
<b>20 July 2016</b>	State of Emergency Declared (Decree Law of the Council of Ministers numbered 2016/9064)
21 July 2016	Derogation from the ECHR <sup>4</sup> and ICCPR <sup>5</sup>
23 July 2016	Decree Law No. 667 <sup>6</sup>
27 July 2016	Decree Law No. 668 <sup>7</sup>
31 July 2016	Decree Law No. 669 <sup>8</sup>
17 August 2016	Decree Law No. 670 and 671 <sup>9</sup>
1 September 2016	Decree Law No. 672, 673 and 674 <sup>10</sup>
<b>19 October 2016</b>	State of Emergency Extended
29 October 2016	Decree Law No. 675 and 676 <sup>11</sup>
<b>8 November 2016</b>	<i>Mercan v Turkey</i> (App no. 56511/16) Decision of the ECtHR
22 November 2016	Decree Law No. 677 and 678 <sup>12</sup>
29 November 2016	<i>Zihni v. Turkey</i> (App no. 59061/16) Decision of the ECtHR

<sup>3</sup> The dates associated with the decree laws are the dates they were sent to the Parliament by the Cabinet of Ministers for approval.

<sup>4</sup> 'Notice of Derogation delivered to the Council of Europe,' 21 July 2016, available at: <https://rm.coe.int/090000168069496b>.

<sup>5</sup> 'International Covenant on Civil and Political Rights Turkey: notification under article 4 (3),' 21 July 2016, available at: <https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf>

<sup>6</sup> 'Notification made in accordance with Article 59 of the Convention,' 28 July 2016, available at: <https://rm.coe.int/09000016806969b0>

<sup>7</sup> <https://rm.coe.int/090000168069792d>

<sup>8</sup> 'European Commission for Democracy through Law (Venice Commission) Emergency Decree Laws of July-September 2016' available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

<sup>9</sup> 'Notification made in accordance with Article 59 of the Convention,' 30 August 2016, available at: <https://rm.coe.int/090000168069f414>

<sup>10</sup> 'Notification made in accordance with Article 59 of the Convention,' 12 September 2016, available at: <https://rm.coe.int/09000016806a2ef7>

<sup>11</sup> 'Notification made in accordance with Article 59 of the Convention,' 16 November 2016, available at: <https://rm.coe.int/09000016806b93b9>

<sup>12</sup> 'Notification made in accordance with Article 59 of the Convention,' 16 December 2016, available at: <https://rm.coe.int/09000016806cd21a>

6 January 2017	Decree Law No. 679, 680 and 681 <sup>13</sup>
<b>19 January 2017</b>	State of Emergency Extended
23 January 2017	Decree Law No. 683, <sup>14</sup> 684 <sup>15</sup> and 685 (Establishing the State of Emergency Enquiry Commission) <sup>16</sup>
7 February 2017	Decree Law No. 686 <sup>17</sup>
9 February 2017	Decree Law 687 <sup>18</sup>
27 March 2017	<i>Çatal v Turkey</i> (App no. 2873/17) Decision of the ECtHR
29 March 2017	Decree Law No. 688 <sup>19</sup>
<b>19 April 2017</b>	State of Emergency Extended
19 April 2017	Opinion No. 1/2017 concerning Rebi Metin Görgeç adopted by the UN Human Rights Council Working Group on Arbitrary Detention
28 April 2017	Opinion No. 38/2017 concerning Kursat Çevik adopted by the UN Working Group on Arbitrary Detention, and Opinion No. 41/2017 concerning 10 individuals associated with the newspaper Cumhuriyet
29 April 2017	Decree Law No. 689 <sup>20</sup> and 690 <sup>21</sup>
25 April 2017	Resolution 2156 (2017) The Functioning of Democratic Institutions in Turkey (taking Turkey under full Council of Europe Monitoring Procedure)
<b>6 June 2017</b>	<i>Köksal v. Turkey</i> (App no. 70478/16) Decision of the ECtHR

<sup>13</sup> 'Notification made in accordance with Article 59 of the Convention,' 16 December 2016, available at: <https://rm.coe.int/09000016806ee865>

<sup>14</sup> 'Notification made in accordance with Article 59 of the Convention,' 6 March 2017, available at: <https://rm.coe.int/09000016806fa1f7>

<sup>15</sup> 'Notification made in accordance with Article 59 of the Convention,' 6 March 2017, available at: <https://rm.coe.int/09000016806fa1f7>

<sup>16</sup> 'Notification made in accordance with Article 59 of the Convention,' 16 December 2016, <https://rm.coe.int/09000016806ee865>

<sup>17</sup> 'Notification made in accordance with Article 59 of the Convention,' 6 March 2017, available at: <https://rm.coe.int/09000016806fa1f7>

<sup>18</sup> 'Notification made in accordance with Article 59 of the Convention,' 6 March 2017, available at: <https://rm.coe.int/09000016806fa1f7>

<sup>19</sup> 'Information Note Regarding The Decree Laws On The Measures Taken Within The Scope Of The State Of Emergency' Council available at: <https://rm.coe.int/cets-005-turkey-information-note-on-decree-laws-nos-688-and-689-on-cer/168077a936>

<sup>20</sup> 'Information Note Regarding The Decree Laws On The Measures Taken Within The Scope Of The State Of Emergency' Council available at: <https://rm.coe.int/cets-005-turkey-information-note-on-decree-laws-nos-688-and-689-on-cer/168077a936>

<sup>21</sup> 'Notification made in accordance with Article 59 of the Convention,' 23 June 2017, available at: <https://rm.coe.int/090000168072abda>

8 June 2017	Mehmet Murat Sabancu and Others (App no. 231997/17) Communicated to the ECtHR
13 June 2017	Ayşe Nazlı Ilıcak (App no. 1210/17) and Ali Bulac (App no. 259339/17) and Atilla Taş and Aksoy (App nos. 72/17 and 80/17) and Mehmet Hasan Altan (App nos. 13237/17 and 13252/17) Communicated to the ECtHR
22 June 2017	Decree Law No. 691 <sup>22</sup>
29 June 2017	Application of Demirtaş and 11 v Turkey App no. 14305/17 communicated to the ECtHR
3 July 2017	Ahmet Şık (App no. 36493/17) Communicated to the ECtHR
14 July 2017	Decree Law No. 692 <sup>23</sup>
<b>19 July 2017</b>	State of Emergency Extended
25 August 2017	Decree Law No. 693 and 694 <sup>24</sup>
19 October 2017	State of Emergency Extended
4 December 2017	Application of Ahmet Okumus App no. 58984/17 Communicated to the ECtHR
<b>28 November 2017</b>	<i>Ayhan Bora v Turkey</i> (App no. 30647/17) Decision of the ECtHR
24 December 2017	Decree Law No. 695 <sup>25</sup> and 696 <sup>26</sup>
12 January 2018	Decree Law No. 697 <sup>27</sup>
<b>19 January 2018</b>	State of Emergency Extended
20 March 2018	<i>Sahin Alpay v Turkey</i> (App no. 16538/17) and <i>Mehmet Hasan Altan v Turkey</i> (App no. 1327/17) Decision of the ECtHR

<sup>22</sup> 'Decree-Law No. 691 Dated 22 June 2017' available at: <https://rm.coe.int/cets-005-turkey-decree-no-691-with-force-of-law-on-measures-to-be-take/168077a934>

<sup>23</sup> 'Information Note Regarding The Decree Law No. 692' available at: <https://rm.coe.int/cets-005-turkey-information-note-on-decree-law-no-692-on-certain-measu/168077a935>

<sup>24</sup> 'Information Note Regarding The Decree Law No. 693 & 694' available at: <https://rm.coe.int/1680768919>

<sup>25</sup> 'Notification made in accordance with Article 59 of the Convention,' 22 January 2018, available at: <https://rm.coe.int/090000168077f5aa>

<sup>26</sup> 'Notification made in accordance with Article 59 of the Convention,' 23 January 2018, available at: <https://rm.coe.int/090000168077fa4d>

<sup>27</sup> 'Notification made in accordance with Article 59 of the Convention,' 22 January 2018, available at: <https://rm.coe.int/090000168077f5aa>

**17 April 2018**

State of Emergency Extended

20 April 2018

Aynur Horzum (App no. 4475/18) Communicated to the ECtHR

4 June 2018

Decree Law No. 701

**18 July 2018**

Conclusion of the State of Emergency

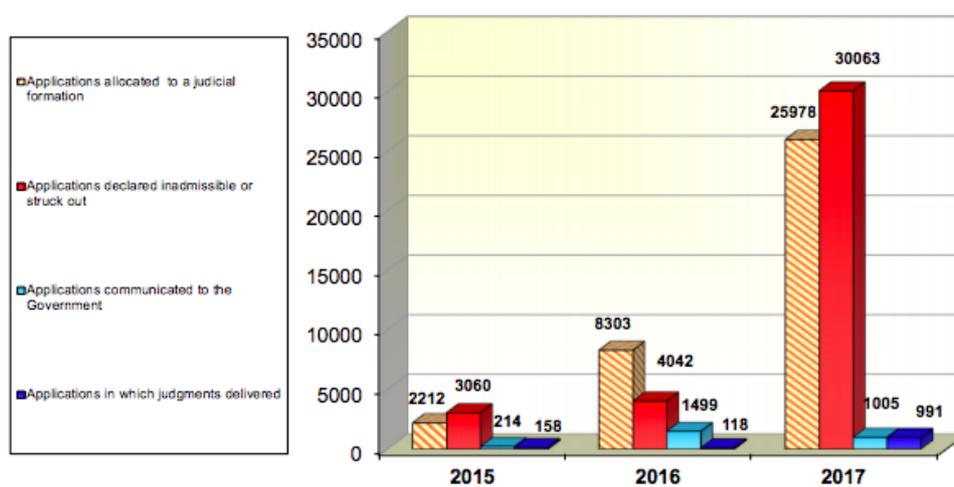
## Notices of Derogation

Turkey lodged formal derogations from both the European Convention on Human Rights and the International Covenant on Civil and Political Rights on 21 July 2017. Information with regards to these derogations can be found below:

- Derogation from the European Convention on Human Rights in Accordance with Article 15 lodged on 21 July 2017, available at [www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p\\_auth=jX2blpB2&\\_coconventions\\_WAR\\_coconventionsportlet\\_enVigueur=false&\\_coconventions\\_WAR\\_coconventionsportlet\\_searchBy=state&\\_coconventions\\_WAR\\_coconventionsportlet\\_codePays=TUR&\\_coconventions\\_WAR\\_coconventionsportlet\\_codeNature=10](http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/005/declarations?p_auth=jX2blpB2&_coconventions_WAR_coconventionsportlet_enVigueur=false&_coconventions_WAR_coconventionsportlet_searchBy=state&_coconventions_WAR_coconventionsportlet_codePays=TUR&_coconventions_WAR_coconventionsportlet_codeNature=10).
- Notification under Article 4(3) concerning derogation from the International Covenant on Civil and Political rights, lodged at the UN on 21 July 2017, available at <https://treaties.un.org/doc/Publication/CN/2016/CN.580.2016-Eng.pdf>.

## The European Court of Human Rights Judgments, Communicated Cases and Amicus Interventions

The number of applications to the European Court of Human Rights from Turkey rose dramatically in the months following the attempted coup. However, in 2017 alone the Court struck out or declared inadmissible 30063 applications from Turkey – a number made more striking by the fact that in 2016 the number was only 8151. Largely these applications were dismissed on the grounds that applicants had failed to exhaust all available domestic remedies. The majority of these applications (30,000) concerned dismissed civil servants and include 250 judges. Another 2000 relate to arbitrary detention.<sup>28</sup>



**Figure 1:** Major Procedural Steps in Processing Applications taken from the ECtHR's Annual Report, available at: [https://www.echr.coe.int/Documents/Stats\\_analysis\\_2017\\_ENG.pdf](https://www.echr.coe.int/Documents/Stats_analysis_2017_ENG.pdf)

### Judgments

*Mercan v Turkey* App no. 56511/16, ECtHR, 8 November 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-169094>

The case concerns the lawfulness of the pre-trial detention of a judge dismissed from her post following the attempted coup d'état. The Court dismissed the application on the grounds of failure to exhaust domestic remedies, rejecting the argument that application to the Constitutional Court was likely to be an ineffective remedy in light of the fact that the Court had dismissed and detained two of its own judges. Reviewing previous case law on the matter, it was held that the mere doubt of no success at the domestic level alone could not be conceived of as a sufficient ground to depart from the requirement to exhaust domestic remedies.

<sup>28</sup> For further statistics, please see: [https://www.coe.int/en/web/portal/belgianchairmanship?p\\_p\\_id=101&p\\_p\\_lifecycle=0&p\\_p\\_state=maximized&p\\_p\\_mode=view&\\_101\\_struts\\_action=%2Fasset\\_publisher%2Fview\\_content&\\_101\\_assetEntryId=37200983&\\_101\\_type=content&\\_101\\_urlTitle=council-of-europe-meeting-with-the-media-and-law-studies-association-turkey-&inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fportal%2Fbelgianchairmanship%3Fp\\_p\\_id%3D101%26p\\_p\\_lifecycle%3D0%26p\\_p\\_state%3Dmaximized%26p\\_p\\_mode%3Dview%26\\_101\\_struts\\_action%3D%252Fasset\\_publisher%252Fview%26\\_101\\_struts\\_action%3D%252Fasset\\_publisher%252Fview](https://www.coe.int/en/web/portal/belgianchairmanship?p_p_id=101&p_p_lifecycle=0&p_p_state=maximized&p_p_mode=view&_101_struts_action=%2Fasset_publisher%2Fview_content&_101_assetEntryId=37200983&_101_type=content&_101_urlTitle=council-of-europe-meeting-with-the-media-and-law-studies-association-turkey-&inheritRedirect=false&redirect=https%3A%2F%2Fwww.coe.int%2Fen%2Fweb%2Fportal%2Fbelgianchairmanship%3Fp_p_id%3D101%26p_p_lifecycle%3D0%26p_p_state%3Dmaximized%26p_p_mode%3Dview%26_101_struts_action%3D%252Fasset_publisher%252Fview%26_101_struts_action%3D%252Fasset_publisher%252Fview)

*Zihni v. Turkey* App no. 59061/16, ECtHR, 29 November 2016, available at:  
<http://hudoc.echr.coe.int/eng?i=001-169704>

The applicant was dismissed from his post in accordance with the legislative decrees passed following the attempted coup. The applicant applied straight to the ECtHR and did not seek any domestic remedies on the grounds that the avenues available were not effective. Firstly, he argued that he could not appeal the measures taken under the legislative decree in the context of the state of emergency, and secondly, that the Constitutional Court is not capable of reaching an impartial decision given that several of its members had been arrested and detained. The Court rejected these arguments holding that the Supreme Administrative Court and the possibility of individual appeal to the Constitutional Court – were not “obviously futile” avenues of redress.

*Çatal v Turkey* App no. 2873/17, ECtHR, 7 March 2017, available at:  
<http://hudoc.echr.coe.int/eng?i=001-172247>

The case concerns the dismissal of a judge by the Supreme Council of Judges in accordance with a legislative decree adopted during the state of emergency. The Court rejected the application on the grounds that she had not exhausted domestic remedies which became available at the time of the decision of the Court. Namely, the new remedy (in Legislative Decree no. 685 adopted in January 2017) allowing for judges and prosecutors to challenge their dismissal before the Supreme Administrative Court. The decision of this body in turn can be challenged via individual application to the Constitutional Court, “putting an end to the dispute as to whether the domestic courts had jurisdiction to judicially review the measures taken by the Supreme Council of Judges.” The Court also held however, that this conclusion did not “in any way prejudice a possible re-examination of the question of the effectiveness of the remedy in question.”

*Köksal v. Turkey* App no. 70478/16, ECtHR, 6 June 2017 available at:  
<http://hudoc.echr.coe.int/eng?i=001-174629>

The case concerns Mr Köksal’s dismissal by legislative decree. The Court dismissed the application for failure to exhaust domestic remedies, finding that Mr Köksal had to use the remedy provided for under Legislative Decree no. 685. i.e. a newly established Commission tasked with adjudicating appeals against measures adopted directly by Legislative Decrees issued in the context of the state of emergency (including the dismissals of civil servants). The Court found that the line of domestic remedies has to be exhausted before introducing an application to the ECtHR. Decisions of the Commission can be appealed before the administrative courts, and subsequently before the Constitutional Court by individual petition. When that highest court had examined a case and given judgment, then an individual could submit a complaint under the European Court of Human Rights.

*Ayhan Bora v Turkey* App no. 30647/17, ECtHR, 28 November 2017, available at:  
<http://hudoc.echr.coe.int/eng?i=001-179925>

The case concerned the arrest and pre-trial detention of a judge in solitary confinement. Invoking Article 3 of the Convention (prohibition against torture, inhuman or degrading treatment and punishment), the applicant contested both his detention conditions and the decision to place him in solitary confinement, which he argued to be inadequately reasoned. The Court evaluated the conditions of detention to conclude that the application did not meet the threshold of gravity required

to fall under Article 3 of the Convention. Relating to the decision to place the applicant in solitary confinement, the Court having regard to the reasons given by the authorities for rejecting the appeal filed by the applicant against this measure found the complaint to be manifestly ill-founded and therefore inadmissible. The authorities argued specifically that the sanction taken against the applicant was not within the meaning of the law, but a measure of separation between the alleged members of the illegal organization decided for reasons of security and in view of the gravity of the charge against the applicant. The Court did however issue a warning that this decision is not permission to make inmates serve entire sentences in these conditions without the provision of more facilities (para 26).

This decision has been criticised see: <http://www.platformpj.org/opinion-is-it-fair-that-judges-and-prosecutors-in-turkey-are-held-in-isolation-the-ecthrs-bora-v-turkey-decision-on-15th-of-july-2016-just-five-hours-after-the-controversial-coup-attempt/>

*Sahin Alpay v Turkey* App no. 16538/17, ECtHR, 20 March 2018, available at: <http://hudoc.echr.coe.int/eng?i=001-181866>

The case concerned the detention of journalist Sahin Alpay. The Court held that there had been a violation of Article 5(1) (right to liberty and security), and a violation of Article 10 (freedom of expression). No violation of Article 5(4) (right to a speedy review of the lawfulness of detention) was found. While the court emphasised the fact that the continued use of pre-trial detention despite the Constitutional Court's ruling against such a measure raised doubts as to the effectiveness of the remedy, it would not depart from the previous finding in (*Kocintar* para. 44) that the right to appeal to the Constitutional Court constituted an effective remedy for those deprived of their liberty.

*Mehmet Hasan Altan v Turkey* App no. 1327/17, ECtHR, 20 March 2018, available at: <http://hudoc.echr.coe.int/eng?i=001-181862>

The case concerned the detention of professor and journalist Mehmet Altan. The Court held that there had been a violation of Article 5(1) (right to liberty and security), and a violation of Article 10 (freedom of expression). No violation of Article 5(4) (right to a speedy review of the lawfulness of detention) was found. While the court emphasised the fact that the continued use of pre-trial detention despite the Turkish Constitutional Court's ruling against the measure raised doubts as to the effectiveness of the remedy, it would not depart from the previous finding in (*Kocintar* para. 44) that the right to appeal to the Constitutional Court constituted an effective remedy for those deprived of their liberty. Concerning the alleged lack of speedy judicial review of the applicant's continued detention (14 months and three days) by the Turkish Constitutional Court, the Court held that the case was exceptional in light of the Constitutional Court's current caseload. On the grounds of failure to exhaust domestic remedies, the Court rejected the complaint with regard to the lawfulness of detention in police custody.

## Communicated Cases

'Application no. 23199/17 Mehmet Murat Sabuncu and Others against Turkey lodged on 2 March 2017' ECtHR, Communicated on 8 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-174684>

The 10 applicants<sup>29</sup> are columnists, journalists and leaders of the national daily Cumhuriyet ("The Republic") newspaper. Relying on Article 5(1) (right to liberty and security), the applicants complain their detention on remand is not in accordance with domestic law, and that there was no evidence of plausible reasons to suspect them of committing a criminal offense requiring their detention on remand. They allege that facts at the root of the suspicion against them are those related to their work as journalists. Relying on Article 5(3) (right to be brought promptly before a judge), the applicants complain of the length of their detention, and submit that the judicial decisions ordering their initial and continued detention are not sufficiently reasoned or based on any concrete evidence. The applicants submit that the proceedings before the Constitutional Court in which they challenged their detention, did not comply with the requirement of "short notice" within the meaning of Article 5(4) (speedy review). Relying on Article 10 (freedom of expression), they complain of a violation of their freedom of expression and denounce the fact that the editorial line of a newspaper criticising certain policies can be considered as evidence in support of accusations of assistance to terrorist organisations. Finally, they argue their continued detention is judicial harassment with a political purpose (Article 18 in conjunction with articles 5 and 10).

'Application no. 1210/17 Ayşe Nazlı Ilıcak against Turkey lodged on December 19, 2016' ECtHR, Communicated on 13 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-174802>

This complaint was brought by a journalist detained following the attempted coup. The applicant argues that the criminal charges against her are not based on any plausible evidence (Article 5(1) 5(3)) and that the length of her pre-trial detention was excessive. In line with Article 5(4) she argues she was not able to effectively challenge the lawfulness of her detention before an independent and impartial tribunal. The complainant also alleges an Article 10 violation of her freedom of expression.

'Application no. 25939/17 Ali Bulac against Turkey lodged on March 24, 2017' ECtHR, Communicated on 13 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-174805>

The complaint is brought by a journalist working for *Zaman* newspaper, who was detained following the attempted coup. The applicant argues there was no evidence or plausible grounds for suspecting him of having committed a criminal offence warranting detention (Article 5(1)), and that the length of his pre-trial detention was excessive. In line with Article 5(4) in conjunction with Article 13, he argues he has not been able to effectively challenge the lawfulness of his detention before the Constitutional Court. The complainant also alleges an Article 10 violation of his freedom of expression.

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<sup>29</sup>Mehmet Murat Sabuncu; Akın Atalay, Önder Celik, Turhan Günay, Mustafa Kemal Güngör, Ahmet Kadri Gürsel, Hakan Karasinir, Hacı Musa Kart, Güray Tekin Öz, and Bülent Utku.

'Application nos. 72/17 and 80/17 Atilla Taş against Turkey and Murat Aksoy against Turkey lodged on 21 December 2016' ECtHR, Communicated on 13 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-174801>

The complaint is brought by two applicants, the first a famous singer and columnist for Meydan newspaper (closed as part of the state of emergency) and the second, a journalist. The two were known for critical views on government policy. The applicants allege their pre-trial detention was arbitrary and there was no evidence of plausible reasons to suspect them of having committed a criminal offense that made it necessary to detain them (Article 5(1)). Additionally they challenge the length of pre-trial detention. In relation to Article 5(4), the applicants allege they were unable to effectively challenge the lawfulness of pre-trial detention before an independent tribunal and denounce the restriction of access to the investigative file. Lastly, they allege an infringement of their freedom of expression (Article 10) and argue they were detained for expressing critical opinions about the president (Article 18 in conjunction with articles 5 and 10).

'Application nos. 13237/17 and 13252/17 Mehmet Hasan Altan against Turkey lodged on 12 January 2017' ECtHR, Communicated on 13 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-174803>

The first applicant is a professor of economics and a journalist, who presented a political debate program on Can Erzinca TV (a channel closed following the issue of Legislative Decree 688). The second is a well-known novelist and journalist. Both applicants are known for their critical views on the policies of the government. The applicants argue that their detention pending trial is arbitrary (Article 5(1)) and that the decisions ordering their arrest and detention were not sufficiently reasoned, nor based on any concrete evidence. Furthermore, they contend no plausible reasons have been established to suspect them of having committed a criminal offence necessitating detention on remand. Relying on Article 5(3), the applicants argue the length of their detention is excessive. Regarding Article 5(4) in conjunction with Articles 6 and 13, the applicants argue they have not had the opportunity to effectively challenge the lawfulness of their pre-trial detention in front of an independent and impartial tribunal. They also note inability to access the investigative file and consider that the proceedings before the Constitutional Court did not comply with the requirements of the Convention in that, the court did not respect the "short notice" requirement. Relying on Article 5(5) the applicants argue they have had no effective remedy to enable them to claim compensation. Lastly, they allege an infringement of their freedom of expression (Article 10) and argue they were detained for expressing critical opinions about the government (Article 18 in conjunction with articles 5 and 10).

'Application no. 14305/17 Demirtaş and 11 others against Turkey' ECtHR, Communicated on 29 June 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-175731>

The applicants<sup>30</sup> are elected members of the Grand National Assembly of Turkey, and members of the HDP ("The People's Democratic Party"). The applications concern the arrest and continued detention of the applicants who report violations of Articles 5, 10, 11 and 18 of the Convention and Article 3 of Protocol No. 1.

<sup>30</sup> Selahattin Demirtaş (no. 14305/17), Figen Yüksekdağ şenoğlu (no. 1433/17), Idris Baluken (no. 24585/17); Besime Konca (25445/17); Abdullah Zeydan (no. 25453/17); nihat akdoğan (no. 25453/17); Selma Irmak (no. 25463/17); ferhat encü (no. 25464/17); gülser yildirim (no. 31033/17); Nursel Aydoğan (no. 36268/17); Çağlar Demirel (no. 39732/17); Ayhan Bilgen (41087/17).

'Application no. 27684/17 İlker Deniz Yücel against Turkey lodged on April 6 2017' ECtHR, Communicated on 3 July 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-175898>

The complaint is brought by a journalist. The applicant alleges his pre-trial detention was arbitrary and there was no evidence of plausible reasons to suspect him of having committed a criminal offense that made it necessary to detain him (Article 5(1)). In relation to Article 5(4), the applicant states he was unable to access the file of the investigation. Without invoking any article he considers proceedings before the Constitutional Court did not comply with Convention procedures. Relying on Article 5(5), he claims he had no effective remedy to enable compensation. Lastly, he alleges an infringement of their freedom of expression (Article 10) and argues he was detained for expressing critical opinions about the government (Article 18 in conjunction with articles 5 and 10).

'Application no. 36493/17 Ahmet Şık against Turkey lodged on 9 May 2017' ECtHR, Communicated on 3 July 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-175895>

The applicant is an investigative journalist and writer, working as a reporter for the national daily Cumhuriyet ("The Republic"), a newspaper known for its critical editorial line vis-à-vis the current government. Relying on Article 5(1) of the Convention, the applicant complains that his detention on remand was not in accordance with domestic law, and that there was no evidence of plausible reasons to suspect him of having committed a criminal offence necessitating detention. He alleges that the facts at the origin of the suspicions against him are those related to his journalistic work. Under Article 5(3), the applicant complains of the length of his pre-trial detention and submits that the judicial decisions ordering his initial and continuing detention are not sufficiently reasoned or based on concrete evidence. The applicant submits that proceedings before the Constitutional Court in which they challenged their detention, did not comply with the requirement of "short notice" within the meaning of Article 5(4). He also complains of an infringement of his freedom of expression (Article 10), as a result of his detention. Lastly, relying on Article 18 of the Convention in conjunction with Articles 5 and 10, the applicant alleges that his detention constitutes a penalty for his criticism of the Government.

'Application no. 58984/17 Okumuş v. Turkey lodged on 21 August 2017,' ECtHR, Communicated on 4 December 2017, available at: <http://hudoc.echr.coe.int/eng?i=001-180190>

The application concerns the disappearance of Murat Okumuş, the applicant's son, following his abduction by unknown persons on 16 June 2017 and the allegations of a lack of an effective investigation into his disappearance.

Application no. 4475/18 Aynur Horzum and others against Turkey lodged on 18 January 2018' ECtHR, Communicated on 20 April 2018, available at: <http://hudoc.echr.coe.int/eng?i=001-182899>

The application concerns the disappearance of Ümit Horzum, following his alleged abduction by unknown persons on 6 December 2017 and the allegations of a lack of an effective investigation into his disappearance (Articles 2, 3 and 5). Ümit Horzum, was dismissed from his job at the Turkey Accreditation Agency after the attempted coup.

### ***Third Party Interventions***

*'Republic of Turkey v Erol Önderoğlu, Rasime Şebnem Korur Fincancı Third-Party Intervention Submissions by Article 19 in Support of Defendants and Acquittal'* Article 19' 13 March 2017, available at:

[https://www.article19.org/data/files/medialibrary/38680/Amicus-Turkey-case-March-2017---FINAL\\_English.pdf](https://www.article19.org/data/files/medialibrary/38680/Amicus-Turkey-case-March-2017---FINAL_English.pdf)

Article 19 submits firstly that the provisions under which the defendants are charged (Article 214 and 215 of the Penal Code and Article 7(2) of the Anti-Terror Act) do not satisfy the requirements of Article 10 of the European Convention and Article 19 of the ICCPR. Secondly, the actions of the defendants do not constitute a contravention of the provisions of the Penal Code and Anti-Terror Act. Lastly, failure to dismiss the charges endorses the government's campaign of harassment against civil society, human rights defenders and the media.

*'Republic of Turkey v Ahmet Husrev and Mehmet Hasan Altan Expert Opinion by Article 19'* 5 June 2017, available at:

<https://www.article19.org/data/files/medialibrary/38799/Final-Expert-Opinion-Altans---English.pdf>

The expert opinion concludes that provisions under which the defendant has been charged (namely Articles 3 and 5 of Law no. 3713 on Counter-Terrorism and Articles 309/1, 311/1, and 312/2 of the Turkish Penal Code do not comply with European and international standards on freedom of expression. In addition, it is considered the charges are unfounded and amount to unlawful restrictions on the freedom of expression – amounting to a “politically motivated campaign of harassment against journalists.”

*'Third Party Intervention by the Council of Europe Commissioner for Human Rights,'* 10 October 2017 available at:

<https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>

This intervention concerns 10 applications<sup>31</sup> relating to freedom of expression and the right to liberty of journalists in Turkey. The submission focusses on the human rights violations and undermining of the rule of law connected to: the arbitrary application of certain criminal provisions on security of the state and terrorism; the chilling effect of prosecutions on legitimate journalistic activity; the lack of sufficient reasoning and evidence in criminal trials of journalists; state of emergency measures that curtail effective review of detention; and judicial actions that have targeted journalists, academics and human rights defenders.

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<sup>31</sup> Ahmet Hüsrev Altan (no. 13252/17); Şahin Alpay (no. 16538/17); Atilla Taş (no. 72/17); Ali Bulaç (no. 25939/17); Ayşe Nazlı Ilıcak (no. 1210/17); Mehmet Hasan Altan (no. 13237/17); Murat Aksoy (no. 80/17); Mehmet Murat Sabuncu and others (no. 23199/17); Ahmet Şık (no. 36493/17) and Ilker Deniz Yucel (no. 27684/17).

'Intervention of United National Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression before the European Court of Human Rights' 20 October 2017, available at:  
<http://www.ohchr.org/Documents/Issues/Expression/AmicusFiling-ECHR-Turkey-UNSR.pdf>

The amicus filing concerns 10 separate applications<sup>32</sup> to the Court regarding the criminal prosecution, arrest, and/or detention of journalists under counter-terrorism legislation and state-of-emergency decrees in Turkey. The brief sets out a pattern of abuses, and outlines the relevant international standards with regard to freedom of expression to conclude that Turkey's restrictions on the freedom of expression, protected by Article 10, are not "prescribed by law."

'Third Party Intervention by the Council of Europe Commissioner for Human Rights' 2 November 2017, available at: <https://rm.coe.int/third-party-intervention-12-cases-v-turkey-on-freedom-of-expression-an/1680764ef6>

This intervention concerns 12 applications<sup>33</sup> relating to the detention and prosecution of opposition parliamentarians. The intervention addresses interference with the applicants' freedom of expression, and right to liberty and security; the "systematic targeting of those who express dissenting views from official policy, particularly on issues related to the situation in South Eastern Turkey" and "reiterates concerns regarding judicial independence and impartiality." The Commissioner concludes that the detention and prosecution of parliamentarians exists as "a broader pattern of repression against those expressing dissent or criticism." This pattern is facilitated by the constitutional amendment lifting parliamentary immunity, and arbitrary application of criminal provisions concerning: security of the state, terrorism, denigrating state organs or insulting the President. Those opposition candidates that have been detained are prevented from carrying out their parliamentary mandate, and decisions of the domestic courts "fall short of justifying the need to resort to pre-trial detention or its extension as they lack sufficient reasoning." Any effective review of detention is curtailed by state of emergency laws. With regards to freedom of expression, the Commissioner concludes that "laws and procedures are currently used to silence dissenting voices in these fields [and] upholding the right to freedom of expression is at present all the more difficult as a result of marked erosion of the independence and impartiality of the judiciary in Turkey."

'Third-party intervention submissions on behalf of Article 19 and Human Rights Watch' available at: <https://www.article19.org/wp-content/uploads/2018/02/171109-Demirtas-submissions-Nov-17.pdf>

This intervention concerns 12 applications<sup>34</sup> relating to the detention and prosecution of opposition parliamentarians. The interveners submit that measures or actions which make it difficult for elected politicians to speak or vote in parliament interfere with Article 10 and Article 3 of Protocol no. 1 and as such any measures or actions taken against MPs call for close scrutiny. The intervention argues

<sup>32</sup> Atilla Taş (no. 72/17); Ahmet Hüsrev Altan (no. 13252/17); Mehmet Hasan Altan (no. 13237/17); Ahmet Şık (no. 36493/17) Şahin Alpay (no. 16538/17); Mehmet Murat Sabuncu and others (no. 23199/17); Murat Aksoy (no. 80/17); Ayşe Nazlı Ilicak (no. 1210/17); Ali Bulaç (no. 25939/17) and Ilker Deniz Yucel (no. 27684/17).

<sup>33</sup> Selahattin Demirtaş (no. 14305/17), Figen Yüksekdağ şenoğlu (no. 1433/17), Idris Baluken (no. 24585/17); Besime Konca (25445/17); Abdullah Zeydan (no. 25453/17); nihat akdoğan (no. 25453/17); Selma Irmak (no. 25463/17); ferhat encü (no. 25464/17); gülser yildirim (no. 31033/17); Nursel Aydoğan (no. 36268/17); Çağlar Demirel (no. 39732/17); Ayhan Bilgen (41087/17).

<sup>34</sup> Selahattin Demirtaş (no. 14305/17), Figen Yüksekdağ şenoğlu (no. 1433/17), Idris Baluken (no. 24585/17); Besime Konca (25445/17); Abdullah Zeydan (no. 25453/17); nihat akdoğan (no. 25453/17); Selma Irmak (no. 25463/17); ferhat encü (no. 25464/17); gülser yildirim (no. 31033/17); Nursel Aydoğan (no. 36268/17); Çağlar Demirel (no. 39732/17); Ayhan Bilgen (41087/17).

that the Constitutional Amendment of May 2016, lifting parliamentary immunity in Turkey, violates Articles 10 and 11 and Article 3 of protocol 1. Concerning pre-trial detention, the applicants argue that Article 10 and Article 3 of protocol 1 are violated in two ways: 1) the prosecutions relate to acts of expression including those connected to the exercise of office; 2) pre-trial detention stops MPs from taking up their seat and speaking and voting in parliament.

'*Republic of Turkey v Sahin Alpay* Expert Opinion by Article 19' 23 November 2017, available at: <https://www.article19.org/resources/turkey-expert-opinion-on-charges-against-sahin-alpay/>

The expert opinion concludes that provisions under which the defendant has been charged (namely Article 5 of Law no. 3713 on Counter-Terrorism and Articles 309/1, 311, 312 and 314(2) of the Turkish Penal Code) do not comply with European and international standards on freedom of expression. In addition, it is considered the charges are unfounded and amount to unlawful restrictions on the freedom of expression – amounting to a “politically motivated campaign of harassment against journalists.”

'Joint Written Comments of the Third Party Intervenors in the case of *Atilla Tas v Turkey* before the European Court of Human Rights' available at: <https://www.mediadefence.org/sites/default/files/blog/files/Intervention.pdf>

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The brief submits that the detention of a journalist can only be justified in extreme and exceptional cases and that the deliberate and arbitrary use of the criminal law to target media amounts to a violation of Article 18. The legal and factual situation justifying derogation under Article 15 is discussed.

'Joint Written Comments of the Third Party Intervenors in the case of *Murat Aksoy v Turkey* before the European Court of Human Rights' available at: [https://www.mediadefence.org/sites/default/files/blog/files/Intervention\\_0.pdf](https://www.mediadefence.org/sites/default/files/blog/files/Intervention_0.pdf)

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The brief submits that the detention of a journalist can only be justified in extreme and exceptional cases and that the deliberate and arbitrary use of the criminal law to target media amounts to a violation of Article 18. The legal and factual situation justifying derogation under Article 15 is discussed.

‘Joint Written Comments of the Third Party Interveners in the case of *Ahmet Sik v Turkey* before the European Court of Human Rights’ available at:

[https://www.mediadefence.org/sites/default/files/blog/files/Intervention\\_1.pdf](https://www.mediadefence.org/sites/default/files/blog/files/Intervention_1.pdf)

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

‘Joint Written Comments of the Third Party Interveners in the case of *Ayşe Nazlı İlicak v Turkey* before the European Court of Human Rights’ available at:

<https://www.mediadefence.org/sites/default/files/blog/files/Nazli%20Ilicak%20Intervention.pdf>

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

‘Joint Written Comments of the Third Party Interveners in the case of *Ali Bulac v Turkey* before the European Court of Human Rights’ available at:

<https://www.mediadefence.org/sites/default/files/blog/files/ECTHR%20Ali%20Bulac%20v%20Turkey%20Written%20Comments.pdf>

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under article 15 is discussed.

‘Joint Written Comments of the Third Party Interveners in the case of *Mehmet Murat Sabuncu and Others v Turkey* before the European Court of Human Rights’ available at:

<https://www.mediadefence.org/sites/default/files/blog/files/20171020%20Intervention.pdf>

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

'Joint Written Comments of the Third Party Interveners in the case of *Ilker Deniz Yucel v Turkey* before the European Court of Human Rights' available at:  
<https://www.mediadefence.org/sites/default/files/blog/files/PEN%20Yucel%20v%20Turkey.pdf>

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

'Joint Written Comments of the Third Party Interveners in the case of *Sahin Alpay v Turkey* before the European Court of Human Rights' available at:  
[https://www.mediadefence.org/sites/default/files/blog/files/PEN\\_Alpay%20v%20Turkey.pdf](https://www.mediadefence.org/sites/default/files/blog/files/PEN_Alpay%20v%20Turkey.pdf)

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

'Written Submissions of behalf of Third Party Interveners in the case of *Ahmet Husrev Altan and Mehmet Hasan Altan v Turkey* before the European Court of Human Rights' available at:  
[https://www.mediadefence.org/sites/default/files/blog/files/PEN\\_Altans%20v%20Turkey%20.pdf](https://www.mediadefence.org/sites/default/files/blog/files/PEN_Altans%20v%20Turkey%20.pdf)

Media Legal Defence Initiative, PEN International, ARTICLE 19, the Association of European Journalists, the Committee to Protect Journalists, the European Centre for Press and Media Freedom, the European Federation of Journalists, Human Rights Watch, Index on Censorship, the International Federation of Journalists, the International Press Institute, the International Senior Lawyers Project and Reporters without Borders submitted this intervention. The legal and factual situation justifying derogation under Article 15 is discussed.

## **International Monitoring Bodies**

### ***UN Human Rights Council & Associated Monitoring Mechanisms***

#### **1. Office of the United Nations High Commissioner for Human Rights Reports**

'Report on the human rights situation in South-East Turkey July 2015 to December 2016,' February 2017 available at: [http://www.ohchr.org/Documents/Countries/TR/OHCHR\\_South-East\\_TurkeyReport\\_10March2017.pdf](http://www.ohchr.org/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf)

The report raises concerns about the adverse effects of the measures undertaken following the declaration of the state of emergency on the enjoyment of human rights. The following issues are addressed: the massive scale of dismissals of public officials, judges, and prosecutors; the mass

arrests of members of parliament belonging to the People's Democratic Party (HDP), municipal mayors and journalists; the closure of Kurdish language local and national media outlets; fair trial rights; and the deterioration of detention conditions.

'Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East January – December 2017,' March 2018 available at: [http://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

The report highlights a “constantly deteriorating human rights situation, exacerbated by the erosion of the rule of law.” Particular attention is paid to the emergency decrees passed by the government, which “foster impunity and a lack of accountability, by affording, legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the decrees.” Concerns regarding the non-reviewability of these measures by the constitutional court and the effect of this on the separation of powers are raised, as are their expanding scope. The arbitrary dismissal of civil servants and the functioning of the Commission of Inquiry for State Emergency Practices are also considered, concluding (in line with the findings of the Venice Commission) that the Commission “cannot be considered as an independent body that will guarantee full respect of due process. It regrets the lack of appropriate remedies to address thousands of dismissals of employees, liquidation of thousands of private entities, including health and education institutions, as well as trade unions.”

## 2. Working Group on Arbitrary Detention

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017, 'Opinion No. 1/2017 concerning Rebi Metin Görgeç (Turkey)' available at [http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A\\_HRC\\_WGAD\\_2017\\_1.pdf](http://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_1.pdf)

The opinion concerns the detention of Rebi Metin Görgeç from 16 August 2016 until 26 November 2016. No formal charges were issued to legitimize this detention. The Working Group found *prima facie* violations “under article 9 (2) of the Covenant (failure to inform of charges at the time of the arrest); articles 9 (3) and 9 (4) of the Covenant (failure to bring promptly before a judge); article 10 (1) of the Covenant (the right to be treated with humanity and respect during detention); and article 10 (2) (a) (the right of un-convicted persons to be treated in accordance with their status as not convicted).” The Working Group reiterated the “urgency of reverting to ordinary procedures and safeguards, by ending the state of emergency as soon as possible.”

The government response to this opinion can be found here: <http://www.ohchr.org/Documents/Issues/Detention/Opinions/CommentsTurkey02052017.pdf>

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eighth session, 19-28 April 2017 'Opinion No. 38/2017 concerning Kursat Çevik (Turkey)' available at: [https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A\\_HRC\\_WGAD\\_2017\\_38.pdf](https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_38.pdf)

The opinion concerns the arrest of Kursat Çevik (a policeman) for alleged membership in a terrorist organisation in July 2016. In light of “the fact that the authorities failed to formally invoke any legal basis justifying the detention the Working Group considers that his detention was arbitrary. The

Working Group found a “violation of the right of Mr. Çevik to have effective legal representation, adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing” under article 14 (3) (b) of the Covenant and principle 17.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The Working Group reiterated the “urgency of reverting to ordinary procedures and safeguards, by ending the state of emergency as soon as possible.”

Opinions adopted by the Working Group on Arbitrary Detention at its seventy-eight session, 19-28 April 2017, ‘Opinion No. 41/2017 concerning 10 individuals associated with the newspaper Cumhuriyet (Turkey)’ available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Opinions78thSession.aspx>

The opinion concerns the arrest on 31 October 2016 of Messrs, Çelik, Günay, Güngör, Gürsel, Kara, Kart, Sabuncu, Utku and Öz – who were subsequently detained for 4 days without access to a lawyer. Mr. Atalay was arrested at the airport on 11 November 2016 and presented to the Court on 12 November 2016. The government argued that this was justified under article 3 (entitled “Investigation and prosecution procedures”) of Decree Law No. 668 of 27 July 2016, under which the right of the suspect in custody to see a defence counsel may be restricted for five days upon the decision of the public prosecutor. The Working Group found violations of Articles 10, 11 and 19 of the Universal Declaration of Human Rights and of Articles 14, 15 and 19 of the International Covenant on Civil and Political Rights. Additionally, the opinion considered the chilling effect of emergency laws on freedom of expression.

### 3. Special Rapporteur Reports

‘Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Turkey,’ 18 December 2017 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/362/52/PDF/G1736252.pdf?OpenElement>

With reference to the coup, the report estimates the number of officials suspended or dismissed to have been 100,000 between July 2016 and December 2017. With regards to arrests, it is estimated more than 40,000 individuals had been arrested – including military and police officers, judges, prosecutors, human rights defenders, journalists lawyers and healthcare personnel. In connection with these arrests, the rapporteur reports widespread torture and other forms of ill treatment at the time of arrest and during the subsequent detention in police or gendarmerie lock-ups as well as in improvised unofficial detention locations (including sports centres, stables and the corridors of court houses). The report heavily criticises the adoption of a number of Decree Laws restricting the right of access to a lawyer, enabling the recording of private meetings and the seizure of documents, and the extension of maximum duration of detention without charge or judicial review.

‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey,’ 21 June 2017 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/170/40/PDF/G1717040.pdf?OpenElement>

The report concludes that the situation of the right to freedom of expression in Turkey is in grave crisis and requires immediate steps for Turkey to be compliant with its obligations under international human rights law. In particular, focus is paid to the state of emergency decrees and their effect on the

arrest, detention and harassment of journalists, media closures, Internet restrictions, academic freedom, the dismissal of public officials and the suppression of civil society.

4. Written statements submitted to the Human Rights Council by NGO's in special consultative status

Human Rights Council Thirty-sixth session 11-29 September 2017, 'Written statement submitted by Amnesty International, a non-governmental organization in special consultative status,' 05 September 2017 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/261/49/PDF/G1726149.pdf?OpenElement>

The statement addresses increased arbitrary detention and torture, and the crackdown on government dissent by the media and civil society. The statement makes the following requests: 1) the end of arbitrary, extended and punitive pre-trial detention; 2) the release of journalists and human rights defenders; 3) permission for the CPT's report on its 2016 visit to be published; 3) an OHCHR fact-finding mission; and 4) prompt facilitation of the visits requested by the Special Rapporteur on the situation of human rights defenders and the Working Group on Arbitrary Detention.

Human Rights Council Thirty-fifth session 6-23 June 2017, Written statement submitted by Amnesty International, a non-governmental organization in special consultative status, 08 June 2017 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/160/77/PDF/G1716077.pdf?OpenElement>

The statement addresses increased arbitrary detention, mass arbitrary dismissals without due process, and the crackdown on media freedom in the context of expansive and far-reaching emergency laws. The statement makes the following requests: 1) an OHCHR fact-finding mission; 2) permission for the CPT's report on its 2016 visit to be published and regular monitoring of places of detention; 3) the end of arbitrary, extended and punitive pre-trial detention; 4) the release of journalists; 4) the end of arbitrary dismissals of public sector officials under state of emergency decrees and the establishment of an independent, impartial, transparent and effective appeal mechanism through which public sector employees can challenge dismissal from their jobs and expulsion from public service.

Human Rights Council Thirty-fifth session 6-23 June 2017, 'Written statement submitted by the European Centre for Law and Justice/Centre Europeen pour le droit, les Justice et les droits de l'homme, a non-governmental organization in special consultative status,' 15 May 2017, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/145/57/PDF/G1714557.pdf?OpenElement>

The written statement addresses the arbitrary detention of Andrew Brunson, an American citizen in Turkey in the context of increasing arrests post the failed military coup, drawing attention to the fact that "Christians and other religious minorities are now increasingly the targets of detention and deportation, and are unreasonably subjected to other governmental regulation simply because of their faith."

Human Rights Council Thirty-third session, 'Written statement submitted by Gazeteciler ve Yazarlar Vakfi, a non-governmental organization in general consultative status,' 29 August 2016 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/201/43/PDF/G1620143.pdf?OpenElement>

Submitted by the Journalist and Writers Foundation, the communication highlights the purging of civil servants and academics without trial, the punishment of those active in civil society and the association of the Hizmet Movement with terrorism.

Human Rights Council Thirty-second session, 'Joint written statement submitted by International PEN, the International Press Institute, Reporters Sans Frontiers, nongovernmental organizations in special consultative status,' 30 May 2016, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/115/43/PDF/G1611543.pdf?OpenElement>

The statement addresses the media blackout on the conflict in the southeast, judicial harassment and detention of journalists, government closure of opposition media and legislative restrictions to freedom of expression. The statement requests 1) the release of all writers, journalists and translators imprisoned or detained solely for the exercise of their right to free speech; 2) the overturning of sentences against journalists imposed for their legitimate reporting; 3) prompt, thorough and transparent investigations into violent attacks on journalists and media outlets; 4) the adoption of legislative and policy measures to prevent all attacks against journalists and eradicate impunity in episodes of violence and intimidation; 5) the repeal of all legislation which unduly restricts freedom of expression; 6) the amendment of Law 5651 to protect freedom of expression online; 7) the repeal of the National Intelligence Agency Law (No. 6532); 8) the removal of any restrictions or regulations that might place the media under political influence or compromise the vital role of the media as public watchdog; 9) Turkey to abide by their obligations under the International Covenant on Civil and Political Rights (ICCPR).

Human Rights Council Thirty-fifth session 6-23 June 2017, 'Joint written statement submitted by Committee to Protect Journalists, Inc., International PEN, Human Rights Watch, International Press Institute and Reporters Sans Frontiers International - Reporters Without Borders International, non-governmental organizations in special consultative status, Article 19 - International Centre Against Censorship, The, a non-governmental organization on the roster,' 15 May 2017 available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/146/02/PDF/G1714602.pdf?OpenElement>

Referencing the themes highlighted by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression – the joint written statement requests 1) immediate release of those held in prison for exercising their rights to freedom of opinion and expression, 2) an end to the state of emergency, 3) an end to prosecutions of journalists, 3) the reopening of media outlets and the end of executive interference including the dismissal of journalists and editors, 4) upholding the independence of the judiciary, 4) investigation of all torture and ill-treatment and 5) review of the anti-terror laws and 5) the rejection of any proposal to reintroduce the death penalty.

## ***The Council of Europe***

### 1. Parliamentary Assembly

'Resolution 2156 (2017) The Functioning of Democratic Institutions in Turkey,' 25 April 2017 available at:

<http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnRvcveG1sL1hSZWYvWDJlLURXLWV4dHluYXNwP2ZpbGVpZD0yMzY2NSZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdc9QZGYvWFJIZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlKP TlZnY1>

The resolution reminds Turkey that the state of emergency should be strictly limited in time and effect and should therefore be lifted as soon as possible. Referencing the adoption of security measures to fight terrorism, the resolution stresses "Turkey's right and duty to fight terrorism and address security issues in order to protect its citizens and its democratic institutions [...] must adhere to the principles of rule of law and human rights standards, which require any interference with basic human rights to be defined in law, necessary in a democratic society and strictly proportionate to the aim pursued, in accordance with international obligations, which includes the revision of legislation and practices on terrorism in line with European standards." Referring to deterioration since the coup, the resolution refers to the diminishing independence of parliament and the judiciary and "decides to reopen the monitoring procedure in respect of Turkey until its concerns are addressed in a satisfactory manner."

### 2. COE Commissioner for Human Rights

'Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey' Nils Muižnieks, Council of Europe Commissioner for Human Rights, 7 October 2016 available at: <http://www.refworld.org/docid/58120efb4.html>

The Commissioner concludes that "it is time for the Turkish authorities to curb certain excesses of the state of emergency" and argues the authorities "should immediately start repealing the emergency decrees, starting with provisions which allow the highest degrees of arbitrariness in their application and stray the widest from ordinary guarantees." Concerning criminal proceedings, the memorandum identifies consistent reports of torture and ill-treatment as "among the most immediate human rights concerns" and urges the authorities to "revert to the situation before the state of emergency" with regard to procedural safeguards for detention. In addition the Commissioner urges authorities to communicate very clearly "that mere membership or contacts with a legally established and operating organisation, even if it was affiliated with the Fethulla Gulen movement is not sufficient to establish criminal liability and to ensure that charges for terrorism are not applied retroactively to actions which would have been legal before 15 July." In relation to administrative procedures concerning those employed in the public sector, the Commissioner urges authorities to "render much more transparent the criteria to be retained to prove membership of FETÖ/PDY and other terrorist organisations, the degree beyond which contacts with these organisations can incur sanctions, as well as the kinds of information and evidence the authorities must assess to establish liability. At a minimum, persons should be able to have access to evidence against them." Regarding civil society and the private sector, the Commissioner raises concerns related to the administrative procedures being used to close down these organisations, and asset seizure. In particular, he criticises the lack of due process,

and safeguards. Measures targeting family members of suspected individuals and a lack of effective legal remedy are also criticised.

The response of the Turkish government can be found here: [https://rm.coe.int/ref/CommDH/GovRep\(2016\)24](https://rm.coe.int/ref/CommDH/GovRep(2016)24)

'Memorandum on Freedom of Expression and Media Freedom in Turkey' Nils Muižnieks, Council of Europe Commissioner for Human Rights, 15 February 2017, available at: <http://www.refworld.org/docid/59490abf4.html>

The memorandum concludes that the deterioration in Turkey regarding media freedom and freedom of expression represent an “existential threat to Turkish democracy” and recommends “the need for a complete overhaul of the Turkish Criminal Code.” In addition to the criminal code, the Commissioner highlights a need for crucial legislative changes to the Internet Law and the Radio and Television Law – which are being used to punish critical media, journalists and academics. In connection with this, and in light of the implementation of a state of emergency, the report criticises the transformation of criminal judges of the peace “into an instrument of harassment to stifle opposition and legitimate criticism [...] as well as of controlling the information available to the general public, including on the Internet, in co-operation with the prosecutors who have become even more active in targeting critical voices than before.”

The response of the Turkish government can be found here: [https://www.ecoi.net/en/file/local/1393731/1226\\_1487663948\\_commdh-govrep-2017-2-en.pdf](https://www.ecoi.net/en/file/local/1393731/1226_1487663948_commdh-govrep-2017-2-en.pdf)

### 3. The Venice Commission

'Opinion on the Measures provided in the recent Emergency Decree Laws with respect to Freedom of the Media,' adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017) available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)007-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)007-e)

The report examines the effect of a number of emergency decree laws on freedom of the media in Turkey, addressing the following: 1) the liquidation of media outlets; 2) criminal law and criminal procedure in relation to freedom of expression; and 3) decree Law no. 685 (creating an inquiry commission to examine cases of liquidated media outlets). The report concludes that while certain measures may have been necessary in the immediate aftermath of the coup – “such measures as mass liquidations of media outlets on the basis of the emergency decree laws, without individualized decisions, and without the possibility of timely judicial review, are unacceptable in light of the demands of international human rights law, and extremely dangerous.” As such, the Venice Commission calls on the Turkish authorities to: 1) supplement Decree Law no. 685 with a provision requiring that individuals and legal entities affected by the emergency measures be made aware of the specific reasons for those measures and the factual basis thereof, in order to enable them to make their case before the inquiry commission, and that decisions of the inquiry commission be individualised, reasoned and based on verifiable evidence; 2) ensure that the inquiry commission has the powers to restore the status quo ante and that it has the power to grant priority treatment to the most urgent applications, including those introduced by the media outlets; 3) ensure that the journalists are not prosecuted under the heading of “membership” of terrorist organisations (and alike); 4) ensure that

where journalists are prosecuted essentially because of their publications, pre-trial detention is not imposed on the sole ground of the gravity of the charges which are derived from the content of their publications; and 5) Repeal any measure taken by emergency decree laws which is not strictly necessitated by the state of emergency.

'Opinion on the duties, competences and functioning of the criminal peace judgeships,' adopted by the Venice Commission at its 110th Plenary Session (Venice, 10-11 March 2017) available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)004-e)

This opinion contains a specific section on "problems of the functioning of judgeships of peace during the state of emergency," focusing on Article 6.1g of Decree Law no. 667 (providing the power to remove the right for a lawyer to exercise advocacy). Using the example of case 2016/5120 M decided by the Istanbul Criminal Peace Judgeship No. 2 in relation to Mr Omer Kavili, the opinion finds "there is not a single argument of reasoning to justify such a drastic measure." The issue of dismissals of the judiciary is also briefly addressed.

'Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy,' adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017) available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)021-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)021-e)

The opinion finds that the decree law enabling appointment of unelected mayors, vice-mayors and members of local councils and the exercise of discretionary control over the functioning of the concerned municipalities (without judicial review) raises concerns in terms of compliance with the procedural and substantial rules on the state of emergency and with local governance principles enshrined in the Charter of Local Self-Government. The Commission recommends 1) repeal of the provisions which are not necessitated by the state of emergency; 2) the implementation of provisions for adequate judicial review for those provisions implemented via emergency decrees but with permanent lasting effects; and 3) the setting up of a framework for the reinstatement of suspended/dismissed local representatives where terrorism charges do not lead to conviction.

'Opinion on Emergency Decree Laws N°s 667-676 adopted following the failed coup of 15 July 2016,' adopted by the Venice Commission at its 109th Plenary Session, 9-10 December 2016 available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e)

The Venice Commission concludes that the state has "interpreted its extraordinary powers too extensively and [has taken] measures that went beyond what is permitted by the Turkish Constitution and by international law." The major concerns relate to a lack of oversight exercised by the Parliament or the Constitutional Court, permanent measures that extend beyond the state of emergency (such as dismissal of civil servants and the dissolution of organisations, confiscation of property and structural changes to legislation). With reference to collective dismissals, the Commission notes that these were not individualised and did not refer to verifiable evidence related to each individual. As such, the basic rights of administrative due process of public servants dismissed by the decree laws were not respected. With regards to criminal procedures, extension of the time limit for detention is highlighted as problematic as is limited access of lawyers to their clients, and reduced safeguards to protect detainees from abuses.

## ***The European Union***

'Turkey 2018 Report. Communication on EU Enlargement Policy' The Commission of the European Union, 17 April 2018, available at: <https://www.state.gov/documents/organization/277471.pdf>. Highlights can be found here: [http://europa.eu/rapid/press-release\\_MEMO-18-3407\\_en.htm](http://europa.eu/rapid/press-release_MEMO-18-3407_en.htm)

The report states that Turkey should lift the state of emergency without delay and criticises the 31 decrees that have been implemented under the state of emergency. The report finds that they have not been subject to diligent and effective parliamentary scrutiny, nor are they open to judicial review, nor subject to a decision of the Constitutional Court. The report finds that "these emergency decrees have notably curtailed certain civil and political rights, including freedom of expression, freedom of assembly and procedural rights. They have also amended key pieces of legislation which will continue to have an effect when the state of emergency is lifted." Concerning the State of Emergency Appeal Commission the report finds that it has only provided redress to a few applicants and "still needs to develop into an effective and transparent remedy." The report also finds that the capacity of Turkey to ensure an effective domestic remedy has been undermined by instances such as a lower court refusing to observe a ruling of the Constitutional Court. Furthermore, "several court rulings favourable to prominent defendants, including Human Rights Defenders, were swiftly reversed by another or even by the same court, in some instances following comments from the executive." The independence of the judicial system is called into question in light of the Constitutional Amendments governing the Council of Judges and Prosecutors. Concerning human and fundamental rights, the report highlights the backsliding in freedom of expression (noting dismissals, closures and the Internet Law allowing online content to be blocked without a Court Order), freedom of assembly, freedom of association, procedural and property rights.

## NGO Reports and Briefings

'Turkey 2017 Human Rights Report' US Department of State Bureau of Democracy, Human Rights and Labor, available at: <https://www.state.gov/documents/organization/277471.pdf>

The report raises concerns with regards to the alleged torture of detainees in official custody, allegations of forced disappearance, arbitrary arrest and detention (related to the state of emergency), interference with the independence of the judiciary, restrictions with regard to freedom of expression and the media, the blocking of websites and content, restrictions on the freedom of assembly, interference with freedom of movement and incidents of violence against LGBTI persons and other minorities.

'Weathering the Storm: Defending Human Rights in Turkey's Climate of Fear' Amnesty International, April 2018, available at: <https://www.amnesty.org/download/Documents/EUR4482002018ENGLISH.PDF>

This report outlines a number of human rights abuses committed under the current state of emergency in Turkey – particularly as they relate to the ability of human rights defenders and NGOs to carry out their work. Focus is paid to increased instances of arbitrary detention, abusive prosecutions under anti-terrorism laws, the use of emergency rule to close NGOs, increasing instances of intimidation to silent dissent, the deteriorating situation in Southeast Turkey, and unfair restrictions on the right to freedom of assembly.

'Briefing: Prosecution of 11 Human Rights Defenders' Amnesty International, available at: <https://www.amnesty.org/download/Documents/EUR4473292017ENGLISH.pdf>

This briefing provides an analysis of the indictment and charges in a case brought against 11 prominent human rights defenders following a police raid on a routine human rights workshop on the island of Büyükada on 5 July 2017. An English translation of the indictment is appended to the brief.

'No End in Sight: Purged Public Sector Workers Denied a Future in Turkey' Amnesty International, 2017, available at: <https://www.amnesty.org/download/Documents/EUR4462722017ENGLISH.PDF>

This report outlines the history of the coup attempt and the subsequent crackdown and mass dismissals of public servants. Based on 61 interviews (33 of which were conducted with dismissed public servants), the report analyses arbitrary dismissals, travel bans, their effect on family life and the lack of any meaningful appeal process. These measures are then assessed against international human rights standards.

'In Custody: Police Torture and Abductions in Turkey' Human Rights Watch, 12 October 2017, available at: [https://www.hrw.org/sites/default/files/report\\_pdf/turkey1017\\_web\\_0.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey1017_web_0.pdf)

Based on evidence taken from interviews with lawyers and relatives, and reviews of court transcripts, the report examines ten cases in which security forces tortured or ill-treated 22 people, and an eleventh in which police beat villagers. A further five cases of enforced disappearance are also

considered. These cases all took place in the context of the state of emergency, focus is paid to weak safeguards (namely reduced access to defence lawyers) fostering a climate of impunity.

'A Blank Check: Turkey's Post-Coup Suspension of Safeguards against Torture' Human Rights Watch, 25 October 2016, available at:  
[https://www.hrw.org/sites/default/files/report\\_pdf/turkey1016\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey1016_web.pdf)

Based on interviews with more than 40 lawyers, human rights activists, former detainees, medical personnel and forensic specialists, this report looks at how the state of emergency has impacted police detention conditions and the rights of detainees. Specific focus is paid to the implementation of emergency decree laws that have impacted standards of pre-trial detention.

'Silencing Turkey's Media: The Government's Deepening Assault on Critical Journalism' Human Rights Watch, 15 December 2016, available at:  
[https://www.hrw.org/sites/default/files/report\\_pdf/turkey1216\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey1216_web.pdf)

This report assesses a number of trends that have emerged in the wake of the coup attempt. Firstly, the prosecution of journalists for terrorism, insulting public officials and crimes against the state. Secondly, threats and physical attacks on journalists and media outlets. Thirdly, interference with independence. Fourthly, the nationalisation of private media organisations or their closure. Lastly, the use of fines and restrictive measures on critical news outlets.

'Anti-Terrorist Repression in Turkey: Excessive and Unlawful' Insan Haklari Denegi Human Rights Association (IHD), 2017, available at:  
[http://ihd.org.tr/en/wp-content/uploads/2017/11/IHD\\_anti-terrorist-repression-excessive\\_and\\_unlawful-ENGLISH.pdf](http://ihd.org.tr/en/wp-content/uploads/2017/11/IHD_anti-terrorist-repression-excessive_and_unlawful-ENGLISH.pdf)

This report is based on interviews conducted by IHD with civil society actors in Turkey between November 2016 and May 2017. The survey relied on is the result of a series of interviews with lawyers, judges, academics, syndicate members, journalists, doctors, activists and citizens. The report considers the legal framework and the situation on the ground with regard to: 1) the state of emergency (focussing on administrative closures and unfair dismissals); 2) anti-terrorist laws; 3) the right to a fair trial; and 4) the practice of torture in pre-trial detention.

'In Prison 2017: A Comprehensive Report on the Prison Conditions in Turkey' Platform for Peace and Justice, available at: <http://www.platformpj.org/wp-content/uploads/IN-PRISON-2017.pdf>

Given the fact that prisons are closed to inspections by national and international civil rights organisations and cannot be sufficiently scrutinised by UN and EU institutions, this report is based on interviews conducted with 66 lawyers and 197 family members of detainees. The violations highlighted in this report include, beatings rape and torture. The report highlights that "the majority of the rights violations are committed against those who have been detained under the accusation of 'membership of a terrorist organisation'" in the wake of the coup attempt and urges intervention and oversight by international monitoring bodies.

Yaman Akdeniz and Kerem Altıparmak, 'Turkey: Freedom of Expression in Jeopardy Violations of the Rights of Authors, Publishers and Academics under the State of Emergency' 28 March 2018, available at: <https://www.englishpen.org/campaigns/turkey-freedom-of-expression-in-jeopardy/>

This report presents an overview of the current situation of freedom of expression in Turkey. Relying on statistical data and case study analysis, the report identifies a number of wide ranging and systematic practices that have “been extended to regularly target NGOs, human rights activists, business people, writers, publishers, scholars and academic institutions.” The report assesses trends in freedom of expression under AKP rule, the independence of the judiciary in this field, and engages in an in depth analysis of the state of emergency and the non-reviewability of state of emergency measures. The principles with regards to freedom of expression established by the European Court of Human Rights and the Council of Europe are outlined. The analysis of this broad framework is followed by case studies concerning violations against publishers and writers, and academics dismissed through emergency decrees. These violations are then assessed in relation to constitutional safeguards. In particular, It is argued the measures have “fuelled self-censorship in both private and professional spheres, [...] and] have led to freedom of expression being replaced with a climate of fear in which political discourse and opposing views have declined.”

'21 July 2016 – 20 March State of Emergency in Turkey: Updated Situation Report,' Human Rights Joint Platform, 17 April 2018 available at: [http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE\\_17042018.pdf](http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE_17042018.pdf)

This report presents a detailed overview of the measures taken under the state of emergency including criminal procedures, investigation and prosecution procedures, measures against individuals, organisations, civil society and media agencies, appeals against state of emergency measures and legislative amendments made by emergency decrees.

'Freedom in the World 2018: Turkey' Freedom House, available at: <https://freedomhouse.org/report/freedom-world/2018/turkey>

Ranking Turkey with a status of “Not Free,” the report references the use of vaguely worded terrorism laws to facilitate mass dismissals, extensive use of pre-trial detention, harassment of civil society and the prosecution and harassment of journalists. In addition the constitutional amendments approved in 2017 are discussed – concluding that the amendments radically reduce democratic checks and balances.

'World Justice Project Rule of Law Index 2017-2018' World Justice Project available at: <https://worldjusticeproject.org/our-work/wjp-rule-law-index/wjp-rule-law-index-2017%E2%80%932018>

The report finds that Turkey scores a 0.42 on the Rule of Law Index, receiving the lowest score of the 13 countries in Europe and Central Asia. With regards to individual indicators, Turkey also received the lowest score in the region concerning constraints on governmental powers, fundamental rights, order and security and civil justice. Globally Turkey ranked 111/113 on the indicator of constraints on governmental power.

'(In) Effective Remedies from Strasbourg: Turkey and the European Court of Human Rights' Report from a conference held by the German Bar Association, the European Association of Lawyers for Democracy and World Human Rights, The Law Society of England and Wales, Lawyers for Lawyers, and Observatoire International des Avocats held on 5 March 2018 with assistance from the project team - link to this report <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/turkeys-coup-and-the-european-court-of-human-rights/5064484.article>. .

The report provides a written record of the discussion, along with key recommendations for the ECtHR and lawyers to consider when responding to the existing crisis in Turkey. Panels were held on the subjects of whether the court provides an effective remedy concerning events related to the attempted coup, and whether the court should adopt a different approach to cases brought in this context. Project Co-Director Ayse Bingol participated in the organisation of this conference.

'Suspicious Deaths and Suicides in Turkey' Stockholm Centre for Freedom, available at: <https://stockholmcf.org/suspicious-deaths-and-suicides-in-turkey-updated-list/>

The Stockholm Centre for Freedom has compiled a database of suspicious deaths in Turkey occurring in detention centres and jails. The entries in this database are mostly classified as suicides by the Turkish government and therefore do not elicit any effective, independent investigation. The Centre "believes the true number of deaths under the extended emergency rule since July 2016 in Turkey is still unknown. Moreover, it remains highly concerned over reports that the government runs secret and unofficial holding centres for some who were abducted with a total disregard to a due process."

Their most recent report on the issue can be found here: [https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey\\_22.03.2017.pdf](https://stockholmcf.org/wp-content/uploads/2017/03/Suspicious-Deaths-And-Suicides-In-Turkey_22.03.2017.pdf)

## Academic Journals and Commentary

Martin Scheinin, 'Turkey's Derogation from the ECHR – What to Expect?' EJIL: Talk!, 27 July 2016 available at: <https://www.ejiltalk.org/turkeys-derogation-from-the-echr-what-to-expect/>

Written before the formal derogation of Turkey from the ECtHR, Scheinin considers the possible implication of various derogation measures under Turkish Constitutional and international human rights law. Specifically, the illegality of reliance on any derogation to reintroduce capital punishment is addressed.

Tarik Olcay, 'Firing Bench-mates: The Human Rights and Rule of Law Implications of the Turkish Constitutional Court's Dismissal of Its Two Members: Decision of 4 August 2016, E. 2016/6 (Miscellaneous file), K. 2016/12' (2017) 13 European Constitutional Law Review 568

The article concerns the Constitutional Court's decision to dismiss two of its own members who had been arrested after the coup attempt on the charge of being members of a terrorist group. In brief, the decision finds that adherence to or connection with a terrorist group is sufficient grounds for dismissal rather than membership or affiliation. Furthermore, legal certitude is not necessary to establish this link, which can be found solely on the "conviction" of an absolute majority of the General Assembly or of the Court with no need to provide evidence. Olcay argues this decision is problematic for five reasons: 1) the authority relied on in delivering the decision is unconstitutional; 2) the court violated the right to a fair trial and the presumption of innocence; 3) the ratio decidendi is entirely subjective; 4) the decision effectively authorises the High Council of Judges and Prosecutors and all government institutions to dismiss officials; and 5) the decision implies that those dismissed after the coup by way of decree-laws and administrative acts stand little chance of gaining access to the constitutional complaint mechanism.

Başak Bağlayan, 'Turkey Declares state of emergency and derogates from ECHR after failed coup d'état' Leiden Law Blog, 8 August 2016, available at: <http://leidenlawblog.nl/articles/turkey-declares-state-of-emergency-and-derogates-from-echr-after-failed-cou>

This article considers the domestic constitutional and international legal frameworks governing the state of emergency. The author argues that the state of emergency could indeed have been justifiable in the immediate aftermath of the coup, however, from July 17<sup>th</sup> when the government and the army general staff had absolute control throughout Turkey, the state of emergency and the proportionality measures taken under it can be called into question.

Ulaş Karan, 'Mercan v. Turkey: Waiting for the Last Word of the Turkish Constitutional Court' Verfassungsblog, 21 November 2016, available at: <https://verfassungsblog.de/mercan-v-turkey-waiting-for-the-last-word-of-the-turkish-constitutional-court/>

Karan considers the effects of the ECtHR judgment in the case of Zeynep Mercan, a former judge who challenged the legality of her pre-trial detention for association with FETO/PDY. The ECtHR, emphasising the principle of subsidiarity, held that Mercan by not taking her case to the Turkish Constitutional Court had not exhausted all domestic remedies. This decision raises concerns given the increased workload of the Constitutional Court in the aftermath of the coup – calling into question its ability to deliver timely and effective justice. In addition, the implementation of judgements

rendered by the Constitutional Court is not being supervised and a situation is emerging where judicial organs and administrative bodies are reluctant to follow precedents. This intentional unwillingness should be taken into account in future applications to the ECtHR.

Emre Turkut, 'Has the European Court of Human Rights Turned a Blind Eye to Alleged Rights Abuses in Turkey' EJIL:Talk!, 28 December 2016, available at: <https://www.ejiltalk.org/has-the-european-court-of-human-rights-turned-a-blind-eye-to-alleged-rights-abuses-in-turkey/>

Turkut argues that the ECtHR decisions in *Zihni v Turkey* and *Mercan* “ring hollow in the context of the so-called availability of domestic remedies in present-day Turkey.” It is argued that the court failed to appreciate that requiring the applicants to first try and navigate the legal system in Turkey deprives them of an effective remedy. Reference is made to the Constitutional Court’s hands off approach to review of emergency measures and it is questioned whether or not the ECtHR was influenced to take such an approach due to an increase in their docket, or the larger context of the state of emergency.

Başak Bağlayan, 'The Turkish State of Emergency Under Turkish Constitutional Law and International Human Rights Law' American Society of International Law, 3 January 2017 available at: <https://www.asil.org/insights/volume/21/issue/1/turkish-state-emergency-under-turkish-constitutional-law-and>

The article assesses the accordancy of measures taken pursuant to the state emergency with Turkish Constitutional Law and International Human Rights Law. Extended powers of pre-trial detention, the removal of habeas corpus review, application of the measures to public and private bodies, property confiscation and restrictions on travel are considered. It is concluded that it is questionable whether such measures meet the requirements under human rights law – a concern heightened by the fact that the constitution (while imposing limits on derogations) fails to provide an effective oversight mechanism to monitor or assess them.

Kerem Altıparmak, 'Is the State of Emergency Inquiry Commission, Established by Emergency Decree 685, an Effective Remedy?' IHOP Human Rights Joint Platform, February 2017 available at: [www.ihop.org.tr/wp-content/uploads/2017/03/IS-THE-STATE-OF-EMERGENCY-INQUIRY-COMMISSION.pdf](http://www.ihop.org.tr/wp-content/uploads/2017/03/IS-THE-STATE-OF-EMERGENCY-INQUIRY-COMMISSION.pdf)

Altıparmak provides an overview of the Emergency Inquiry Commission, to find that it does not meet the requirements of an effective remedy in accordance with the case law of the European Court of Human Rights. Of primary importance is the fact that the Commission cannot assess whether the actions taken by the government in the first place were lawful. It is highlighted that the Commission is essentially dealing with what would be classed as criminal charges under the ECHR. Nonetheless, the Commission is only able to examine applications based on the case file (which may sometimes be deemed a state secret), violating any opportunity to make a defence and raising fair trial concerns. “This procedure forces people and institutions to acknowledge a crime of which they were not informed at any stage and then to make a suitable defence. The person applying to the Inquiry Commission will first need to choose a crime and then make their defence as to how they did not commit that crime.” Concerns are also raised with regards to the nature of the decisions. Reviewing the case law of the ECtHR, Altıparmak argues that the Commission is not able to provide effective reparations as understood by the Court. Practically speaking, concerns with regard to the number of

applications and the methods of appointment and dismissal of Commission members are also raised. It is estimated any form of remedy could take up to 6 years.

Ali Acar, 'The Hamartia of the Constitutional Court of Turkey: Part I' International Journal of Constitutional Law Blog, 30 March 2017, available at: <http://www.iconnectblog.com/2017/03/the-hamartia-of-the-constitutional-court-of-turkey-part-i/>

Acar outlines a number of emergency decrees adopted in the aftermath of the coup and challenges their relevance to the underlying exigency of the emergency. The controversy is heightened with regard to decrees that have disbanded TV channels, newspapers, news agencies, hospitals, educational institutions, foundations, NGOs, universities and trade unions and involve the confiscation of assets.

Ali Acar, 'The Hamartia of the Constitutional Court of Turkey: Part II' International Journal of Constitutional Law Blog, 4 April 2017, available at: <http://www.iconnectblog.com/2017/04/the-hamartia-of-the-constitutional-court-of-turkey-part-ii/>

Acar analyses the Turkish Constitutional Court's decisions in the cases challenging emergency decrees on the grounds that they are irrelevant to the underlying exigency of the emergency. The Court rejected these applications on a literal reading of paragraph 1 of Article 148 of the Constitution stipulating that the emergency decrees are not subject to judicial review. The author highlights that this overturns, without good reason, two cases from 1991 in which the contents of emergency decrees were reviewed and some provisions struck out as the scope of the decree went beyond what is necessary in a state of emergency.

Emre Turkut, 'The Köksal case before the Strasbourg Court: a pattern of violations or a mere aberration?' Strasbourg Observers, 2 August 2017, available at: <https://strasbourgobservers.com/2017/08/02/the-koksal-case-before-the-strasbourg-court-a-pattern-of-violations-or-a-mere-aberration/>

Concerning the case of Köksal, dismissed by the Court for failure to exhaust domestic remedies, the Court found that a new remedy was available to the applicant in the form of the 'State of Emergency Inquiry Commission.' In criticising this decision, rather than focussing on the inability of the Commission to meet Article 6 fair trial standards, the article instead focuses on a systematic failure to provide effective remedies in Turkey that ought to be taken into account by the Court as was done in the *Greek* case. Namely, the number of wide-ranging violations and the national level reluctance of the Turkish Constitutional Court and the Turkish Council of State to review Emergency degrees.

Ignatius Yordan Nugraha, 'Human Rights Derogation During Coup Situations,' (2018) 22 The International Journal of Human Rights 194

This article provides an analysis of whether a coup d'état can be regarded as 'an emergency that threatens the life of a nation' under Article 4(1) of the ICCPR and Article 15 of the ECHR. Discussing the interpretation of the term by the HRC, referencing case law of the HRC and the ECtHR (the Lawless principles), General Comments and the Siracusa Principles, it is concluded that if a coup is conducted bloodlessly without resistance, it cannot be invoked as a ground of derogation. Nor can a government installed as the result of coup rely on Article 4(1) to derogate. These approaches are then

compared to the rules under the Inter-American Court of Human Rights, which sets a lower threshold for derogation. With reference to Turkey the author argues the Turkish government has failed to prove the measure is necessary and proportional. The fact a coup has occurred in Turkey does not justify derogation measures – the method and impact of coups differ significantly and may develop over time requiring constant re-evaluation of the state of emergency in light of applicable legal criteria.

Jessica Mecellem, 'Human Rights Trials in an Era of Democratic Stagnation: The Case of Turkey' (2018) 43 Law & Social Inquiry, 119

The author considers the paradox between increasing trials for human rights crimes (in the context of the Kurdish issue) in Turkey and the worsening democratic situation. Discussing Turkish domestic human rights trials (re crimes committed against the Kurds) in the context of transitional justice, the author considers the unique situation in which increasing numbers of human rights trials do not necessarily go hand in hand with democratization. The Turkish case indicates that certain conditions (rivalries between political elites) can lead to a justice cascade in countries that are not democratizing. In these situations human rights trials provide important counter-narratives and have the potential to be an important political tool.

Başak Çalı, 'Will Legalism be the End of Constitutionalism in Turkey?' Verfassungsblog, 22 January 2018 available at: <https://verfassungsblog.de/will-legalism-be-the-end-of-constitutionalism-in-turkey/>

This article discusses the first instance ordinary court decisions in the cases of Mehmet Altan and Sahin Alpay in which the court found that the fundamental rights guarantees interpreted by the Turkish Constitutional Court do not comply with ordinary domestic law. Discussing the four grounds for refusal to implement the Constitutional Court's decision, Çalı questions whether the first instance courts are developing a doctrine of immunity from constitutional review for detention practices.

Massimo Frigo, 'The Constitutional Conflict in Turkey: Is There Still an Effective Remedy for Human Rights Violations?' Opinio Juris, 26 January 2018 available at: <http://opiniojuris.org/2018/01/26/the-constitutional-conflict-in-turkey-is-there-still-an-effective-remedy-for-human-rights-violations/>

This article considers the effect of the dispute between first instance ordinary courts and the Constitutional Court on the availability of effective remedies in Turkey. Referencing the cases of Mehmet Altan and Sahin Alpay, in which the Istanbul Criminal Courts refused to apply the constitutional court's ruling ordering remedies for a breach of the right to liberty, Frigo argues that the individual application system can no longer be regarded as a presumptively effective remedy.

Dilek Kurban, 'Think Twice before Speaking of Constitutional Review in Turkey' Verfassungsblog, 20 February 2018, available at: <https://verfassungsblog.de/think-twice-before-speaking-of-constitutional-review-in-turkey/>

Kurban calls into question the application of the rule of law and the availability of an effective remedy arguing that the ECtHRs principle of subsidiarity in relation to Turkey is futile. Highlighting that major victories (such as the release of journalist Deniz Yucel), were the result of diplomacy rather than application of the rule of law, the article outlines with reference to a number of cases and the dismissal of two judges from the court the reluctance of the Constitutional Court to exercise its power of review.

Tolga Sirin, 'Is the Turkish Constitutional Complaint System on the Verge of a Crisis?' *Verfassungsblog*, 27 January 2018 available at: <https://verfassungsblog.de/is-the-turkish-constitutional-complaint-system-on-the-verge-of-a-crisis/>

This article assesses the decisions of the Turkish Constitutional Court in the cases of Mehmet Altan and Sahin Alpay. Specific focus is paid to the way in which the decisions diverge from judgements of a similar nature of the ECtHR. Specifically, the violations of freedom and security did not concern the long duration of pre-trial detention but rather a “strong suspicion” determination concerning the first decision ordering detention (i.e. an Article 5(1) violation rather than Article 5(3)). Additionally, the decision was made on an on-going case. The author argues this focus explains the first instance courts reaction and other criticisms that found the court to be acting as a “super-appeal court.”

Michael O'Boyle, 'Can the ECtHR provide an effective remedy following the coup d'état and declaration of emergency in Turkey?' *EJIL: Talk!* 19 March 2018, available at: [www.ejiltalk.org/can-the-ecthr-provide-an-effective-remedy-following-the-coup-detat-and-declaration-of-emergency-in-turkey/](http://www.ejiltalk.org/can-the-ecthr-provide-an-effective-remedy-following-the-coup-detat-and-declaration-of-emergency-in-turkey/)

The author considers the arguments that are being raised against the court's ability to deliver an effective remedy. Firstly, the court has rejected four applications regarding dismissal of judges and civil servants (*Mercan, Zihni, Catal and Koskal*). In response to this it is argued that a lack of trust in state institutions is not a valid excuse to not pursue domestic remedies. It is not possible for the Court to assume that there are gross violations when the issues have not yet been determined by the court – there needs to be clear evidence that the system is not functioning (as opposed to repeated claims) to challenge effectiveness. The author argues this evidence is only beginning to emerge now – not when these cases were litigated. The second strand of arguments against the Court are political – namely that the decisions to reject application are politically motivated by the need to keep Turkey an ally, and due to the principle of subsidiarity. The author refutes this claim by pointing to the independent nature of the Court.

Dilek Kurban, 'A Love Letter from Strasbourg to the Turkish Constitutional Court' *Verfassungsblog*, 27 March 2018, available at: <https://verfassungsblog.de/a-love-letter-from-strasbourg-to-the-turkish-constitutional-court/>

Kurban critically reflects on the ECtHR decisions of Alpay and Altan, arguing that the prioritization of these cases “serves to put forth a new criteria for the assessment of domestic remedies in Turkey: lower courts' abidance by the TCC judgments.” The selection of these two cases from another 10 applications (representing 17 journalists) is also questioned. In addition, the failure of the Court to rule yet on the imprisonment of officials from the People's Democratic Party is also queried. With regard to the decisions themselves, the Court's failure to take into account or assess the broader political context and the state of emergency rule is also criticised.

Senem Gurol, 'Resuscitating the Turkish Constitutional Court: The Alpay and Altan Judgments' Strasbourg Observers, 3 April 2018, available at: <https://strasbourgobservers.com/2018/04/03/resuscitating-the-turkish-constitutional-court-the-ecthrs-alpay-and-altan-judgments/>

Gurol argues that by finding violations of Articles 5(1) and 10, and relying on the reasoning of the Turkish Constitutional Court, the decisions in Alpay and Altan serve to resuscitate the system of human rights protection in Turkey. By prioritising these cases, the ECtHR "accelerated the domestic proceedings and sent the necessary signals to the national authorities to perform their duties. As a result the TCC [broke] its protracted silence since the coup and delivered its judgments in the applicants' favour," something they would not have dared to do in the political climate without the ECtHR acting. Gurol also argues that the judgments do not ignore the wider political context and that the Court gives clear warnings to domestic authorities that certain standards of effectiveness exist and are open to further review in the future.

Leighann Spencer, 'The ECtHR and Post-coup Turkey: Losing Ground or Losing Credibility' Verfassungsblog, 17 July 2018, available at: <https://verfassungsblog.de/the-ecthr-and-post-coup-turkey-losing-ground-or-losing-credibility/>

Spencer reviews the statements of the Council of Europe and the Turkish Media Law Studies Association (MLSA) released after a meeting in May 2015 convened to discuss criticisms of the European Court of Human Rights in relation to the high number of rejected applications and controversial decisions such as Köksal and Bora. The Council of Europe stated it is "aware of a common perception among NGOs that the ECtHR is not giving adequate attention to human rights issues in Turkey, but believes this is based on a lack of information and misconceptions" and reiterates that they have the right to reject applications. Referencing the Sahin Alpay case, it is stated that the court is not barred from reviewing the domestic avenue in the future. The MLSA response comments on the length of pre-trial detention and the practical viability of domestic avenues. Taking these statements together, Spencer argues "in moving forward, the CoE must reconsider the criteria of a viable domestic avenue; at the very least, explain the circumstances in which the State of Emergency Commission and Constitutional Court could be re-evaluated."

Tolga Şirin, 'Governing with Emergency Decree Law without Review: A Turkish Case' Mamara University Faculty of Law, available at: [https://www.academia.edu/36820242/T.\\_Sirin-Turkey1.docx](https://www.academia.edu/36820242/T._Sirin-Turkey1.docx)

Şirin's article assesses the constitutional structure in relation to declaration of a state of emergency and the passing of emergency laws. Şirin concludes that the regime is in general conformity with international human rights standards, however raises issues such as the non-judicial reviewability of declarations and emergency decrees with the force of law by the Constitutional Court. With relation to the former, Şirin highlights the fact that the Court does not consider decisions for declaration of a state of emergency as a procedures that affect fundamental rights and freedoms and therefore does not perform constitutionality review of the declaration and of the "parliamentary decision" approving it. With relation to emergency decrees, it is described how in accordance with new case law emanating from the Constitutional Court that scrutiny is left to the political review of the parliament and until after these norms consequently become a statute. Practically, however, the parliament does not debate decrees during the state of emergency leading to a lack of constitutional protection. Şirin highlights the importance of the ECtHR in this regard to mitigate this risk.