



Submission to the 132nd Session of the UN Human Rights Committee

28 June – 23 July 2021

For the LOIPR to be considered in relation to Turkey

Submitted by the International Bar Association's Human Rights Institute

Introduction

1. The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The International Bar Association's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

IBAHRI in Turkey

2. The IBAHRI has closely monitored the human rights situation in Turkey through trial observations of human rights defenders, training and technical assistance to legal professionals, advocacy on the independence of lawyers and judges, and fair trial standards, and has published reports on systematic human rights violations and attacks against the rule

of law.¹ This submission builds on the data collected by the IBAHRI, including through its local partners and consultants, as well as by the United Nations and civil society organisations, and it is aimed at highlighting issues of serious concerns and alarming gaps related to the human rights legal framework of Turkey and violations by the Turkish government.

Independence of the Judiciary (Articles 2(3) and 14, ICCPR, General Comment No 32)

3. The lack of judicial independence is persistent and widespread in Turkey, particularly through the erosion of the separation of powers between the judicial and the executive branch.² The alarming and sustained interference of the executive branch in the judicial process, following the 2016 coup attempt, is reflected in the widespread and systematic persecution of judges and prosecutors, and the arbitrary appointment of judges. The judiciary is effectively controlled by the executive and plays a central role in the persecution of political opponents, with many judges operating in fear of reprisal. This includes dismissals and arrests of judges and prosecutors resulting in low security of tenure, executive interference in the decisions of judges and prosecutors, and a lack of recourse to an effective remedy. This in turn has weakened the judicial system's capacity to protect human rights, uphold the rule of law and ensure an effective remedy for victims of human rights violations. An independent judiciary is a fundamental pillar of the rule of law, key for the effective functioning of democracy and access to justice for all citizens.
4. Numerous legislative and constitutional amendments have given the government of Turkey unprecedented control over the judiciary and prosecutorial authorities.³ The Turkish Constitution establishes the rule of law (Article 2), the right to a fair trial (Article 36), and judicial

¹ See, e.g., ICJ. *Turkey: ICJ and IBAHRI release report highlighting trial violations of Gezi Park defendants and call for immediate release of Osman Kavala* (16 December 2020) available at: <<https://www.icj.org/turkey-icj-and-ibahri-release-report-highlighting-trial-violations-of-gezi-park-defendants-and-call-for-immediate-release-of-osman-kavala/>>; *Joint Oral Statement to the 45th Session of the UN Human Rights Council* (28/29 September 2020) available at: <<https://www.ibanet.org/MediaHandler?id=d8c4db16-da92-4b6b-99f4-8934fae3cf3c>>; IBAHRI. *IBAHRI co-signs statement urging Turkish authorities to end persecution of lawyers* (26 June 2020) available at: <<https://www.ibanet.org/article/74efa3e6-40c3-4224-bc7d-e24fcc3a05c2>>; IBAHRI. *IBAHRI condemns persecution of human rights lawyer Ramazan Demir in Turkey* (13 February 2019) available at: <<https://www.ibanet.org/article/f61c45b8-38d6-4615-8509-e687ae4750ad>>; IBAHRI. *IBAHRI statements on Turkey at the 37th Session of the Human Rights Council* (2018) available at: <<https://www.ibanet.org/article/96747C39-5F19-433B-8100-03B1937CD777>>; The Law Society. *Law Society, IBAHRI and BHRC advocate on behalf of Turkish lawyers* (23 August 2018) available at: <<https://www.lawsociety.org.uk/en/topics/international/law-society-ibahri-and-bhrc-advocate-on-behalf-of-turkish-lawyers>>.

² <https://www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf>

³ See European Parliament. 'Resolution on the current human rights situation in Turkey' (8 February 2018) 2018/2527(RSP).

independence (Article 138). In 2010 and 2014, several amendments were made that undermined the Judiciary and regulations of the legal profession,⁴ giving the Minister of Justice authority to determine the composition of the Council for Judges and Prosecutors (HSK) and conduct disciplinary investigations against its members.⁵ Such executive influence was later deemed unconstitutional.⁶ Furthermore, 12 of the 15 judges of the Constitutional Court can now be appointed by the President, in contravention of Article 159 of the Constitution. Law 7145, adopted in July 2018, with the stated aim of enabling an effective fight against “terrorist” organizations after the end of the emergency rule, extended the possibility for dismissal for a further three years, on vague grounds, thus expanding the scope for judges and prosecutors to be dismissed arbitrarily.⁷ These constitutional and legislative amendments erode judicial and prosecutorial independence,⁸ as well as violate the right to a fair trial, thereby eliminating safeguards against other human rights abuses.

5. The HSK decides on the admission of judges and prosecutors, appointments, transfers, promotion, and disciplinary proceedings.⁹ Additionally, the number of HSK members was reduced from 22 to 13, seven of whom are elected by Parliament and six appointed by the President. Judges and prosecutors no longer elect any members of the HSK. This has resulted in the arbitrary targeting of judicial officers influenced by the Executive branch, which now has overwhelming power to determine the composition of the judiciary and initiate disciplinary probes and dismissals of judges and prosecutors. Given the executive influence on the HSK and the courts and their lack of independence, lawyers, prosecutors, and judges are denied an effective appeal mechanism. This has allowed for their dismissals to go unchecked, without adequate accountability.

⁴ Law No. 5982 and Law No. 6524 had, respectively, amended Article 159 of the Constitution and four laws regulating the judiciary. Law No. 6087 on the High Council of Judges and Public Prosecutors; Law No. 2802 on Judges and Public Prosecutors; Law No 2992 on the Organization and Duties of the Ministry of Justice; and Law No 4954 on the Turkish Justice Academy.

⁵ Constitutional Court, Judgment no. 2014/81 of 10 April 2014.

⁶ Thomas Giegerich ‘Report on the Reform of the High Council of Judges and Public Prosecutors by Law No. 6524 of February 2014’ (18 December 2014) p. 4 <<http://jean-monnet-saar.eu/wp-content/uploads/2015/03/Report052014.pdf>>

⁷ <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>

⁸ Council of Europe, Human Rights Commissioner, Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders, https://www.coe.int/fr/web/commissioner/view/-/asset_publisher/ugj3i6qSEkhZ/content/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rightsdefenders?_101_INSTANCE_ugj3i6qSEkhZ_languageId=en_GB

⁹ Turkish Constitution, Article 159.

6. As of March 2020, 6,994 Ministry of Justice employees had been dismissed in a bid to remove all those suspected to be linked to the 2016 attempted coup.¹⁰ By June 2019, over 4,500 judges and prosecutors had been dismissed,¹¹ with approximately 500 imprisoned. Consequently, at least 45% of roughly 21,000 judges and prosecutors in Turkey now have three years of experience or less and are ill-equipped to fairly adjudicate the rising number of coup-related prosecutions.¹² This in turn has contributed to the failure in implementing the right to a fair trial, with defence lawyers reporting that the introduction of new judges to cases has proven detrimental to accused persons.¹³
7. On 21 February 2020, thirty bar associations called for the resignation of the members of the HSK over its systematic intervention into the judicial process and investigations and (re)detention of individuals, particularly those detainees recently acquitted and released or pending release, considering such investigations in violation of judicial independence under the Turkish Constitution.¹⁴ The latest instance was the initiation of an investigation against, and replacement of, three judges following their acquittal of Osman Kavala in conformity with the judgment of the European Court of Human Rights.¹⁵ This abuse of the powers of the HSK in pursuing political objectives in this case coincided with critical comments made by the Turkish President.¹⁶ The Kavala case, which has come to symbolise the crackdown on democratic values in Turkey, has experienced several Executive interferences in the judicial process, undermining judicial independence and the right to a fair trial. The IBAHRI and the International Commission of Jurists (ICJ) called on the HSK to immediately stop these proceedings, which constitute a *“further sign of the grave decline of the rule of law in Turkey”* and appear to be a *“direct interference in their decision-making power and will have a chilling effect on the independence of all members of the judiciary”*.¹⁷ Following his latest hearing on 21 May 2021, Osman Kavala’s detention has been extended, with his hearing postponed, until 06 August 2021. The organisations continue to monitor proceedings in this case.

¹⁰ <https://www.reuters.com/investigates/special-report/turkey-judges/>

¹¹ <https://repo.gchumanrights.org/bitstream/handle/20.500.11825/1076/Bilgili.pdf?sequence=1&isAllowed=y>

¹² <https://www.reuters.com/investigates/special-report/turkey-judges/>

¹³ Ibid.

¹⁴ <https://arrestedlawyers.org/2020/02/22/bar-associations-call-for-resignation-of-cpjhsk/>

¹⁵ Ibid.

¹⁶ <https://www.hrw.org/news/2020/06/02/submission-human-rights-watch-international-commission-jurists-and-turkey-human>

¹⁷ Full report can be accessed here: www.icj.org/wp-content/uploads/2020/12/Turkey-GeziParkTrial-TrialObservation-Publications-Reports-2020-ENG.pdf

8. The prosecutors of Kavala, Hasan Yılmaz and İrfan Fidan, have since been promoted following the second arrest and indictment of Kavala. Yılmaz was appointed as Deputy Minister of the Ministry of Justice, and as an ex officio member of the 13-person HSK. Fidan was appointed as the new member of the Constitutional Court, after a 20-day tenure at the Court of Cassation, whilst judges on average are ordinarily appointed to the Constitutional Court after a 9.5-year tenure. Furthermore, Yılmaz was among the prosecutors presiding over the case against several journalists from the Cumhuriyet newspaper¹⁸ that was also widely criticised as a political trial, and he has detained 146 lawyers during his term as an Istanbul prosecutor.¹⁹ These promotions give credibility to concerns that compliance with orders from the Executive branch (which demonstrate support for the spurious indictments) result in reward, sending a strong message to other prosecutors in the state. Bar associations, lawyers, and scholars have expressed concern regarding highly subjective application procedures for prosecutors and judges, which they warned opened the door to political litmus tests in the hiring process.

Right to a Fair Trial (Article 14, ICCPR, General Comment No. 32)

9. Despite the Turkish Constitution providing for the right to a fair public trial, many bar associations and human rights groups have asserted that increasing executive interference with the judiciary and actions taken by the government through state of emergency provisions jeopardised this right. The acute lack of judicial independence has severely undermined an accused's right to a fair trial. Broad leeway granted to prosecutors and judges challenges the requirement to remain impartial, and judges' inclination to give precedence to the state's interests contributed to inconsistent application of laws.

10. Following the HSK's removal of the judges who acquitted Kavala, the new judges re-detained the accused on the same grounds, on 09 March 2020,²⁰ leading to double jeopardy, a severe violation of the right to a fair trial and a direct contravention of Article 14(7) of the ICCPR. This demonstrates the active interference in politically charged cases, despite well-established and internationally recognised legal doctrines. Furthermore, the lack of implementation and enforcement of decisions by the European Court of Human Rights (ECtHR) has left many

¹⁸ www.ibanet.org/article/74efa3e6-40c3-4224-bc7d-e24fcc3a05c2

¹⁹ <https://www.duvarenglish.com/human-rights/2020/10/18/prosecutor-who-penned-2nd-kavala-indictment-promoted-as-deputy-justice-minister>

²⁰ <https://www.expressioninterrupted.com/osman-kavala/>

victims of human rights violations and members of the judiciary without recourse after having exhausted domestic and regional remedies.

11. On the public nature of trials, the State increasingly used a clause allowing closed courtrooms for hearings and trials related to security matters, such as those related to “crimes against the state.” Court files, which contain indictments, case summaries, judgments, and other court pleadings, were closed except to the parties to a case, making it difficult for the public, including journalists and watchdog organisations, to obtain information on the progress or results of a case. In some politically sensitive cases, judges restricted access to Turkish lawyers only, limiting the ability of domestic or international groups to observe some trials.
12. Defendants have the right to consult an attorney of their choice in a timely manner, although legal advocates have asserted that the government coerced defendants to choose government-appointed lawyers. Judges may restrict defence lawyers’ access to their clients’ court files for a specific catalogue of crimes (including crimes against state security, organised crime, and sexual assault against children) until the client is indicted. Furthermore, defendants have the right to be present at their own trial. However, observers and human rights groups noted that in some high-profile and politically charged cases, these rights were not afforded to defendants. Individuals particularly from the southeast were increasingly held in prisons or detention centres far from the location of the alleged crime and appeared at their hearing via video link systems. Some human rights organisations reported that hearings sometimes continued in the defendant’s absence when video links purportedly failed.²¹
13. Observers noted that prosecutors and courts often failed to establish evidence to sustain indictments and convictions in cases related to supporting terrorism, highlighting concerns regarding respect for due process and adherence to credible evidentiary thresholds. In numerous cases, authorities used secret evidence or witnesses to which defence attorneys and the accused had no access or ability to cross-examine and challenge in court, particularly in cases related to national security. The government occasionally refused to acknowledge secret witnesses.²²

²¹ <https://freeturkeyjournalists.ipi.media/analysis-use-of-courtroom-video-link-violates-turkey-journalists-rights/>

²² <https://www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf>

14. Regarding the Kavala case, it is apparent that the ECtHR ruling on its unlawfulness has had little substantial consideration by the presiding judges. This has been further demonstrated by the merger of the espionage case and the Gezi park trial on the same evidence and without due consideration to the merits of the case. Judicial decisions have come to represent a rubber-stamping process based on the indictments and requests of prosecutors. This is the case with the continued detention of Kavala despite overwhelming evidence exonerating him, as well as the violation of Article 16/2 of the Code of Criminal Procedure in the merger of the two cases.
15. Following a trial observation, the ICJ and IBAHRI found the Kavala trial to be unfair.²³ This was based on four principles/rights being violated: the principle of legality and lawfulness of the prosecution; the right to fair trial before a competent, independent and impartial tribunal established by law; the right to be presumed innocent until proved guilty according to the law; and the right to equality of arms and to test evidence through cross-examination of witnesses.

Lawyers, Human Rights Defenders and Journalists at Risk (Articles 9, 14 and 22 of the ICCPR, General Comments No 13)

16. Law No 1136 of 1969 (Code of Lawyers or Attorney Law), as amended in 2001, classifies the legal profession as an independent public service and liberal profession (Article 1). The Presidents of all Turkish bar associations, as well as the President of the Union of Turkish Bar Associations, have a duty to defend the independence of the legal profession (Articles 97.6 and 123.6).²⁴ Despite legislative safeguards, Turkish authorities have severely eroded the independence of the legal profession, particularly through the targeting²⁵ and criminalisation of legal and human rights activities and reporting through legislative amendments and the misuse of anti-terrorism laws²⁶.

²³ <https://www.icj.org/turkey-icj-and-ibahri-release-report-highlighting-trial-violations-of-gezi-park-defendants-and-call-for-immediate-release-of-osman-kavala/>

²⁴ Law No 1136, also known as the Code of Lawyers or the Attorney Law www.ankarabarassociation.org/doc/Code%20of%20Lawyers.pdf.

²⁵ www.ibanet.org/article/d8867226-285e-4884-ba7d-c2b098a0d8ca

²⁶ www.ibanet.org/article/0a53f27b-5dee-45d1-8c2e-4c7dd13db6a7

I) Anti-Terrorism and National Security

17. “Terrorism”-related cases have become concomitant with the prosecution of peaceful dissent, freedom of expression and association, and other politically charged cases.²⁷ There is a pervasive pattern of courts convicting people of terrorism crimes on the basis of their lawful activities and without providing evidence of material connection to armed groups, further supported by the exceptionally large number of pre-trial detainees in prison (43.1% of the total prison population).²⁸
18. The definition of “terrorism” in Turkey’s anti-terrorism law is overly broad, vague and lacks the level of legal certainty required by international human rights law. Fundamentally, it defines “terrorism” by its political aims rather than its tactics.²⁹ Provisions criminalising membership of a terrorist organization have also led to abuses. For example, Article 220/6 and 220/7 of the Turkish Penal Code allow the state to punish individuals as though they were members of a “terrorist” organization, even when they have not been proven in court to be members.³⁰ Similarly, according to Article 2 of the Anti-Terrorism Law, persons can be found guilty of membership to a terrorist organization without being a member of the organization if found to have committed a crime *‘in the name of such an organization’*.³¹ This is further reinforced by Law No. 7262, which entered into force on 31 December 2020. It aimed at preventing the financing of terrorism and weapons proliferation, but the provisions grossly exceed this by enabling the Interior Ministry to target non-governmental groups’ legitimate and lawful activities, including online fundraising, and the right to association of their members.³²

²⁷ <https://www.amnesty.org/download/Documents/EUR4408342019ENGLISH.pdf>

²⁸ <https://www.prisonstudies.org/country/turkey>

²⁹ Anti-Terrorism Law No. 3713, Article 1: "Terrorism is any kind of act done by a person or persons belonging to an organization with the aim of changing the characteristics of the Republic as defined in the Constitution, the political, legal, social, secular and economic system, damaging the indivisible unity of the State with its territory and nation, endangering the existence of the Turkish State and Republic, weakening, destroying or seizing State authority, eliminating fundamental rights and freedoms, damaging the internal and external security of the State, public order or general health by means of coercion and violence; pressure, intimidation, deterrence, suppression or threats.

³⁰ Article 220/6 of the Penal Code punishes those who “commit crimes in the name of a [terrorist] organization and 220/7 criminalizes “knowingly and willingly assisting a [terrorist] organization

³¹ Law No. 3713, Article 2 defines a “terrorist” offender as “any person, who is a member of organisations formed to achieve the aims specified under Article 1, and who commits a crime in furtherance of these aims in concert with others or individually, or who is a member of the organisations even if s/he does not commit the targeted crime. The second paragraph of the Article continues that “persons, who commit a crime in the name of the organisation are also considered as terrorist offenders, even if they are not members of a terrorist organisation.

³² <https://www.hrw.org/node/377519/printable/print>

19. These “anti-terrorism” provisions have frequently been brought against individuals, who advocate political ideas that may be shared by groups that authorities describe as “terrorist”, even when the prosecuted individuals have not themselves advocated violence, hatred, or discrimination, and are not prosecuted for direct involvement in violent acts.
20. Reports by the Arrested Lawyers Initiative indicate that, since 2016, over 1,600 lawyers have been arrested and arraigned in court, with an additional 615 being remanded in pre-trial detention.³³ 450 lawyers have been sentenced to prison sentences on charges mostly related to membership of a terrorist organization,³⁴ and/or spreading terrorist propaganda, amounting to a combined 2,786 years in prison. This is an average of 18.6 years imprisonment per lawyer.³⁵ The presidents of various bar associations are among those prosecuted, such as Fevzi Kayacan (Konya Bar Association), Orhan Öngöz (Trabzon Bar Association), Cemal Acar (Siirt Bar Association), Ismail Tastan (Gumushane Bar Association).
21. Additionally, there is little political will to reform the pervasive model of arbitrary arrests and detention of human rights defenders. The crackdown on lawyers and human rights defenders has continued unabated after the introduction of the [Human Rights Action Plan](#) on 02 March 2021, which is to be implemented over a two-year period. Less than three weeks after the introduction of the Action Plan, Öztürk Türkdoğan, a prominent Turkish human rights lawyer, chair of the Human Rights Association,³⁶ committee member of the Human Rights Foundation (HRFT) and member of the Ankara Bar Association, was arbitrarily arrested.³⁷ He was charged with “membership in an illegal armed organisation” based on evidence that was within the scope of his professional activities as a lawyer.³⁸ The Turkish government had consulted the Human Rights Association about the Human Rights Action Plan, revealing deep-rooted disregard for its sincere and effective implementation beyond use as political leverage.
22. Furthermore, many journalists and media workers have been imprisoned and, in many investigations and prosecutions, journalistic work is being presented as a “terrorism-related

³³ <https://arrestedlawyers.org/2021/01/18/report-update-mass-prosecution-of-lawyers-in-turkey-2016-2021/>

³⁴ Following the coup, terrorist organisation mainly referred to affiliation with the Fethullahist Terrorist Organization (FETÖ) and the Kurdistan Workers’ Party (PKK) but has been gradually expanded to include organisations that carry out human rights work, particularly targeting such organisation through unsupported accusations of affiliation with FETÖ and the PKK. See also <https://ihd.org.tr/en/joint-statement-on-the-arrest-of-lawyers-in-turkey/>

³⁵ <https://arrestedlawyers.org/2021/01/18/report-update-mass-prosecution-of-lawyers-in-turkey-2016-2021/>

³⁶ The Human Rights Association (İHD) is the oldest and largest human rights organization in Turkey.

³⁷ <https://lawyersforlawyers.org/en/arrest-of-ozturk-turkdogan/>

³⁸ <https://ihd.org.tr/en/ihd-statement-on-ozturk-turkdogans-arrest-and-release/>

offence”.³⁹ Turkey is the second worst jailer of journalists, behind China, with 37 jailed in 2020,⁴⁰ bringing the total to 87.⁴¹ An example of this is the recent retrial of RSF representative, Erol Önderoğlu alongside two other defendants, Şebnem Korur Fincancı, the chair of the Turkish Medical Association trade union and a columnist for daily Evrensel, and Ahmet Nesin, a columnist for the online newspaper Artı Gerçek. The human rights defenders are facing “terrorist propaganda” charges and face up to 14 years in prison under the Anti-Terror Law No. 3713 and the Penal Code of Turkey.⁴² In May 2016, numbers of journalists, academics and artists joined a campaign to symbolically act as co-editor of a pro-Kurdish daily newspaper, Özgür Gündem to protest the Turkish authorities’ misconducts. A month later, Erol Önderoğlu, Şebnem Korur Fincancı and Ahmet Nesin were arrested ‘on incitement and terrorism charges’.⁴³ The three were briefly detained before release, pending trial. In 2019, the three defendants were acquitted after three years of persecution; however, the Turkish government appealed against the decision and subsequently, on 3 November 2020, the 3rd Penal Chamber of the Court of Appeals of Istanbul reversed the previous ruling and allowed retrial. As a result, once again the three individuals are being tried on charges of ‘propagandizing for a terrorist organization’, ‘openly inciting to commit crimes’ and ‘praising the crime and the criminal’.⁴⁴

II) Bar Associations

23. In recent years, bar associations in Turkey have played a critical role in defending fair trial rights and promoting and protecting human rights (including by providing vital support to its membership) and continues to be amongst the country’s remaining apolitical institutions.

24. Bar associations have also been the target of Turkish authorities:

- In 2018, the government created a State Supervisory Board to monitor, oversee and investigate bar associations;

³⁹ Amnesty International, Journalism is not a crime: Crackdown on media freedom in Turkey, Index number: EUR 44/6055/2017, May 2017, <https://www.amnesty.org/download/Documents/EUR4460552017ENGLISH.PDF>

⁴⁰ <https://www.theguardian.com/media/2020/dec/15/china-jails-the-most-journalists-for-second-year-running>

⁴¹ <https://www.hrw.org/world-report/2021/country-chapters/turkey>

⁴² Committee to Protect Journalist ‘Turkey to begin retrial of RSF representative, other press freedom advocates on terrorism charges’, 1 February 2021, <https://cpj.org/2021/02/turkey-to-begin-retrial-of-rsf-representative-other-press-freedom-advocates-on-terrorism-charges/>

⁴³ Committee to Protect Journalist, ‘Turkey Crackdown Chronicle: Week of June 26’, 27 June 2016 <https://cpj.org/2016/06/turkey-crackdown-chronicle-week-of-june-26/>

⁴⁴ Reporters without Borders (RSF), ‘Joint statement in support of Erol Önderoğlu, facing 14 years in prison’, 02 February 2021, <https://rsf.org/en/news/joint-statement-support-erol-onderoglu-facing-14-years-prison>

- The Ministry of Justice has refused to issue licenses for jurists under investigation for terrorist related crimes who wish to join bar associations;
- Several key members of bar associations have been arbitrarily detained⁴⁵; and
- Emergency decrees have closed down more than 30 lawyer's association and law societies; their assets were confiscated, without justification or compensation.

25. The most recent attack against bars came in July 2020 when the Turkish parliament adopted a law that fundamentally transformed the structure of bar associations across the country. Prior to the legislation's passage, only one bar association was allowed to represent the lawyers in each province. In provinces with over 5,000 lawyers, a group of at least 2,000 lawyers can establish alternative bar associations. In big cities such as Istanbul, Ankara, and Izmir, several bar associations could be established. By opening the provinces to additional bar associations, the new law allows for the artificial creation of competitors, diluting the voices of existing organizations within the Union of Turkish Bar Associations. The new law also threatens to have a strong impact on regions with especially strong and independent bar associations; and greatly reduce the representation of the largest bar associations at the national level within the Union of Turkish Bars, the Ankara-based umbrella body, with significant financial resources it controls and distributes to provincial bars⁴⁶. The IBAHRI strongly condemned the amendments arguing that it was a new effort to fragment professional bodies and use information about political affiliation for potential persecution of their members.⁴⁷

III) Shrinking Civic Space

26. There has been a severe deterioration of the right to association by members of civic society, particularly when it comes to associations with human rights institutions and organisations. A limited number of domestic and international human rights groups operated throughout the country, although many faced continued pressure from the government. Some had difficulty registering as legal entities with the Ministry of Interior. Others faced government obstruction and restrictive laws regarding their operations. Human rights groups reported the government was sometimes unresponsive to their requests for meetings and did not include their input in

⁴⁵ Paragraph 13, above.

⁴⁶ www.reuters.com/article/us-turkey-lawyers-idUSKCN24C08L

⁴⁷ www.ibanet.org/article/DCF59080-F5AE-437A-BD2F-2190D703A98B

policy formation. Human rights organizations and monitors as well as lawyers and doctors involved in documenting human rights abuses occasionally faced detention, prosecution, intimidation, and harassment, and their organizations faced closure orders for their activities.⁴⁸

27. By law, persons organizing an association do not need to notify authorities beforehand, but an association must provide notification before interacting with international organizations or receiving financial support from abroad and must provide detailed documents on such activities. Representatives of associations stated this requirement placed an undue burden on their operations. Human rights and civil society organizations, groups promoting lesbian, gay, bisexual, transgender, and intersex (LGBTI) rights, and women's groups in particular, stated the government used regular and detailed audits to create administrative burdens and to intimidate them through the threat of large fines.⁴⁹ For instance, Turkey's Human Rights Association (HRA) reported that continued investigations and audits during the last four years have created immense pressure on the organization. In February the government launched a three-week audit of the HRA.
28. The HRA reported that its members have collectively faced a total of more than 5,000 legal cases since the group's establishment and more than 300 legal cases continuing at the end of 2020. These cases were mostly related to terror and insult charges. The HRA also reported that executives of their provincial branches were in prison. Others faced continued threats of police detention and arrest.
29. The harassment, detention, and arrest of many leaders and members of human rights organizations resulted in some organizations closing offices and curtailing activities and some human rights defenders self-censoring. For example, the case against former Amnesty International honorary chair Taner Kilic and 10 other human rights defenders continued in appeals court. Authorities charged the defendants with "membership in a terrorist organization" or "aiding a terrorist organization without being a member," largely stemming from attendance at a 2017 workshop, "*Protecting Human Rights Advocates--Digital Security*," held on Istanbul's Buyukada Island. On 3 July 2020, an Istanbul court convicted four of the human rights activists on terrorism-related charges.

⁴⁸ www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf

⁴⁹ <https://www.fidh.org/en/issues/human-rights-defenders/turkey-new-law-seriously-threatens-freedom-of-association-and-must-be>

30. Furthermore, on 27 December 2020, the parliament adopted new counter-terrorist financing legislation entitled “Preventing Financing of Proliferation of Weapons of Mass Destruction” granting the Ministry of Interior powers to audit, suspend staff and governing board members, and temporarily shut down operations of NGOs. The legislation prompted strong concern among civil society groups. Nearly 700 civil society organizations signed a petition opposing the new law, noting it would expand Ministry of Interior “political tutelage,” severely restrict fundraising, and allow for rapid closure of civil society groups without judicial review. Bar association and other civil society organization representatives reported that police sometimes attended organisational meetings and recorded them, which the representatives interpreted as a means of intimidation.

IV) National Human Rights Action Plan

31. On 16 March 2021, Turkish President, Recep Tayyip Erdogan unveiled a National Human Rights Action Plan (‘the Action Plan’) designed to strengthen the rule of law and judicial independence in the country. The Plan includes respect for the presumption of innocence and a swifter judicial process to reduce the length of pre-trial detention, considering a future new constitution that he has promised to adopt by the time Turkey marks its centenary in 2023.⁵⁰

32. The Action Plan, however, has been heavily criticised by human rights defenders, legal experts and politicians for its lack to incorporate any concrete action as well as general measures to ensure compliance with the international human rights framework. The ambiguity of the scope of some of the measures announced by President Erdogan, regarding strengthening freedom of expression and press freedom, create doubt on the implementation of the plan. Accordingly, the overarching aims, including the protection and promotion of freedom of expression, are widely and severely criticised on the grounds that they are ambiguous and abstract, and not solution oriented.⁵¹ The Action Plan does not commit to concrete actions to prevent politically motivated and punitive prosecutions and convictions of journalists’, lawyers, human rights defenders and many others for exercising their rights.

⁵⁰ France 24. Erdogan unveils Turkish human rights action plan, 2 March 2021, www.france24.com/en/live-news/20210302-erdogan-unveils-turkish-human-rights-action-plan

⁵¹ IFEX; “Makeup on a bedridden patient”: Rights experts assess Turkey’s new Human Rights Action Plan”; March 12, 2021. <https://ifex.org/makeup-on-a-bedridden-patient-rights-experts-assess-turkeys-new-human-rights-action-plan/>

33. The Action Plan also fails to address major rights violations that have been frequently highlighted by the Council of Europe bodies and other human rights mechanisms such as the use of excessive force in dispersing peaceful demonstrations, ineffectiveness of investigations into deaths, torture and other ill-treatment by members of security forces, arbitrary arrests and pre-trial detention, including of journalists; or the composition of the Council of Judges and Prosecutors (HSK) which in large part facilitates the control and political influence of the executive over the judiciary leading to authorities bringing politically motivated charges, grossly unfair trials, convictions and sentences.
34. Measures envisaged in the new Action Plan allege to strengthen the rights to a fair trial, to freedom of expression, to peaceful assembly and association and liberty and security. However, these rights are identified either in very narrow and technical terms or listed too vaguely such as confined to reviewing the existing legislation in light of international human rights standards. Urgent legal reform is required to problematic legislation, like the Anti-Terrorism law as well as to the restrictive articles within Turkish Penal Code and require to be brought in line with international human rights standards.

Freedom of Expression and Media Freedom (Articles 19 and 22, ICCPR, General Comment No. 34)

35. Article 25 of the Turkish Constitution protects the right to freedom of thought and opinion whilst Article 26 of the Constitution provides for the freedom of expression and dissemination of thought. However, in practice, these rights are far from recognised. Turkish authorities have long argued that extraordinary measures to restrict these rights in the face of serious threats to public order and national security have been necessary. In the 2017 report by the UN Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression on his mission to Turkey, found that the laws and policies of censorship and criminalization are working to repress freedom of opinion and expression in all the places that are fundamental to democratic life: the media, educational institutions, the judiciary and the bar, government bureaucracy, political space and the vast online expanses of the digital age. He stated that the restriction exists *“despite limited evidence that the restrictions are necessary to protect legitimate interests, such as national security and public order or the rights and reputations of others. Legal and institutional pressures coupled with increasing executive control and dominance, punctuated by the constitutional amendments*

*adopted in April 2017, erode the foundations necessary for the exercise of freedom of opinion and expression”.*⁵²

I) Silencing Criticism and Dissent

36. To silence dissent, criminal investigations and prosecutions are widely implemented despite serious lack of evidence. The arbitrariness of prosecutions for alleged dissent, which often result in pretrial detention and carry the risk of lengthy prison terms has contributed to an atmosphere of self-censorship. In 2019, the IBAHRI and the Anti-Torture Initiative condemned the conviction of 11 members of the Turkish Medical Association Central Council on terrorism charges after they published two declarations critical of the Turkish authorities.⁵³ In 2020, hundreds of social media users were arrested for “provocative” posts allegedly “attempting to stir unrest” on the Covid-19 pandemic.⁵⁴
37. Under the guise of the pandemic, authorities continue to crackdown on “fake news” - Between 11 March and 21 May 2020, the Cyber Crimes Unit of the Interior Ministry alleged that 1105 social media users had made propaganda for a terrorist organization, including by ‘sharing provocative Corona virus posts’. Of these, 510 were reportedly detained for questioning.⁵⁵ Others continued to be detained and prosecuted for “sharing criminal content”.⁵⁶

II) Media Freedom

38. Despite Article 28 of the constitution providing for right to a free press, pressure and restrictions on freedom of expression continue to plague the media in Turkey, where 90% of the media is state controlled. Turkey has been ranked 153 in the 2021 World Press Freedom Index⁵⁷ and 35 out of 100 in the Freedom House Freedom on the Net report 2020⁵⁸, marking it as “not free”. Turkey remains a candidate for European Union membership and, in this context, the European Commission’s 2020 progress report⁵⁹ strongly criticized Turkey’s

⁵² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/170/40/PDF/G1717040.pdf?OpenElement>

⁵³ IBAHRI. *IBAHRI and ATI pen letter to Turkey’s President condemning conviction of 11 medical professionals* (17 May 2019) available at: <<https://www.ibanet.org/article/31B5DAA5-BB85-400C-A66F-5D444137EF70>>.

⁵⁴ www.reuters.com/article/us-health-coronavirus-turkey-idUSKBN21C1SG

⁵⁵ www.amnesty.org/en/latest/campaigns/2020/06/turkey-stifling-free-expression-during-the-covid19-pandemic/

⁵⁶ www.amnesty.org.uk/press-releases/turkey-hundreds-arrested-crackdown-critics-military-offensive-new-report

⁵⁷ <https://rsf.org/en/taxonomy/term/145>

⁵⁸ <https://freedomhouse.org/country/turkey/freedom-net/2020>

⁵⁹ https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

record for failing to uphold freedom of expression. With regard to broadcasting and the role of the Council, the European Commission focused on its harsh sanctions that stifle freedom of speech and recommended that Turkey strengthens the independence of the regulatory body and its board members to ensure media pluralism.

39. The Radio and Television Supreme Council ('RTÜK'), which is meant to act as the media watchdog in Turkey, is problematic in its creation as it lacks independence from the state. The composition of the Council leaves it vulnerable to political interference as the ruling AKP party holds the most seats. The European Union's 2018 Audiovisual Media Services Directive⁶⁰ specifies in Article 30 that regulatory bodies must be independent of respective governments. In terms of its lack of independence and impartiality, the media watchdog also fails to comply with a Council of Europe Committee of Ministers' Recommendation⁶¹ (2000) and Declaration (2008)⁶² on the independence and functions of the regulatory authorities for the broadcasting sector. The RTÜK has been known to take punitive action against independent television and radio channels that broadcast coverage critical of the President Erdogan and the Turkish government.⁶³ In 2020, the OSCE Representative on Freedom of the Media, expressed concern about bans imposed by RTÜK on several media outlets in Turkey, including Fox TV, Halk TV and Tele 1. He noted that the "*actions are an additional form of pressure on journalists and can seriously harm media pluralism and journalists' ability to report on issues of public interest. It is of utmost importance to ensure that RTÜK, as a regulatory agency, is independent, impartial and works free from any kind of political influence in line with the best international practices*". Similarly, the Basın İlan Kurumu or the Press Ad Agency, which is largely made up of government appointed representatives and is responsible for the distribution of the state advertising budget, has also imposed bans (some indefinite⁶⁴) on independent news outlets for alleged breach of regulations.

III) Safety of Journalists

40. In order to have a free and independent media, it is crucial to ensure the safety of journalists and an enabling environment for access to information in the public interest beyond the state

⁶⁰ <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>

⁶¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016804e0322

⁶² <https://rm.coe.int/09000016805d3c1e>

⁶³ <https://stockholmcf.org/punitive-actions-by-turkey-against-anti-govt-media-at-record-high-report/>

⁶⁴ <https://freeturkeyjournalists.ipi.media/call-to-end-public-advertising-ban-on-turkeys-independent-newspapers/>

narrative. Turkey has no such framework at present. The role of the media was urgently recognised globally during the Covid-19 pandemic when journalists served on the frontline of the health crisis as the crucial need for access to reliable, trustworthy and fact-checked information was identified to enhance transparency, accountability and trust, and to address the challenges of misinformation and disinformation.

41. Scores of journalists and media workers face regular attacks (online and offline) in Turkey including physical assault and harassment, intimidation⁶⁵, illegal arrests, and arbitrary detentions, often on charges of terrorism⁶⁶. In many cases, steps to address impunity for crimes against journalists through effective judicial and accountability processes remains to be seen.

IV) Social Media Takeover

42. Many have argued that “social media platforms and online news sites are among “the last bastions for critical journalism in Turkey following the state-led takeover of mainstream media”.⁶⁷
43. While Turkey lifted a ban on Wikipedia in January 2021, which had been in place since April 2017, authorities continue to block thousands of websites, including critical news websites, and order the removal of online content. Thousands of people face arrest and prosecution for their social media posts, typically charged with defamation, insulting the president, or spreading terrorist propaganda. In the context of Covid-19, the Interior Ministry announced that hundreds of people were under criminal investigation or detained by police for social media postings deemed to “create fear and panic” about the pandemic. Some of these postings included criticism of the government’s response to the pandemic.⁶⁸
44. The amendment to Law No 5651, entitled Regulation of Publications on the Internet and Suppression of Crimes Committed by means of Such Publication, was passed in Turkish parliament on 29 July 2020 and came into force on 1 October. The law obliges all social media platforms with more than a million visitors per day to have a formal presence in Turkey by

⁶⁵ <https://cpj.org/2020/09/turkey-threatens-to-seize-assets-of-exiled-journalist-can-dundar/>

⁶⁶ www.theguardian.com/world/2020/dec/23/turkey-sentences-journalist-can-dundar-27-years-jail

⁶⁷ www.hrw.org/news/2020/10/14/turkey-press-freedom-under-attack

⁶⁸ <https://www.hrw.org/world-report/2021/country-chapters/turkey>

opening an office or assigning an in-country representative,⁶⁹ and to send reports to Turkey's Information and Communication Technologies Authority (BTK) on their response to requests from administrative or judicial authorities to censor or block access to online content.⁷⁰ To this end, if social networking platforms like YouTube, Twitter, and Facebook do not comply with content removal requests from Turkish authorities within 48 hours after the request, they will be subject to harsh sanctions, including a fine of \$1.3 million fine, advertisement bans and restricted bandwidth.⁷¹

45. This is an alarming development for online free speech in Turkey which is not only being used to threaten and intimidate social media companies to diminish freedom of expression online, but also erodes the decentralised nature of the internet by holding website owners responsible for the publications of its users- a widely recognised doctrine of net neutrality. On 24 March 2021, the free speech watchdog, Article 19, had reported that Twitter has become the latest social media company to comply with the repressive law, with local NGOs criticising the company of effectively becoming an instrument of state censorship through the unfair removal of content and their complicity of human rights violations.⁷² This not only violates Article 19 of the ICCPR, but also Twitter's community guidelines, which is legally binding on its users and itself. Furthermore, it also violates the UN's guidelines on Business and Human Rights, which obliges companies to respect human rights. However, other social media companies have also opted to comply with the new laws, including Facebook, Instagram, LinkedIn, VKontakte (VK), YouTube, Dailymotion, TikTok, Spotify, Netflix, and Amazon Prime Video, which essentially represents all major social media companies.⁷³ This is an extremely worrying trend that places social media companies under the direct authority of Turkish authorities, and has inspired other states to follow a similar route in their regulation of social media platforms.

⁶⁹ The Guardian, 'It's a war on words': Turks fear new law to muzzle social media giants', 27 September 2020, www.theguardian.com/world/2020/sep/27/its-a-war-on-words-turks-fear-new-law-to-muzzle-social-media-giants

⁷⁰ RSF, 'Tighter control over social media, massive use of cyber-censorship', 1 October 2020, [//rsf.org/en/news/tighter-control-over-social-media-massive-use-cyber-censorship-0](https://rsf.org/en/news/tighter-control-over-social-media-massive-use-cyber-censorship-0)

⁷¹ Euronews, 'Turkish law tightening rules on social media comes into effect', 1 October 2020, <https://www.euronews.com/2020/10/01/turkish-law-tightening-rules-on-social-media-comes-into-effect5RSF>, n3

⁷² <https://www.article19.org/resources/turkey-twitter-becomes-latest-company-to-comply-with-repressive-social-media-law/>

⁷³ <https://www.aa.com.tr/en/turkey/turkey-top-companies-complying-with-social-media-laws/2182659>

Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Articles 7 and 10, ICCPR; General Comment No. 20 and 21)

46. Article 17 of the Constitution and Article 94 of the Penal Code prohibit torture and other cruel, inhuman, or degrading treatment or punishment. The government has asserted that it follows a “zero tolerance” policy on torture.⁷⁴ However, there are credible reports of torture and ill-treatment by government agents, including police officers, prison authorities, and military and intelligence units, in a variety of contexts,⁷⁵ including forced confessions and statements.⁷⁶ Furthermore, since 2015, the use of counter-charges of aspersion against public officers has risen, intending to deter victims from filing a complaint of torture.⁷⁷
47. Allegations of torture and ill-treatment significantly increased after the attempted military coup and under the 2016 - 2018 state of emergency, with weakened or abolished procedural safeguards facilitating torture practices and impunity.⁷⁸ For example, Law No. 7145 extended the maximum duration of police custody up to 12 days and Article 59 of Law No. 5275 restricts access to a lawyer.⁷⁹ In 2019, the Human Rights Foundation of Turkey (HRFT) received 838 applications by torture survivors to their treatment and rehabilitation centres, 67.5% of whom were subjected to torture and ill-treatment that year.⁸⁰ Individuals with alleged affiliation with

⁷⁴ OHCHR. Torture: *UN expert calls on the Turkish Government to live up to its “zero tolerance” policy* (2 December 2016) available at: <<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20977>>.

⁷⁵ See, e.g., Human Rights Association and Human Rights Foundation of Turkey. *Appendix A: A Brief Review of Recent Torture Allegations* (26 June 2019) available at: <<https://ihd.org.tr/en/wp-content/uploads/2019/07/App.-A-Brief-Review-of-Recent-Allegations-of-Torture.pdf>>; Human Rights Association and Human Rights Foundation of Turkey. *Torture in its Various Dimensions in Turkey* (26 June 2020) available at: <<https://ihd.org.tr/en/wp-content/uploads/2020/07/1%CC%87HD-HRFT-2019-Torture-Report.pdf>>; Bianet. *Report by Ankara Bar Association Regarding Allegations of Torture in Custody* (29 May 2019) available at: <<https://bianet.org/english/human-rights/208936-report-by-ankara-bar-association-regarding-allegations-of-torture-in-custody>>.

⁷⁶ Human Rights Association. *IHD Special Report: Enforced Statements, Interviews, Informant-Making, and Abductions through Coercion and Threats in 2020* (5 November 2020) available at: <https://ihd.org.tr/en/wp-content/uploads/2020/11/20201105_IHD-Special-Report-on-Informant-Making-and-Abductions-1.pdf>.

⁷⁷ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 4; Human Rights Association and Human Rights Foundation of Turkey. *Appendix A: A Brief Review of Recent Torture Allegations* (26 June 2019) available at: <<https://ihd.org.tr/en/wp-content/uploads/2019/07/App.-A-Brief-Review-of-Recent-Allegations-of-Torture.pdf>> pg. 8.

⁷⁸ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 1.

⁷⁹ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 2.

⁸⁰ Human Rights Foundation of Turkey. *Treatment and Rehabilitation Centres Report* (2019) available at: <<https://en.tihv.org.tr/treatment-and-rehabilitation-reports/2019-hrft-treatment-centers-report/>>.

the PKK or the Gülen movement were reportedly more likely to be subjected to mistreatment or abuse.⁸¹

48. In June 2020, the Turkish parliament passed legislation to increase the powers of night watchmen (Bekcis) who assist the police with community policing functions, granting them authority to undertake ID checks, body searches and to use lethal force. There have been reported instances of watchmen abusing their powers and ill-treating people, including credible evidence that police and community night watchmen committed serious abuses against at least 14 persons, including violent arrests and beatings, in six incidents in Diyarbakir and Istanbul from May to July 2020.⁸² In four of the cases, authorities refuted or countered the allegations.

I) Places of deprivation of liberty

49. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has conducted three visits to Turkey since the July 2016 coup attempt, most recently in January 2021.⁸³ During its 2019 visit, the CPT identified ill-treatment in police custody, including of women and juveniles, and degrading conditions and overcrowding in prisons. The CPT noted that a “significant proportion of the allegations related to beatings during transport or inside law enforcement establishments, apparently with the aim of securing confessions or obtaining other information, or as a punishment. Further, numerous detained persons claimed to have been subjected to threats, and/or severe verbal abuse.”⁸⁴

50. In 2014, the Government designated the National Human Rights Institution as the National Preventative Mechanism (NPM) via cabinet decree.⁸⁵ In a visit to Turkey in 2015, the UN Subcommittee on Prevention of Torture (SPT) observed several obstacles faced by the NPM, including a lack of legislation expressly defining its mandate, functions and authorities,

⁸¹ US Department of State, Bureau of Democracy, Human Rights and Labor. *Turkey 2020 Human Rights Report* (undated) available at: <<https://www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf>> pg. 5.

⁸² Human Rights Watch. *Turkey: Police, Watchmen Involved in Torture, Ill-Treatment* (29 July 2020) available at: <<https://www.hrw.org/news/2020/07/29/turkey-police-watchmen-involved-torture-ill-treatment>>.

⁸³ CPT. *Council of Europe anti-torture Committee visits Turkey* (27 January 2021) available at: <<https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-turk-3>>.

⁸⁴ CPT. *Executive Summary* (undated) available at: <<https://rm.coe.int/16809f20a2>>.

⁸⁵ Association for the Prevention of Torture. *OPCAT Status: Turkey* (undated) available at: <<https://www.ap.t.ch/en/knowledge-hub/opcat-database/turkey>>.

shortcomings in the selection of its membership and a lack of institutional and functional independence.⁸⁶ In 2016, the Human Rights and Equality Institution (HREI) was created under Law No. 6701 and appointed as the NPM but concerns remained. These were exacerbated in July 2018 following Decree Law No. 703, which prescribed that the President appoints all board members, and the first presidential circular letter dated 15 July 2018, which affiliated the HREIT with the Ministry of Justice.⁸⁷

51. In response to prison overcrowding following the outbreak of the Covid-19 pandemic, the Law Amending Law No. 7242 on the Enforcement of Sentences and Security Measures and Some Other Laws renders those sentenced for “intentional injury resulting in death”, “reckless killing” and “intentional injury” eligible for a reduction in their sentences. This includes law enforcement officers convicted of violating the right to life using unlawful and disproportionate force and those who committed torture but were charged and convicted of “intentional injury”.⁸⁸

II) Accountability

52. There is a lack of independent, impartial, prompt and effective *ex officio* investigations into allegations of torture and ill-treatment, a “subjective and partial mentality of prosecutors and judges”, deferral of sentences and a pervasive culture of impunity for alleged perpetrators.⁸⁹

53. Despite the 2013 amendment of Article 94 of the Turkish Penal Code that abolished the statute of limitation for the crime of torture, successive court decisions have interpreted this in a restrictive manner, preventing accountability for allegations of torture after the 1980 military coup and during the 1990s.⁹⁰

⁸⁶ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Report on the visit for the purpose of providing advisory assistance to the national preventive mechanism of Turkey* (12 December 2019) UN Doc CAT/OP/TUR/1.

⁸⁷ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 2; Human Rights Association and Human Rights Foundation of Turkey. *Appendix A: A Brief Review of Recent Torture Allegations* (26 June 2019) available at: <<https://ihd.org.tr/en/wp-content/uploads/2019/07/App.-A-Brief-Review-of-Recent-Allegations-of-Torture.pdf>> pgs. 6-7. See also: Human Rights Association and Human Rights Foundation of Turkey. *Torture in its Various Dimensions in Turkey* (26 June 2020) available at: <<https://ihd.org.tr/en/wp-content/uploads/2020/07/1%CC%87HD-HRFT-2019-Torture-Report.pdf>> pg. 11-12.

⁸⁸ Human Rights Association. *Alliance against Impunity: Joint Statement on the Enforcement Law* (5 May 2020) available at: <<https://ihd.org.tr/en/alliance-against-impunity-joint-statement-on-the-enforcement-law/>>.

⁸⁹ Human Rights Association and Human Rights Foundation of Turkey. *Torture in its Various Dimensions in Turkey* (26 June 2020) available at: <<https://ihd.org.tr/en/wp-content/uploads/2020/07/1%CC%87HD-HRFT-2019-Torture-Report.pdf>> pgs. 12-13.

⁹⁰ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 4.

54. Law No. 6722, adopted on 23 June 2016, requires Executive authorisation for judicial investigations into the acts of military personnel and public officials during counter-terrorism operations,⁹¹ rendering investigations into allegations of gross human rights violations more challenging and bolstering impunity. The Law also expands the scope of military jurisdiction regarding prosecution of members of the security forces accused of criminal conduct in such contexts.⁹² Decree Law No. 668 (2017) effectively grants immunity from, *inter alia*, criminal liability for torture and ill-treatment in relation to actions aimed at “suppressing the coup attempt and terrorist activities”.⁹³

Enforced Disappearances (Articles 6, 7, 9, 14, 16, 21 and 22, ICCPR; General Comment No. 37)

55. Turkey has not ratified the Convention for the Protection of All Persons from Enforced Disappearance and, as of 2019, the Turkish Criminal Code did not define the crime of enforced disappearance.⁹⁴ Acts of enforced disappearances started to increase again as of 2016,⁹⁵ reportedly in “an almost identical manner to the 1990s”, targeting members of opposition parties and alleged members of the Gülen movement.⁹⁶ There are reports of victims being tortured and ill-treated during their disappearance in order to incriminate themselves or others, often in relation to high-profile cases against the Gülen movement.⁹⁷ There are also cases of “so-called ‘extraterritorial abductions’ resulting in enforced

⁹¹ Human Rights Association and Human Rights Foundation of Turkey. *Appendix A: A Brief Review of Recent Torture Allegations* (26 June 2019) available at: <<https://ihd.org.tr/en/wp-content/uploads/2019/07/App.-A-Brief-Review-of-Recent-Allegations-of-Torture.pdf>> pg. 7; Council of Europe Commissioner for Human Rights. *Third party intervention* (25 April 2017) available at: <<https://rm.coe.int/168070cff9>> [32].

⁹² Library of Congress. *Turkey: Immunity for Soldiers Involved in Counterterrorism Operations* (5 July 2016) available at: <<https://www.loc.gov/law/foreign-news/article/turkey-immunity-for-soldiers-involved-in-counterterrorism-operations/>>.

⁹³ International Commission of Jurists and Human Rights Joint Platform. *Joint Submission in view of the UN Committee against Torture’s adoption of a List of Issues to be transmitted to the Republic of Turkey* (25 June 2018) available at: <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT_CAT_ICS_TUR_31711_E.pdf> [23].

⁹⁴ Human Rights Foundation of Turkey. *UPR Briefing Note: Torture and ill-treatment in Turkey* (2019) available at: <<https://en.tihv.org.tr/wp-content/uploads/2019/09/Universal-Periodic-Review-HRFT-Briefing-Note.pdf>> pg. 2.

⁹⁵ Human Rights Association and Human Rights Foundation of Turkey. *Torture in its Various Dimensions in Turkey* (26 June 2020) available at: <<https://ihd.org.tr/en/wp-content/uploads/2020/07/1%CC%87HD-HRFT-2019-Torture-Report.pdf>> pg. 3. See, e.g., Human Rights Association. *IHD Statement on Enforced Disappearances* (27 January 2021) available at: <<https://ihd.org.tr/en/ihd-statement-on-enforced-disappearances/>>.

⁹⁶ Johan Heymans. *Enforced disappearances in Turkey: an old habit or a new trend?* (Völkerrechtsblog, 11 February 2021) available at: <<https://voelkerrechtsblog.org/enforced-disappearances-in-turkey-an-old-habit-or-a-new-trend/>>.

⁹⁷ Turkey Tribunal in collaboration with the International Observatory Human Rights. *Abductions in Turkey Today* (September 2020) available at: <https://turkeytribunal.com/wp-content/uploads/2020/09/AbductionsinTurkey_Turkey-Tribunal-Report_FINAL.pdf> pgs. 15-16.

disappearances”.⁹⁸ The authorities have not conducted independent, impartial, prompt and effective investigations into at least 25 reported cases of enforced disappearance over the past four years.⁹⁹

56. Furthermore, on 18 November 2020, the Istanbul Penal Court of First Instance charged 46 peaceful protestors in connection with their participation in the Saturday Mothers/People (Curmatesi Anneleri/İnsanları) 700th vigil on 25 August 2018,¹⁰⁰ despite the ban imposed by the Beyoğlu District Governorate.¹⁰¹ The Saturday Mothers/People group is comprised of human rights defenders and relatives of victims of enforced disappearance and political murders in the 1980s and 1990s who hold a weekly vigil to call for the disclosure of the fate and whereabouts of their loved ones and the end of impunity.¹⁰² The police dispersed the vigil using excessive force, which the Ministry of Internal Affairs later claimed was justified as “the mothers were “being exploited by terrorist organisations” and that those organisations were “using the concept of motherhood to create victimisation, masking terrorism and polarising society”.¹⁰³

Women’s Rights (Articles 2(1), 3, 6, 7, 21 and 22, ICCPR, General Comments No. 28, 36 and 37)

57. The issue of women’s rights is closely tied with that of the deterioration of the right of association, with several women’s rights organisations being targeted by Turkish authorities through the law. Femicide and domestic abuse are significant problems in Turkey. While

⁹⁸ Johan Heymans. *Enforced disappearances in Turkey: an old habit or a new trend?* (Völkerrechtsblog, 11 February 2021) available at: <<https://voelkerrechtsblog.org/enforced-disappearances-in-turkey-an-old-habit-or-a-new-trend/>>.

⁹⁹ Solidarity with OTHERS. *Enforced Disappearances: Turkey’s Open Secret* (May 2020) available at: <https://b2923f8b-dcd2-4bd5-81cd-869a72b88bdf.filesusr.com/ugd/b886b2_e59e82b397704cb3bf609c872c46c28d.pdf> ara pg. 7. See also: Ankara Bar Association Human Rights Center. *Joint Monitoring Report* (27 June 2019) available at: <https://turkeytribunal.com/wp-content/uploads/2020/06/Enforced_Disappearances_JointMonitoringReport_AnkaraBar.pdf>.

¹⁰⁰ The Saturday Mothers/People group is comprised of human rights defenders and relatives of victims of enforced disappearance and political murders in the 1980s and 1990s who hold a weekly vigil to call for the disclosure of the fate and whereabouts of their loved ones and the end of impunity.

¹⁰¹ OMCT. *Turkey: Judicial harassment of the Saturday Mothers/People movement* (24 February 2021) available at: <<https://www.omct.org/en/resources/urgent-interventions/turkey-judicial-harassment-of-the-saturday-mothers-people>>.

¹⁰² OMCT. *Turkey: Judicial harassment of the Saturday Mothers/People movement* (24 February 2021) available at: <<https://www.omct.org/en/resources/urgent-interventions/turkey-judicial-harassment-of-the-saturday-mothers-people>>.

¹⁰³ OMCT. *Turkey: Judicial harassment of the Saturday Mothers/People movement* (24 February 2021) available at: <<https://www.omct.org/en/resources/urgent-interventions/turkey-judicial-harassment-of-the-saturday-mothers-people>>.

official disaggregated data on numbers are not available, women's rights groups have reported that hundreds of women are killed annually as a result of domestic violence.

58. In December 2019, the Ministry of the Interior closed and fined the Hatay-based women's NGO Purple Association for Women's Solidarity for establishing an unauthorized workplace and conducting unauthorized training. In July 2020, after seven months of closure, the association reopened. Human rights organizations reported that official human rights mechanisms did not function consistently and failed to address grave violations. Selectively using Covid-19 as a pretext, provincial governors banned peaceful protests of women's rights activists, healthcare workers, lawyers, and political opposition parties.
59. The government and independent monitoring groups reported with concern that rates of violence against women remained high although the number of femicides decreased slightly from 2019. Between April 15 and May 19, the Ministry of Family, Labour, and Social Services received a record 2,506 complaints of domestic violence following the release of 90,000 convicts from prisons as part of the country's COVID-19 countermeasures. The We Will Stop Femicide Platform, an NGO dedicated to monitoring violence against women since 2008, reported a record 421 femicides in 2019, estimating that men killed at least 407 women during the year. The NGO reported at least 300 women were killed in 2020 and indicated that the trend was on the rise in 2021.
60. As of July 2020, 42,396 individuals, including 26,347 women and 16,049 children received services from women's shelters. Women's rights advocates asserted there were not enough shelters to meet the demand for assistance and that shelter staff did not provide adequate care and services, particularly in the southeast. Some NGOs noted shelters in multiple southeastern provinces closed during the 2016-18 state of emergency and COVID-19 lockdowns and that others faced difficulty following the removal of elected mayors and appointment of government trustees, some of whom cut funding and ended partnerships with the local NGOs. Lack of services was more acute for elderly women and LGBTI women as well as for women with older children. Further, from May to July, at least 45 Kurdish women's rights activists were detained and face prosecution for links with the PKK.
61. Violence against women, including spousal abuse, remained a serious and widespread problem both in rural and urban areas. Pandemic lockdowns for COVID-19 during the year

coincided with increased reports of domestic violence. Spousal rape is a criminal offense, and the law also provides criminal penalties for conviction of crimes such as assault, deprivation of liberty, or threats. Despite these measures, killings and other forms of violence against women continued.

62. For three consecutive years, the authorities banned the International Women's Day march in Istanbul. In 2020, the police used tear gas and plastic bullets to disperse peaceful protesters who had defied the ban. In 2021, the Istanbul Prosecutors office opened criminal investigations against 18 women's rights activists for chanting non-violent slogans.¹⁰⁴

I) Withdrawal from the Istanbul Convention

63. On 22 March 2021, due to pressure from the senior members of the AKP, President Erdoğan announced Turkey's withdrawal from the Istanbul Convention in a presidential decree. Critics of the convention alleged its commitment to equal implementation without discrimination based on "sexual orientation" or "gender identity" violated Turkish values and that the convention damaged family structures. The calls for withdrawal generated a significant domestic backlash, including from within the ruling party, and women's rights groups organized in support of the convention. To quell the critics, senior AKP members announced they would deal with domestic violence through judicial reform and an Ankara Convention that would claim its power from "traditions and customs". In response, women in pro-government circles and elsewhere took to social media to criticise the reference to "customs and traditions", which in their view designates women as second-class citizens.¹⁰⁵

64. In a statement¹⁰⁶ responding to the decision, The UN Special Rapporteur on violence against women stated, "*This decision to withdraw from such an important instrument is a very worrying step backwards. It sends a dangerous message that violence against women is not important, with the risk of encouraging perpetrators and weakening measures to prevent it,*" adding that "*the Istanbul Convention is the most recent and detailed women's rights instrument that, alongside the UN Declaration on the Elimination of Violence against Women, the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Platform for*

¹⁰⁴ www.hrw.org/news/2021/03/12/turkey-end-probe-women-over-shouted-slogans

¹⁰⁵ www.state.gov/wp-content/uploads/2021/03/TURKEY-2020-HUMAN-RIGHTS-REPORT.pdf

¹⁰⁶ www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26936&LangID=E

Action, provide a roadmap for the elimination of gender-based violence against women and girls". The statement called for the decision to be reconsidered.

65. The decision is due to come into force on 1 July, but for weeks protests have been taking place across Turkey to demand that the Turkish authorities reconsider their decision. In a statement, the IBAHRI urgently called for Turkey's reinstatement of the Istanbul Convention, the protection of women from domestic and other forms of violence, and renewed respect for international human rights norms.

Death Penalty (Article 6, ICCPR, General Comment No. 6)

66. Despite Turkey abolishing the death penalty for all crimes in 2004 through Law No. 5170 and ratifying regional and international abolition legislation, the Speaker of the Grand National Assembly of Turkey reportedly claimed in 2020 that the death penalty could be restored for some offences.¹⁰⁷ President Erdoğan has also repeatedly stated his intention to restore the death penalty after the failed coup in 2016.¹⁰⁸

¹⁰⁷ Human Rights Association. *Death Penalty Cannot be Reinstated in Turkey* (9 October 2020) available at: <<https://ihd.org.tr/en/ihd-statement-on-the-occasion-of-the-world-day-against-the-death-penalty/>>.

¹⁰⁸ World Coalition against the Death Penalty. *Input to the List of Issues Prior to Reporting for the UN Committee against Torture, 65th Session (12 November 2018 – 07 December 2018): Turkey* (undated) available at: <https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/TUR/INT_CAT_ICS_TUR_32826_E.docx>.