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of England and Wales

Human Rights
Institute

Mr. Diego García-Sayán

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Subject: Threats to the independence of the legal profession in Turkey - systematic arrests and detention of lawyers / dismissals of judges and prosecutors

18 September 2018

Dear UN Special Rapporteur on the Independence of Judges and Lawyers,
Mr. Diego García-Sayán,

The Bar Human Rights Committee of England and Wales (BHRC), the International Bar Association's Human Rights Institute (IBAHRI) and the Law Society of England and Wales write in relation to breaches of the rights and protections of the legal profession in Turkey.

This submission relates to human rights violations which have occurred and are occurring since the attempted coup d'état in July 2016 and examines the position post the ending of the State of Emergency in Turkey. Primarily, new laws place in a statutory framework the pre-existing threats to the independence of the legal profession, including arbitrary arrest and detention, dismissals, and breaches of the right to a fair trial and due process.

Legal professionals are being targeted with allegations of supporting a terrorist organisation. The evidence points to these allegations as being a strategy to stop the legitimate exercise of their professional duties, including human rights related work.

We request that you enter into urgent dialogue with the Government of Turkey with a view to ending the persecution and prosecution of legal professionals in the country. As detailed below, the already dire situation is worsening.



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International Law Breaches Concerning the Independence of Legal Profession in Turkey

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The Arrested Lawyers Initiative, Two Turkish Lawyers

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1. Introduction

1. This report is submitted by the Bar Human Rights Committee of England and Wales (BHRC), the International Bar Association's Human Rights Institute, and the Law Society of England and Wales. Following a meeting with the Special Rapporteur on the Independence of Judges and Lawyers on 22 June 2018 in Geneva, these organisations have worked in collaboration with six Turkish lawyers to prepare a joint submission to raise concerns over the challenges faced by the legal profession in Turkey in recent years, specifically since the attempted coup of 2016.
2. The organisations submit that the already dire situation in Turkey concerning the independence of the legal profession has deteriorated. Whilst, it can be seen that prior to the coup attempt, the Turkish government has been increasingly interfering with and exercising undue influence over the legal profession using adverse constitutional and legislative reforms together with systematic attacks against judges, prosecutors, lawyers and other legal professionals, the current imposition of laws previously upheld under a State of Emergency intensify a crackdown upon the independence of the judiciary and lawyers by providing a purported statutory framework for breaches of international law.
3. We respectfully request that the Special Rapporteur sends a communication to the Government of Turkey, drawing attention to the information included in this submission and seeking urgent remedy.

2. Recent Political Context

4. Between July 2015 and December 2016, 2,000 people were reportedly killed in the context of security operations in South-East Turkey according to the OHCHR.¹ In September 2015, 500 lawyers (including lawyer Tahir Elçi, president of the Diyarbakır Bar Association who was killed a few months later²) were denied access to Cizre where crimes were allegedly committed. Following this incident, lawyers denouncing the violations committed in South East Turkey or representing individuals arrested have been targeted by soldiers and law enforcement officers.
5. On 15 July 2016, an operation to overthrow the Turkish government and unseat President Recep Tayyip Erdoğan failed. Fethullah Gülen, founder of the Gülenist movement,³ in exile in the United States since 1999, has been held responsible by the Turkish government.

¹ OHCHR 'Report on the human rights situation in South-East Turkey - July 2015 to December 2016' (February 2017) para. 2 < www.ohchr.org/documents/countries/tr/ohchr_south-east_turkeyreport_10march2017.pdf> accessed 30 August 2018.

² On 20 October 2015, Tahir Elçi was arrested and prosecuted after an interview by CNN for giving statement about the PKK (Kurdistan Workers Party). He was killed on 28 November 2015, while making a statement to the press about gross human rights violations. The investigation of his murder has not progressed until now.

³ Since 2013, the Gülenist movement has been labelled 'Fethullah Terrorist Organisation' or 'FETÖ' and any of its members, or those linked to it, are considered as terrorists.

6. On 21 July 2016 the Turkish government declared a state of emergency pursuant to Article 120 of the Constitution and the State of Emergency Law No 2935. Thousands of military officials, police officers, journalists, civil servants, academics, teachers, lawyers, judges and prosecutors were dismissed and/or arrested for alleged links to the Gülenist movement. Under the state of emergency, Turkey suspended provisions of international and regional human rights treaties and adopted 31 emergency decree laws.
7. Two important political events took place during the state of emergency: the constitutional referendum and the general elections. On 16 April 2017, a constitutional referendum was held by the governing party to vote on an 18-article constitutional reform package. The reform was approved and is regarded as having effectively altered the political and democratic makeup of the Republic of Turkey. The changes introduced by the amendment bill⁴ abolish the position of prime minister and provided President Erdoğan with an executive presidency,⁵ with increased powers over both the legislature and the judiciary.⁶ On 24 June 2018, President Erdoğan decided to hold general elections 18 months earlier than planned, winning the presidential elections with 53% of the votes, and his alliance won the parliamentary elections with 57%.
8. Less than a month later on 18 July 2018, and after seven extensions, the state of emergency was finally lifted. The continuous prolongation of a state of emergency in Turkey led to “an enduring system of governing characterised by a large number of arbitrary decisions that profoundly affect the lives of many individuals and families”,⁷ which in turn may have lasting negative effects on the institutional and socio-economic structures in Turkey.⁸
9. Recently and despite the end of the state of emergency, the Turkish Parliament has successively passed legislation codifying all the measures adopted through emergency decree laws during the state of emergency, thus permanently undermining the rule of law in the country.

⁴Law Amending the Constitution of the Republic of Turkey (*Official newspaper, Issue: 29976*, 11 February 2017) < www.resmigazete.gov.tr/eskiler/2017/02/20170211-1.htm > accessed 08 August 2018.

⁵Wendy Zeldin, ‘Turkey: Parliamentary Commission Approves Amendments to Constitution that Would Enhance President’s Powers’ (*Library of Congress*, 9 January 2017) <www.loc.gov/law/foreign-news/article/turkey-parliamentary-commission-approves-amendments-to-constitution-that-would-enhance-presidents-powers/> accessed 08 August 2018; See also Ali Unal, ‘Turkey likely to continue discussing new constitution in 2017’ (*Daily Sabah* Ankara, 1 January 2017) < <https://www.dailysabah.com/legislation/2017/01/02/turkey-likely-to-continue-discussing-new-constitution-in-2017> > accessed 08 August 2018.

⁶OHCHR ‘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) para. 31 < www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf > accessed 08 August 2018 (‘OHCHR Report on the impact of the state of emergency on human rights in Turkey’)

⁷OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 4.

⁸OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 4.

10. In January 2018, UN Special Rapporteurs, including the Special Rapporteur on the independence of judges and lawyers, urged the Turkish Government to refrain from extending the exceptional legal measures under the declared state of emergency. They emphasised that:

“emergency powers must...not be used as a means to limit legitimate dissent, protest, belief and opinion, expression and the work of civil society, which in turn risks violating, inter alia, fair trial and due process guarantees, the prohibition of torture and of arbitrary detention and even the right to life.”⁹

3. National Legal Framework

11. Under Turkish law, the Constitution provides the fundamental legal rules of the country. These laws are binding upon the legislative, executive and judicial organs in addition to administrative authorities and other institutions. No law is to be contrary to the provisions of the Constitution.¹⁰

12. Article 2 of the Turkish Constitution enshrines the rule of law:

“The Republic of Turkey is a democratic, secular and social state governed by the rule of law, within the notions of public peace, national solidarity and justice, respecting human rights, loyal to the nationalism of Ataturk, and based on the fundamental tenets set forth in the preamble.”

A. Fair trial rights

13. The right to a fair trial is contained in Chapter Two, Section XIII of the Constitution which relates to the protection of rights. Article 36 states: ‘Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.’

14. Article 37 mandates the principle of natural judge, stipulating that ‘no one may be tried by any judicial authority other than the legally designed court.’

15. The Code of Criminal Procedure, known as the *Ceza Muhakemeleri Usulu Kanunu* (CMK) in Turkish, contains a number of provisions which guarantees individuals their right to a fair trial during criminal proceedings.¹¹ For example, Article 160 requires that public prosecutors, when informed of an offence, conduct investigations and give orders to the judicial police in order to investigate the factual truth as the basis of a fair trial.

⁹ Joint Statement of Special Rapporteurs dated 17th January 2018
<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22592&LangID=E>

¹⁰ Article 11 of the Constitution.

¹¹ Turkish Code of Criminal Procedure (CMK), known as the *Ceza Muhakemeleri Usulu Kanunu* <www.unodc.org/res/cld/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf> accessed 08 August 2018.

B. Independence of the legal profession

16. The Turkish Constitution expressly mandates for the independence of the Turkish Courts and Judges, under article 138:

“[j]udges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction in conformity with the law. No organ, authority, office or individual may give orders or instructions to courts or judges relating to the exercise of judicial power, send them circulars, or make recommendations or suggestions [...]”

17. Whilst the Constitution guarantees the independence of the Turkish Courts and Judges, there is no express provision relating to the independence of the legal profession itself.

18. The conduct and practice of lawyers within the legal profession is regulated by Law No 1136, which is also known as the Code of Lawyers or the Attorney Law. Article 1 of the Code of Lawyers, which was adopted on 19 March 1969 and amended on 2 May 2001, classifies the legal profession as an independent public service and liberal profession.

19. In addition to this, Articles 97.6 and 123.6 stipulate that the duties of the President of all Turkish bar associations and the President of the Union of Turkish Bar Associations includes ‘defending the dictates of the law and professional rules against all manner of organs in matters involving the honour and independence of the profession’.¹²

4. Recent Challenges to the Independence of the Judiciary

20. According to the Turkish Constitution, the judicial system consists of six higher courts: the Constitutional Court, the Court of Cassation, the Council of State, the High Military Court of Cassation, the High Military Administrative Court and the Court of Jurisdictional Disputes.

21. The Council for Judges and Prosecutors (HSK) – previously High Council for Judges and Prosecutors (HSYK) - is in charge of the organisation of the judiciary, including the admission of judges and prosecutors, appointments, transfers, promotion, as well as disciplinary proceedings and supervision of judges and prosecutors.¹³

22. On 23 January 2017, the Turkish Government established a new body, the Inquiry Commission for State of Emergency Measures (‘the Commission’) to investigate applications regarding dismissals and closures of organisations arising from emergency decree laws. Decisions of the Commission can be appealed before administrative courts and - subsequently - the Constitutional Court.¹⁴

¹² Law No 1136, also known as the Code of Lawyers or the Attorney Law <www.ankarabarassociation.org/doc/Code%20of%20Lawyers.pdf> accessed 08 August 2018.

¹³ Turkish Constitution, Article 159.

¹⁴ IHOP 2017, pp 12, 18; (In)effective Remedies from Strasbourg – Turkey and the European Court of Human Rights, DAV, ELDH, The Law Society, Lawyers for Lawyers, OIA (March 2018), p. 18.

A. Judicial reforms curtailing the independence of the judiciary

23. Turkey has undertaken several reforms of its judicial system, notably since 2010, permanently curtailing the independence of the judiciary, and providing increased control of the government over the judiciary.

2010 reform

24. In 2010, Law No 5982 amended Article 159 of the Constitution in relation to the HSYK. Although the amendment granted the HSYK budgetary autonomy and reduced the number of members appointed to the HSYK by the government, the new law still provides for the Minister of Justice and the Undersecretary to the Ministry to remain, respectively, *ex officio* President and member of the HSYK. Furthermore, Law No 5982 provides that four out of the HSYK's 22 regular members shall be appointed by the President of the Republic.

2014 reform

25. On 26 February 2014, the Grand National Assembly of Turkey adopted Law No 6524 which amended four laws regulating the judiciary, including Law No. 6087 relating to the HSYK.¹⁵

26. Several amendments to Law No 6087 on the HSYK gave unprecedented control to the government over the judiciary and prosecution authorities and restricted the independence of both. Among other powers, amendments granted the Ministry of Justice the power to determine the composition of HSYK's chambers¹⁶ and to conduct disciplinary investigations against its members. On 10 April 2014, the Constitutional Court found these provisions unconstitutional and contrary to the principle of judicial independence. The Constitutional Court held that the amendments "transformed the [HSYK] into a Directorate General factually affiliated and dependent upon the Ministry of Justice".¹⁷ However, because the decision did not have any retroactive effect, the administrative decisions already made remained in force, including decisions of the Minister of Justice relating to the composition of the HSYK's chambers.¹⁸ The amendments to Law No 6087 and the way

¹⁵ 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.

¹⁶ The Council now consists of three chambers; chambers and each chamber consists of seven members. The First Chamber is responsible for the appointment and transfer of judges and prosecutors, the Second Chamber deals with promotion, disciplinary matters and dismissal of judges and prosecutors and the Third Chamber is in charge of the recruitment of judges.

¹⁷ Constitutional Court, Judgment no. 2014/81 of 10 April 2014.

¹⁸ 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> > accessed 08 August 2018; European Commission for Democracy Through Law (Venice Commission), 110th Plenary Session 10-11 March 2017 'Opinion No. 852 / 2016 on the duties, competences and functioning of the criminal peace judgeships' (13 March 2017) CDL-AD(2017)004, para.

in which they were put into practice by the executive were condemned by the Venice Commission.¹⁹

2016 reforms under the state of emergency

27. During the state of emergency, 31 emergency decree laws were adopted and have all been enacted by Parliament.²⁰ For example, Law No 6749 codifies emergency decree law 667 of 22 July 2016.²¹ The new law curtails the independence of the judiciary by providing for the dismissal and eviction of members of the judiciary if they are considered to be “engaging in activities against the national security of the State”; this includes members of the Constitutional Court, Court of Appeal, and lower court judges.
28. According to the Human Rights Joint Platform,²² as of March 2018, 4,279 judges and prosecutors have been dismissed (including two judges of the Constitutional Court) and only 166 have been subsequently reinstated.²³ In addition, around 500 court staff members have also been dismissed, with only a handful being reinstated.²⁴
29. Law No 6755 enacting emergency decree law 668 of 27 July 2016,²⁵ provided for the establishment of a National Defence Commission composed of two military judges appointed by the Minister of National Defence. The National Defence Commission decided on the dismissal of 185 military judges (76 military judges on 2 September 2016 with decision No 2016/1 and 109 military judges on 13 October 2016).²⁶
30. Since the introduction of numerous emergency decree laws in Turkey, which resulted in mass dismissal of judges and prosecutors, seeking a national remedy in Turkish courts can be very difficult. The Constitutional Court, Turkey’s highest court, has been ineffective in addressing the gross violations of individual rights and freedoms which have taken place

48 < www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e > accessed 08 August 2018 (‘Venice Commission, Opinion No. 852 / 2016’).

¹⁹ Venice Commission, Opinion No. 852/2016, paras 47-49; see also European Commission for Democracy Through Law (Venice Commission), ‘Declaration on Interference with Judicial Independence in Turkey’ (Venice, 20 June 2015) < <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf> > accessed 08 August 2018.

²⁰ Human Rights Joint Platform (IHOP) ‘Updated Situation Report - State of Emergency in Turkey 21 July 2016 – 20 March 2018’ (17 April 2018) p. 5 < www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE_17042018.pdf > accessed 08 August 2018 (‘IHOP, Updated Situation Report’)

²¹ European Commission for Democracy Through Law (Venice Commission) ‘Opinion No. 865/2016: Emergency Decree Laws of July-September 2016 Nos 667-674’ (10 November 2016) CDL-REF(2016)061 ≤ [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) > accessed 08 August 2018 (‘Venice Commission, Opinion No. 865/2016’); See also IHOP, Updated Situation Report’ p. 5.

²² <http://www.ihop.org.tr/en/>

²³ IHOP, Updated Situation Report, p. 38.

²⁴ IHOP, Updated Situation Report, p. 37.

²⁵ See Asylum Research Consultancy ‘Turkey Country Report’ (15 December 2016) p. 15 ≤ www.ecoi.net/en/file/local/1253794/1226_1481885250_58529e5b4.pdf > accessed 08 August 2018.

²⁶ IHOP, Updated Situation Report, p. 35.

in Turkey since July 2016. The Constitutional Court,²⁷ as did the administrative courts and the Council of State, decided that it had no jurisdiction to challenge actions taken under decree laws because they do not constitute legislation.

31. The Commission was established in January 2017, in response to the Council of Europe Secretary-General's suggestion to create a body with jurisdiction to receive applications regarding measures taken on the basis of emergency decree laws (such as dismissals and the dissolution of organisations). The Commission has been criticised for its lack of independence and for its deficient procedure (for more details please see para 41 et seq.).

2017 referendum

32. A constitutional referendum took place in April 2017, during the state of emergency. The 18-article constitutional reform was approved by the electorate, permanently altering the political and democratic makeup of the Republic of Turkey. President Erdoğan was granted increased powers over both the legislative branch and the judiciary.²⁸ So far as these powers relate to the independence of the judiciary:

- The number of Constitutional Court's judges was reduced from 17 to 15. The President can now appoint 12 out of 15 Constitutional Court members.
- The number of HSK members was reduced from 22 to 13 with seven elected by parliamentary vote and the remaining six selected by the President.
- Judges and public prosecutors no longer elect members of the HSK.

33. Whilst the Turkish judiciary was already weakened as a consequence of the legislative changes since 2010 outlined above, the constitutional amendments enshrined and strengthened the President's powers over the judiciary, thus raising concerns over the independence of the judiciary, the independence of the prosecution services, and the rule of law.

2018 Anti-Terrorism Bill

34. Following the end of the state of emergency, Turkey ratified an anti-terrorism bill on 25 July 2018.²⁹ The newly introduced law covers a range of powers that previously only existed under the state of emergency.

²⁷ The Republican People's Party (CHP) applied to the Constitutional Court for the cancellation of emergency decrees no. 668, 669, 670 and 667. The Constitutional Court rejected their applications respectively with decisions No. 2016/166 E., 2016/159 K., 12.10.2016; No. 2016/167 E., 2016/160 K., 12.10.2016; No. 2016/171 E., 2016/164 K., 02.11.2016; No. 2016/172 E., 2016/165 K., 02.11.2016.

²⁸ OHCHR Report on the impact of the state of emergency on human rights in Turkey, para. 31.

²⁹ Law No 7145 of 25 July 2018 regarding amendments to some laws and decrees < www.tbmm.gov.tr/kanunlar/k7145.html > accessed 29 August 2018.

35. Article 26.A allows authorities to dismiss judges and all other public officials for the next three years if they are:-

“found to have been members of or acted in union with or been in contact with terrorist organizations or structures, entities or groups that the National Security Council has decided are engaged in activities against national security.”³⁰

36. Appeals can only be made to the authority that carried out the dismissal in the first place—in the case of judges, this would be the HSK. The law also permits the confiscation of passports, including those of spouses and children.³¹

37. In addition, the new provisions extend pre-trial detentions to up to 12 days without charge³² or any judicial review, and grant authorities the power to ban public gatherings.³³

Conclusion

38. Since 2010, successive legislative and constitutional reforms have significantly weakened the rule of law in Turkey by undermining the independence of judges and prosecutors. The newly acquired powers enable the government to interfere with the judiciary and the prosecution services by appointing those held in favour by the government to key judicial positions and to other institutions, by reassigning and dismissing others and by arresting and prosecuting thousands of lawyers, judges, prosecutors, and court staff.

39. Such measures strongly undermine the independence of the judiciary and the prosecution and contravene the UN Basic Principles on the Independence of the Judiciary (especially Principles 1, 2, 4, 8, and 18 and 20), as well as the UN Guidelines on the Role of Prosecutors (especially Principles 2(a), 4, 8, 21 and 22).

B. Lack of impartial and independent body for the examination of individual cases of dismissals

40. After the failed coup in 2016 and the declaration of the state of emergency, many public officials who had been dismissed by emergency decree law sent applications for revocation of those dismissals to administrative bodies, administrative courts, the Constitutional Court, and the European Court of Human Rights.³⁴ In over 300 cases, the administrative

³⁰ Non-official translation - www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency

³¹ Law No 7145 of 25 July 2018, Article 26.C.

³² Law No 7145 of 25 July 2018, Article 13.a.

³³ Law No 7145 of 25 July 2018, Articles 8 and 9.

³⁴ K. Altıparmak, *Is the State of Emergency Inquiry Commission, Established by Emergency Decree 685, an Effective Remedy?*, Human Rights Joint Platform (IHOP) (February 2017) p. 1 < <http://www.ihop.org.tr/en/wp-content/uploads/2017/03/IS-THE-STATE-OF-EMERGENCY-INQUIRY-COMMISSION.pdf>, > accessed 28 August 2018 (‘IHOP 2017’).

courts rejected such applications, arguing lack of jurisdiction because of the nature of the emergency decree law,³⁵ as did the Constitutional Court,³⁶ and the Council of State.³⁷

41. Taking into account the lack of jurisdiction argued by the domestic courts (as described above), the Secretary-General of the Council of Europe suggested the establishment of a commission that could address all these applications. This was supported by the Venice Commission, suggesting that the commission be constituted as an “independent ad hoc body for the examination of individual cases of dismissals, subject to subsequent judicial review”.³⁸

Mandate of the Commission

42. On 23 January 2017, the Turkish Government issued emergency decree law No 685, codified by Law No 7075, that established the Inquiry Commission for State of Emergency Measures (‘Commission’), for a term of two years,³⁹ to investigate applications regarding dismissals and closures of organisations arising from emergency decree laws. It should be noted that the Commission has no jurisdiction to hear applications regarding dismissals of judges and prosecutors (other than those in government service – see paragraph 42 below); such dismissals need to be challenged before the relevant body (see below para 42). Decisions of the Commission can be appealed before administrative courts and - subsequently - the Constitutional Court.⁴⁰
43. The Commission does not have jurisdiction to hear cases of lawyers’ arrests, convictions and disbarments. However, lawyers employed by State institutions who were dismissed from their post by emergency decree laws can apply to the Commission. The Commission’s jurisdiction is restricted; it only has the authority to decide on reinstatement. If someone is reinstated through a decree or by the Commission, his/her salary is paid in full, retrospectively (from the date of dismissal to the date of reinstatement). However, applicants cannot claim compensation for non-pecuniary damages (for example, for the fact that his/her name will have been published in the Official Gazette upon dismissal, as being linked to a terrorist organisation).

³⁵ IHOP 2017, p. 2

³⁶ IHOP 2017, p. 18; IHOP, Updated Situation Report, p. 60. *See also* E. Turkut, The Köksal Case Before the Strasbourg Court: a Pattern of Violations or a Mere Aberration? <<https://strasbourgobservers.com/2017/08/02/the-koksal-case-before-the-strasbourg-court-a-pattern-of-violations-or-a-mere-aberration/>> (‘The Köksal Case’), accessed 28 August 2018.

³⁷ The Köksal Case, *ibid*.

³⁸ European Commission for Democracy Through Law (Venice Commission) ‘Turkey Opinion on Emergency Decree Laws Nos. 667-676 adopted following the failed coup of 15 July 2016’ (9-10 December 2016) CDL-AD(2016)037, par 221.

³⁹ European Commission for Democracy Through Law (Venice Commission) ‘Turkey Opinion No. 872/2016 on the Measures Provided in the Recent Emergency Decree Laws With Respect to Freedom of the Media’ (13 March 2017) CDL-AD(2017)007, para. 86 <[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)> accessed 27 August 2018 (‘Venice Commission March 2017’).

⁴⁰ IHOP 2017, pp 12, 18; (In)effective Remedies from Strasbourg – Turkey and the European Court of Human Rights, DAV, ELDH, The Law Society, Lawyers for Lawyers, OIA (March 2018), p. 18.

Composition of the Commission

44. There are seven members in the Commission, aided by 240 staff, including 80 rapporteurs (judges, experts, inspectors)⁴¹: three appointed by the Prime Minister (since 9 July 2018 the office of Prime Minister does not exist anymore; all powers are exercised by the President), one by the Minister of Justice, one by the Interior Minister, and two by the HSK⁴² (six out of the 13 members of this HSK are selected by the President). There are currently only six members in the Commission, after its President became undersecretary at the Ministry of Justice.⁴³
45. The Venice Commission noted, therefore, that the executive appoints five out of seven members in the Commission, while the quorum for taking decisions is four members.⁴⁴ This means that the executive effectively controls decision-making in the Commission. Moreover, members of the commission do not have security of tenure and are not protected from judicial harassment or political interference. The Commission, therefore, does not meet the requirements indicated by the Venice Commission of an independent ad-hoc mechanism.⁴⁵

Procedure before the Commission

46. Apart from the lack of independence of the Commission, there are serious deficiencies in its procedure. Firstly, public officials have been dismissed with reference to provisions in emergency decree laws. Their names appear on lists, without any reason being given for their dismissal.⁴⁶ This means that applicants to the Commission do not know the evidence against them or the reasoning behind the dismissal they seek to challenge.
47. Secondly, the Commission does not hold hearings. On its web site, its procedure is described as follows. Information and documents related to applications are requested from relevant institutions (these are, in practice, State institutions). The Commission then

⁴¹ The Inquiry Commission on the State of Emergency Measures: <https://soe.tccb.gov.tr/>

⁴² IHOP 2017, p. 7.

⁴³ IHOP, Updated Situation Report, p. 61.

⁴⁴ Venice Commission March 2017, para. 86.

⁴⁵ IHOP 2017. Article 4 of the Emergency Decree Law entitled ‘Guarantees and Rights of Members’ establishes that “Members [of the Commission] cannot be dismissed on any account before their terms of office expires”, but then goes on to list the conditions under which their dismissal can be justified. One of these conditions is set out in Article 4-1(e): a member shall be dismissed by the Commission, if it is found that an administrative investigation was launched or authorisation was given to start an investigation by the Prime Ministry against a member on grounds of membership, association, connection or contact with terrorist organisations or bodies, entities or groups which are decided by the National Security Council to have acted against the national security of the State.

⁴⁶ See The Köksal Case, citing the Commissioner for Human Rights of the Council of Europe, who said that: the persons in question were not provided with evidence against them and were unable to defend themselves in an adversarial manner in many cases. Many had also not been aware of any investigation against them until their dismissal was notified to them by the administration or published in a decree. It has been reported that the operation of the administrative commissions has also been very opaque, and the Commissioner received allegations that certain decisions were based on simple hearsay or a global impression about the person, based for example, on their social environment.

examines the application on the basis of the documents in the case file. Following such examination, the Commission dismisses or accepts an application. The applicant cannot challenge the documents submitted by State institutions.

48. Thirdly, although decisions of the Commission can be appealed before administrative courts and - subsequently - the Constitutional Court,⁴⁷ this lack of information makes any appeal almost impossible. The Venice Commission has noted the absence of any requirement that decisions be supported with evidence, be reasoned and published:⁴⁸

“[i]f the commission is not capable of issuing reasoned and individualized decisions, it is unclear what would be the role of the administrative courts and of the Constitutional Court in this scheme.”⁴⁹

49. Fourthly, decisions of the Commission are not made public. The applicants can track their application through the Commission’s website by introducing their national identification number. The website only indicates whether the application is accepted or rejected. When the Commission issues its decision, it sends the decision to the institution where the applicant was most recently employed. That institution then notifies the applicant of the decision. Fifthly, the reasoning of decisions seems to be minimal.⁵⁰ We also have been informed by Turkish lawyers that decisions rely mostly, if not exclusively, on the documents submitted by state institutions.

50. In our view, the procedure before the Commission, described above, violates the fair trial guarantees established in Article 6 of the ECHR and Article 14 of the ICCPR. More specifically, it violates article 6.1 of the ECHR and article 14.1 of the ICCPR because: (i) there is no fair and public hearing, only a consideration by the Commission of documents contained in the case file, (ii) the Commission is an administrative body controlled by the executive, so that it cannot be regarded as “a competent, independent and impartial tribunal established by law”, and (iii) its decisions are not made public, only notified to the institution where the applicant was last registered.

51. Although the procedure before the Commission does not itself constitute a criminal proceeding, most - if not all - dismissals are based on supposed links with a terrorist organisation and, so far as lawyers are concerned, at least, will have a huge impact on the ability of the individual to practice in their chosen profession. Article 6.1 and 6.3.a and b of the ECHR , as well as article 14.3.a, b and c of the ICCPR refer to the rights to be informed of the case against a person, the right to a defence, and the right to a hearing without undue delay. In our view, all these rights would be violated in the procedure before

⁴⁷ IHOP 2017, p. 12, 18; (In)effective Remedies from Strasbourg – Turkey and the European Court of Human Rights, DAV, ELDH, The Law Society, Lawyers for Lawyers, OIA (March 2018), p. 18.

⁴⁸ Venice Commission March 2017, para. 87.

⁴⁹ Venice Commission March 2017, para. 88.

⁵⁰ See Gazete Duvar < www.gazeteduvar.com.tr/gundem/2018/01/24/ohal-komisyonunun-ret-gerekcesi-ortaya-cikti/ > accessed 28 August 2018: one of the first decisions of the Commission was published on this website. It shows a photograph of the reasoning, set out in three paragraphs. The reasoning is as follows: the applicant uses a certain application; a court of appeal has established that such application is used by members of a certain organisation; a relation between the applicant and that organisation is assumed; the application to revoke dismissal is rejected.

the Commission, because of (i) the applicant’s lack of knowledge regarding the grounds of dismissal, (ii) the lack of access by the applicant to evidence presented against him or her, as well as the applicant’s inability to present evidence, and (iii) the applicant having to wait many months to receive a decision because of the backlog of cases before the Commission.

52. In addition, there is a risk that the right to the presumption of innocence – established in articles 6.2 of the ECHR and 14.2 of the ICCPR – will be breached because the applicant’s name will already have been published (annexed to an emergency decree law) as being linked to a terrorist organisation.

Applications before the Commission

53. The members of the Commission were appointed in May 2017. On 12 July 2017, the Commission’s procedural regulations were issued and, on 17 July 2017, it started receiving applications.⁵¹ However, it did not issue any decisions until the beginning of 2018. The opposition Republican People’s Party made parliamentary inquiries into the Commission stating that “[n]o official statement was made about the decisions made by the OHAL Commission so far, even though 11 months have been passed since the establishment of the Commission.”⁵²

54. By 22 June 2018, 108,905 applications had been made to the Commission and 21,500 decisions had been rendered. On that same date, there were still 87,405 applications under consideration⁵³ and there had been only 1,300 decisions of reinstatement (approx. 6% of decisions rendered).⁵⁴ All remaining applications which had been adjudicated were rejected. Moreover, when decisions of the Commission are appealed, there are only two administrative courts that have jurisdiction to hear such appeals. We were informed by Turkish lawyers that the HSK designated the Ankara Administrative Court’s 19th and 20th Circuits for this purpose.⁵⁵ This contributes to the backlog of cases, also at the stage of appeal.

⁵¹ IHOP 2018, p. 61.

⁵² Stockholm Center for Freedom, Turkey’s OHAL Commission could not be remedy for victims of gov’t decrees under emergency rule: <https://stockholmcf.org/turkeys-ohal-commission-could-not-be-remedy-for-victims-of-govt-decrees-under-emergency-rule/>, accessed 28 August 2018.

⁵³ The Inquiry Commission on the State of Emergency Measures < <https://soe.tccb.gov.tr/> > accessed 28 August 2018.

⁵⁴ KHKLI Platformu < <http://www.khkliplatformu.com/ohal-komisyonundan-duyuru.html> > accessed 28 August 2018 (note that the number of reinstatements is not included in the English version of the Commission’s website, see *supra* note 49.).

⁵⁵ See <https://www.yenisafak.com/gundem/hskdan-iki-mahkemeye-yetki-2853565>.

International reactions on the Commission

55. There has been much international criticism of the Commission and its functioning since it was established. In January 2018, a Human Rights Watch Report criticised the impartiality of the Commission, highlighting how the members of this body represent the “same authorities responsible for approving dismissals and closures”.⁵⁶ The same was noted in a report of March 2018 of UN OHCHR, which also expressed concern that decisions of the Commission did not need to be reasoned, supported by evidence, or made public.⁵⁷
56. The European Parliament adopted a resolution in which it requested Turkey to review, as a matter of urgency, the nature of the Commission so that it would become an “independent commission capable of giving individual treatment to all cases, of effectively processing the enormous number of applications it receives, and of ensuring that judicial review is not unduly delayed”. It also urged the commission to “make its decisions public”.⁵⁸ This resolution reiterated statements made by the Committee on Foreign Affairs of the European Union, included in its report of June 2017.⁵⁹

Appeals of dismissal of judges and prosecutors

57. It should be noted that the Commission is not the body that considers applications from judges and prosecutors who have been dismissed other than those in government service. The HSK decides on the dismissals of prosecutors and most judges, apart from judges of the Constitutional Court, Council of State, Court of Appeal, Court of Accounts which can be dismissed by relevant bodies within those same institutions. The Council of State (the supreme administrative court) has jurisdiction to hear appeals.⁶⁰ The dismissals of judges of the Constitutional Court are final and cannot be appealed. The dismissal of Appeal Court judges can be appealed before the Council of State.
58. As mentioned in paragraph 28 above by March 2018, 4,279 judges and prosecutors had been dismissed, of whom 166 returned to work after the decision of dismissal was revoked.⁶¹ In addition, around 500 administrative personnel of the Supreme Court, Council of State, Court of Accounts, and Council of Judges and Prosecutors were dismissed; and only eight were reinstated.⁶²

⁵⁶ Human Rights Watch, Turkey- Events of 2017 < www.hrw.org/world-report/2018/country-chapters/turkey accessed 27 August 2018 (‘Human Rights Watch report’).

⁵⁷ OHCHR Report on the impact of the state of emergency on human rights in Turkey, para. 104.

⁵⁸ European Parliament ‘Resolution on the current human rights situation in Turkey’ (8 February 2018) 2018/2527(RSP) para. 4.

⁵⁹ European Parliament, Committee on Foreign Affairs ‘2016 Commission Report on Turkey’ (2016/2308(INI)) para. 11 < www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A8-2017-0234+0+DOC+XML+V0//EN&language=en > accessed 27 August 2018.

⁶⁰ IHOP 2017, p. 5.

⁶¹ IHOP, Updated Situation Report, pp 26, p. 38-39.

⁶² IHOP, Updated Situation Report, 37.

C. Attitude of the European Court of Human Rights to cases coming out of Turkey since the attempted coup

59. In view of the difficulties which have been encountered with delays in terms of implementing the new administrative State of Emergency Inquiry Commission and existing domestic remedies such as the right of individual petition to the Constitutional Court, many have turned elsewhere in search of a remedy.
60. Turkish citizens filed more than 90,200 petitions to the ECtHR in 2017, but over 25,000 of them were dismissed summarily as being ‘manifestly ill-founded’ by the court since domestic remedies had not been exhausted. Although some cases involving politicians and journalists have now been referred by the ECtHR to the Turkish government, the ECtHR has not yet made any substantive finding that the right of individual petition to the Constitutional Court is ineffective.

Dismissal cases

61. The ECtHR has rejected three applications, which have raised issues concerning the dismissal of judges and civil servants in 2016 and 2017 for non-exhaustion of domestic remedies: the cases of judge *Catal* (March 2017),⁶³ and teachers *Zihni* (Nov 2016)⁶⁴ and *Koksäl* (June 2017).⁶⁵
62. In the *Catal* case, the ECtHR found that the Council of State had recently been provided jurisdiction to examine the merits of appeals against dismissals of judges under emergency decree law and ruled that affected judges need to first apply to that court. According to the Court, there was no evidence that this remedy was incapable of providing appropriate redress or that it did not offer a reasonable prospect of success.
63. Since March 2017, the procedure before the Council of State has however not offered any effective and impartial remedy to judges affected by emergency decree laws. Out of the 4,279 judges and prosecutors who had been dismissed, less than 4%, have been allowed to return to work.
64. Regarding other civil servants, the *Koksäl* case may be the most significant decision because the Court required the applicant to first bring his complaint to the new Commission, which was tasked with the role of examining dismissals individually and having powers of reinstatement. For the ECtHR mere doubts as to the prospects of success of these remedies was not sufficient to excuse the applicant from having recourse to them. At the time of the decision, the Commission was not yet operational (its members were only appointed in May 2017 as described above).

⁶³ ECtHR (decision) 07/03/2017 – No 2873/17 - *ÇATAL c. TURQUIE* available only in French <http://hudoc.echr.coe.int/eng?i=001-172247>.

⁶⁴ ECtHR (decision) 29/11/2016 – No 59061/16 - *ZIHNI c. TURQUIE* (available only in French <http://hudoc.echr.coe.int/eng?i=001-169704>).

⁶⁵ ECtHR (decision) 12/06/17 – No 70478/16 – *KOKSAL c. TURKEY*.

65. As noted in section 4.B, since the *Koksül* case, a year ago, the Commission has not proven to provide any effective remedy in the vast majority of cases and has been widely criticised for its lack of independence and for its deficient procedure and huge backlog (all of which are described in detail above).

Cases related to other human rights breaches committed during the state of emergency

66. In November 2016, the ECtHR rejected the application of Judge Mercan for failure to exhaust domestic remedies.⁶⁶ Ms Mercan was put in pre-trial detention after the attempted coup for alleged links with the Gülenist movement. The Court held that Ms Mercan was required to lodge an individual application with the Constitutional Court with regard to her complaint concerning the lawfulness and duration of her pre-trial detention. The Court held that the mere fears as to the impartiality of the Constitutional Court's judges did not in themselves relieve her of the obligation to lodge an application before that court.

67. As referred to above, under the powers now held by President Erdoğan since 2017, he has the ability to appoint 12 of the 15 Constitutional Court judges and so, in our view, its future independence cannot be guaranteed. In the aftermath of the attempted coup, two judges of the Constitutional Court have been dismissed and detained. To date, there is still some evidence that the Constitutional Court can operate as an independent body. Thus, in two cases, involving journalists Mehmet Altan and Sahin Alpay the Constitutional Court held that their detention contravened the freedom of the press and ordered their release. However, the lower criminal courts failed to comply with these judgements and, in March 2018, the ECtHR did find breaches of their rights specifically because of the failure of the lower courts to follow the Constitutional Court's decision.⁶⁷ The Court observed, in particular, that the reasons given by the Istanbul 13th Assize Court in rejecting the application for their release, following a 'final' and 'binding' judgment delivered by the supreme constitutional judicial authority, could not be regarded as satisfying the requirements of Article 5.1 of the Turkish Convention.

5. Challenges to the Independence of Lawyers

68. Since the failed coup in July 2016 and the subsequent enactment of emergency decree laws, the Turkish legal profession has been the target of numerous attacks by the Government taking the form of (i) obstacles to perform their professional duties, as well as (ii) persecution and attacks, including arbitrary arrests, detainment, interrogation, and prosecutions.

69. These actions hinder the ability of lawyers to freely carry out their professional duties and severely restrict access to justice in Turkey, with a consequent erosion of the rule of law.

⁶⁷ See judgements in *Altan v Turkey* (application no. 13237/17) and *Alpay v Turkey* (application no. 16538/17)

A. Obstacles to the effective performance of lawyers' professional functions

Obstacles to lawyers' ability to carry out their professional duties

Access to case files

70. With the enactment of emergency decree law 668, codified by Law No 6755, the prosecutor may restrict a defence lawyer's right to examine the case-file or make copies of it, in those cases in which the prosecutor feels that the aim of the investigation may be compromised by the information contained in the files and where the information in the file is relevant to issues of national security.⁶⁸ It is important to note that before the declaration of the state of emergency, this prerogative could only be exercised by a judge.⁶⁹
71. International human rights norms protect legal professionals in order to allow them to carry out their work unhindered and without interference. This includes having access to all information that is necessary to be able to represent their clients effectively. In this regard, Law No 6755 breaches Principle 21 of the UN Basic Principles on the Role of Lawyers.
72. After the introduction of emergency decree law 668, the right of a suspect in custody to consult with a lawyer could be restricted for up to five days which breaches the right to liberty and security of the person. According to the Human Rights Committee, General Comment No 35 (on ICCPR Article 9 'Liberty and Security of Person'), "delays should not exceed a few days from the time of arrest. In view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing". Furthermore, the inability to access a lawyer from the first day of detention could increase the risks of torture and inhuman treatment (a non-derogable right under Article 4(2) of the ICCPR).
73. This period was reduced to 24 hours, six months later, by emergency decree law 684 of 23 January 2017.⁷⁰

Access to indictments

74. Emergency decree law 668 also restricts access to indictments by the defence lawyer before the trial.⁷¹ The Venice Commission outlines that according to this emergency decree law "a bill of indictment or 'documents which substitute for the bill of indictment' may be 'read out or summarized and explained' before the start of the trial".⁷² This course of action

⁶⁸ Emergency decree law 668, article 3/1; Law No 6755, Article 3. "The defense counsel's right to examine the contents of the case file or take copies of the documents can be restricted by the decision of the public prosecutor, if the purpose of the investigation may be compromised" < www.tbmm.gov.tr/kanunlar/k6755.html > accessed 29 August 2018.

⁶⁹ Article 153/2 of the Turkish Penal Procedure Law prior to the Emergency decree law, in ALI right to defence, p. 11.

⁷⁰ IHOP 2018, p.10

⁷¹ Emergency decree law 668, Article 3.

⁷² European Commission for Democracy through Law (Venice Commission), Turkey, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session (Venice 9-10 December 2016) para 151, p. 33.

violates the right to a fair trial included in article 14.3.a of the ICCPR and article 6 of the ECHR, and the right to a defence, set out in article 14.3.b of the ICCPR.

75. Criminal defence lawyers are subject to high levels of pressure and threats when working on cases related to the attempted coup or anti-terrorism legislation. In many instances, lawyers have been associated with their clients and their clients' causes. As a consequence, very few lawyers are willing to face the level of risk that this entails, thereby affecting access to justice for Turkish citizens.⁷³ In our view, this represents a flagrant breach of Principle 18 and 16 of the UN Basic Principles on the Role of Lawyers which forbids such an approach.

Limitations on access to a lawyer

76. Since the failed coup in 2016 and the enactment of emergency decree laws following the proclamation of a state of emergency, access to a lawyer has been restricted or prevented in Turkey in different ways, including the following.

77. As noted in paragraph 74, during a period of six months, emergency decree law 668 restricted the right of a suspect in custody to consult with a lawyer for up to five days,⁷⁴ thus violating the right to liberty and security of the person.⁷⁵

78. Emergency decree law 676 of 29 October 2016, codified by Law No 7070, also limits access to a lawyer for detainees. Under this emergency decree law, a magistrates' court has the power of restricting access to a lawyer for 24 hours for individuals accused of crimes within the scope of the Anti-Terror Law.⁷⁶ Furthermore, such individuals can only be represented by a maximum of three lawyers during court hearings.⁷⁷ This emergency decree law extends these restrictions from the investigation stage to include the prosecution stage.⁷⁸

79. Emergency decree law 667 of 23 July 2016, codified by Law No 6749, significantly curtails the right to a fair trial, allowing the consultations between lawyers and their clients to be

⁷³ OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 14.

⁷⁴ Emergency decree law 668, Article 3/m : "The right of the suspect in custody to see a defense counsel may be restricted for five days by the decision of the public prosecutor. No statement shall be taken during this time."; see also European Commission for Democracy Through Law (Venice Commission) 'Turkey Opinion on Emergency Decree Laws Nos. 667-676 adopted following the failed coup of 15 July 2016' (9-10 December 2016) CDL-AD(2016)037, p. 37; OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 10.

⁷⁵ European Commission for Democracy through Law (Venice Commission), Turkey, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session (Venice 9-10 December 2016) p. 37.

⁷⁶ Emergency decree law 676, Article 3; see also OHCHR Report on the impact of the state of emergency on human rights in Turkey, paras 40(j) and 83(a).

⁷⁷ Emergency decree law 676, Article 1; see also OHCHR Report on the impact of the state of emergency on human rights in Turkey, para. 83(a).

⁷⁸ See ALI right to defence, p. 9.

restricted in duration, and to take place in the presence of police or state agents.⁷⁹ Authorities can ban a lawyer from meeting with the client if the lawyer is accused to have transmitted information to a terrorist or criminal organization.⁸⁰ The case of the lawyer Levent Pişkin is an example of this provision being utilised: in November 2016, Mr Pişkin was accused by some media of passing information from Selahattin Demirtaş (member of Parliament and by then in detention) to a German magazine, for propaganda purposes. As a result, Mr Pişkin was arrested on 14 November 2016 and subsequently released after two days.

80. Due to the high numbers of Turkish lawyers fleeing the country to escape persecution, the number of lawyers available to work on dismissal and security - related cases in the country is significantly reduced. This is exacerbated by the fact that those lawyers remaining and practising in Turkey request, at times, very high fees in cases involving suspects of terrorism, due to the limited availability of lawyers willing to take up these cases.⁸¹ Furthermore, a significantly high proportion of lawyers that are normally appointed by Bar Associations as public defenders have their appointments revoked by the same bodies, which leaves numerous clients unrepresented in proceedings.⁸²
81. These new criminal provisions and actions amount to breaches of the right to access to a lawyer guaranteed under article 14 of the ICCPR, article 6 of the ECHR and Principle 1 of the UN Basic Principles on the Role of Lawyers.
82. Restrictions have been imposed on the right of those accused to a lawyer of one's own choice. According to emergency decree law 667, the prosecution is allowed to request the replacement of a defence lawyer – retained by the detainee or accused - with a lawyer

⁷⁹ Emergency decree law 667, Article 6/d:) “Where there is a risk that public security and the security of the penitentiary institution is endangered, that the terrorist organization or other criminal organizations are directed, that orders and instructions are given to them or secret, clear or crypto messages are transmitted to them through the remarks during the interviews between the detainees and their lawyers; the interviews may be recorded auditorily or audio - visually via technical devices, the officers may be made present during the interviews between the detainee and his/her lawyer with a view to monitoring the interview, documents or document templates and files given by the detainee to his/her lawyer or vice versa and the records kept by them concerning the interview between them may be seized, or days and hours of the interviews may be limited upon the public prosecutor's order. In the event that the interview of the detainee is understood to be made for the aim set out above, the interview shall be immediately ended, and this fact shall be recorded into minutes together with the grounds thereof. The parties shall be warned about this issue prior to the interview. In the event that such minutes are drawn up in respect of a detainee, the Office of the Magistrates' Judge could ban the detainee from interviewing with his/her lawyers, upon the public prosecutor's request. Decision on banning shall be immediately served on the detainee and the relevant Bar Presidency with a view to assigning a new lawyer. The public prosecutor may ask for replacement of the lawyer commissioned by the Bar. The commissioned lawyer shall be paid in accordance with Article 13 of the Law no. 5320 on the Enforcement and Application Procedure of the Criminal Procedure Code of 23 March 2005.”

⁸⁰ Human Rights Watch report, A Blank Check, Turkey's Post-Coup Suspension of Safeguards Against Torture (October 2016) p. 18 < www.hrw.org/report/2016/10/25/blank-check/turkeys-post-coup-suspension-safeguards-against-torture > accessed 29 August 2018 ('HRW Report').

⁸¹, Stockholm Center for Freedom, Turkey's Descent into Arbitrariness: The End of the Rule of Law, p. 5 < <https://stockholmcf.org/wp-content/uploads/2017/04/Turkey%E2%80%99s-Descent-Into-Arbitrariness-The-End-Of-Rule-Of-Law.pdf> > accessed 29 August 2018, ('Stockholm centre report').

⁸² Stockholm centre report, p. 7.

appointed by the Bar Association.⁸³ The replacement can be justified by the mere suspicion that consultations between the lawyer and his or her client could be used to facilitate terrorist or criminal activities.⁸⁴ Furthermore, according to reports from lawyers from Ankara, Istanbul, Urfa and Antalya, authorities have significantly reduced the ability of detainees and their families to retain lawyers during the stage of police detention. In the majority of cases, the choice has been limited to lawyers who are on the list of local Bar Associations as public defenders/legal aid lawyers.⁸⁵

83. According to research of Human Rights Watch, reporting opinions of Turkish legal professionals, and confirmed by the Turkish lawyers submitting this report, “legal aid lawyers are often young and inexperienced, many in their first years after graduation, which makes them vulnerable to pressure and manipulation”.⁸⁶ Such lawyers also face financial constraints working under poor legal aid schemes, which potentially adversely impacts their performance.⁸⁷
84. Emergency decree law 676, codified by Law No 7070, amended the Code of Criminal Procedure and incorporated further new limitations on detainees accessing lawyers of their own choice. According to the new procedure, lawyers facing criminal investigations are banned for two years from representing clients in terrorism- related cases.⁸⁸ Prior to emergency decree law 676, lawyers could be banned from representing a client only where there was a pending prosecution against them. The new decree extended this limitation to the existence of a pending investigation against a lawyer for forming organised groups with the intention of committing a crime (article 314 of the Criminal Code) and forming an armed organisation (article 312 of the Criminal Code). Reports also document that, immediately after the coup attempt in Turkey, “lawyers who had previously worked on cases related to the Gülen movement were not allowed to act for clients even if appointed by bar associations as legal aid lawyers”. According to the Washington Post, 189 lawyers were not allowed to represent individuals alleged to have taken part in the attempted coup.⁸⁹ However, this specific limitation does not seem to be in place at this time.⁹⁰
85. We consider that these amendments to the provisions relating to access to a lawyer in Turkey violate the right to instruct a lawyer of one’s own choosing protected under ICCPR

⁸³ Emergency decree Law 667, Article 6/d; *see also* OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 19; The Arrested Lawyers Initiative, The Rights to Defence and Fair Trial under Turkey’s Emergency Rule (February 2018) p. 11 < <https://arrestedlawyers.files.wordpress.com/2018/02/the-rights-to-defense-fair-trial-in-turkey.pdf> > accessed 29 August 2018 (‘ALI, right to defence report’).

⁸⁴ Emergency decree Law 667, Article 6/1 (d).

⁸⁵ HRW report, p. 18.

⁸⁶ HRW report, p. 18.

⁸⁷ HRW report, p. 18.

⁸⁸ Emergency decree law 676, Article 6/g; *see also* ALI right to defence report, p. 10.

⁸⁹ Loveday Morris, ‘Law is suspended’: Turkish lawyers report abuse of coup detainees’ (*Washington Post*, 24 July 2016) < www.washingtonpost.com/world/law-is-suspended-turkish-lawyers-report-abuse-of-coup-detainees/2016/07/24/dc240998-4e9f-11e6-bf27-405106836f96_story.html?noredirect=on&utm_term=.ea89c845a9bf > accessed 29 August 2018.

⁹⁰ HRW Report, p.18

(article 14.3.b), ECHR (article 6.3.c) and the UN Basic Principles on the Role of Lawyers (principle 1); as part of the right to a fair trial.

Breaches of legal professional privilege

86. Emergency decree law 667, codified by Law No 6749, undermines the confidentiality of communications between lawyers and their clients in cases where the client is in detention, and imposes restrictions on the right of a detainee to be visited while in custody.⁹¹ The emergency decree law allowed for oral consultations between the detainees and their lawyers to be recorded for security reasons, as well as the seizure by authorities of documents related to the detainee's case.⁹² It also authorised the limitation of consultations between detainees and their lawyers upon the public prosecutor's order.⁹³
87. Emergency decree law 676 allows authorities to record, observe and/or interrupt meetings between lawyers and their clients in detention, where the case involves or could lead to a threat to national security and in terrorism related cases.⁹⁴
88. Emergency decree law 668, codified by Law No 6755, grants prosecutors the authority to order searches of private premises and offices (including lawyers' offices), as well as inspection of computers, databases and software in urgent cases and without the order of a judge.⁹⁵ It also establishes that all information obtained in such a search should be submitted to a judge for review within five days.⁹⁶ Furthermore, some of the lawyers arrested in Turkey since 2016 face enormous pressure and, in some instances, are compelled to testify against their clients, violating the principle of lawyer-client confidentiality.⁹⁷
89. The principle of legal professional privilege is enshrined in principle 22 of the UN Basic Principles on the Role of Lawyers. Norms included in the emergency decrees adopted after

⁹¹ The scope of the decree does not include the coup attempt, but only focuses on the fight against terrorism. (from Commissioner for Human Rights, Memorandum on the Human Rights Implications of the measures taken under the State of Emergency in Turkey (26 July 2016).

⁹² Emergency decree law 668, Article 6/d; *see also* OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 19.

⁹³ Emergency decree law 668, Article 6/d.

⁹⁴ Emergency decree law 668, Article 6; *see also* OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 19; Evidence contained in HRW report, p. 19.

⁹⁵ Emergency decree law 668, Article 3; *see also* European Commission for Democracy through Law (Venice Commission), Turkey, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session (Venice 9-10 December 2016) p. 33; OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 10; ALI, right to defence report, p. 15.

⁹⁶ Emergency decree law 668, Article 3.I; *see also* European Commission for Democracy through Law (Venice Commission), Turkey, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, adopted by the Venice Commission at its 109th Plenary Session (Venice 9-10 December 2016) p. 33, OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 10, ALI, right to defence report, p. 15.

⁹⁷ Stockholm centre report, p. 5.

July 2016 led to a consistent erosion of this principle, which violates the right to a fair trial established in article 14 ICCPR and article 6 ECHR.

90. It is emphasised that all of these measures passed during the state of emergency now form part of the permanent law in Turkey.

B. Persecution and attacks against lawyers

91. Due to successive legislative and constitutional amendments put in place by the Turkish government, the government has gained unprecedented control over the judiciary and prosecution authorities. It has used its new powers over the judiciary to harass and persecute legal professionals not only as a means of suppressing dissenting voices, but also to restrict and criminalise work carried out by lawyers as part of their professional duties.⁹⁸

92. The independence of the legal profession constitutes an essential guarantee for the protection of human rights of all citizens and is necessary for effective and adequate access to justice. According to the Office of the UN High Commissioner for Human Rights, it is possible to draw “a pattern of persecution of lawyers representing individuals accused of terrorism offences” in Turkey,⁹⁹ which clearly undermines the role of lawyers within Turkish society. Furthermore, the Commissioner for Human Rights of the Council of Europe stated that:-

“given the vagueness of the basis for some of the administrative measures provided for in the emergency decrees and the fact that some administrative sanctions could be seen as displaying a criminal character, many people are justifiably afraid of facing sanctions while not having committed any illegal actions themselves.”¹⁰⁰

93. Practising as a lawyer in Turkey has, therefore, exposed individual lawyers to high levels of risk: this represents a clear message from the Turkish Government of a complete disregard for the rule of law and democratic principles of justice.

94. Further, the participation of lawyers in public debate in Turkey is hampered by a wide campaign of attacks and harassment against those who freely express their opinion (especially if such opinion is critical of the Government’s policies). Such dissent is often silenced through prosecuting lawyers and others on terrorist-related charges. These actions breach lawyers’ right to freedom of expression.¹⁰¹ The European Court of Human Rights (ECtHR) suggests that an impermissible restriction of a lawyers’ right to freedom of expression would not only result in a breach of article 10 of the ECHR (right to freedom of expression), but could also give rise to a breach of article 6 of the ECHR (right to a fair trial), because of the impact this may have on any trial in which that lawyer carries out his

⁹⁸ See European Parliament ‘Resolution on the current human rights situation in Turkey’ (8 February 2018) 2018/2527(RSP).

⁹⁹ OHCHR Report on the impact of the state of emergency on human rights in Turkey, p. 3.

¹⁰⁰ Council of Europe, Commissioner for Human Rights, Memorandum on the Human Rights Implications of the measures taken under the State of Emergency in Turkey (26 July 2016) p. 4.

¹⁰¹ UN Basic Principles on the Role of Lawyers, principle 23.

professional functions.¹⁰² Obstacles to lawyers' freedom of expression, therefore, have far-reaching consequences to the right to a fair trial and on access to justice.

Arbitrary Arrest, Detention and Wrongful Prosecution

95. Lawyers representing clients who are regarded by the Turkish government as terrorists, including those who have voiced opposition against law reforms and actions taken by the State prior and subsequent to the failed coup attempt, as well as those who conduct human rights advocacy have been targeted and prosecuted for breaches of the anti-terrorism law No 3713. These lawyers have also faced prosecution for other offences, such as establishing organisations for the purpose of committing crimes (Article 220 of the Criminal Code), or establishing, commanding or being a member of an armed organisation (Article 314 of the Criminal Code). The Ministry of Justice's National Judiciary Informatics System (UYAP) network prepared a list of lawyers who represent political opponents of the government and sent it to the prosecution services to prosecute the listed lawyers.
96. In May 2018, the Bar Human Rights Committee, headed by Kirsty Brimelow QC, carried out interviews with prosecutors and Judges who have fled Turkey and are residing abroad. They have been purged from their family lives and lost profession, home, property and peaceful enjoyment of possessions. Evidence demonstrates that arrests are based upon a list of names or use of an Asya bank account (in one case set up by the State many years previously for payment of money to the Prosecutor) or alleged use of a smartphone app called Bylock, which is a secure messaging app widely used in Turkey unsupported by evidence of wrongdoing or criminality. The criminal burden of proof is reversed with those accused being required to prove their innocence, indictments are cut and pasted from one to the other, detention is used liberally with evidence of ill-treatment and torture, including the use of solitary confinement.¹⁰³
97. In its 2018 report, OHCHR noted that:-

“[i]n total, some 570 lawyers were arrested, 1,480 faced some kind of prosecution, 79 were sentenced to long-term imprisonment, and approximately 34 bar associations shut down on the ground of alleged affiliation to a terrorist organization. In addition, OHCHR observed a pattern of persecution of lawyers representing individuals accused of terrorism offences, being associated with their clients' cause (or alleged cause) while discharging their official functions, and consequently prosecuted for the same or related crime attributed to their client.”¹⁰⁴

¹⁰² ECtHR, *Kyprianou v Cyprus*, Application no. 73797/01, 15 December 2005, para 175; ECtHR, *Steur v The Netherlands*, Application no. 39657/98, 28 October 2003, para 37; ECtHR, *Nikula v Finland*, Application no. 31611/96, 21 March 2002, para 26. More information on the international and European human rights standards related to lawyers' right to freedom of expression are included in the Amicus Curiae Brief to the Turkish Constitutional Court on case no. 2016/9808, drafted by the Law Society of England and Wales and Lawyers Rights Watch Canada < <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/amicus-for-constitutional-court-turkey/5057590.article> > accessed on 27 August 2018.

¹⁰³ Report pending publication, draft on file with BHRC.

¹⁰⁴ OHCHR Report on the impact of the state of emergency on human rights in Turkey, para. 56.

98. Since the publication of the report, we estimate that more than 581 lawyers have now been arrested, 1,542 prosecuted and 168 lawyers convicted. A list of lawyers who have been sentenced, has been prepared by the Arrested Lawyers Initiative, and can be sent upon request.¹⁰⁵ The list was compiled by using Turkish news articles mentioning the arrest, prosecution or sentence of lawyers, as well as by receiving direct reports of arrested lawyers from their families or themselves.
99. We received specific information from the following lawyers:
100. *Ahmet Bal and Mehmet Şimşek*: a few days after the attempted coup, on 21 July 2016, arrest warrants were issued for alleged membership of the Gülenist movement against 45 members of Konya Bar Association, including lawyers Ahmet Bal and Mehmet Şimşek. Mrs. Bal and Şimşek were arrested, along with 20 other lawyers, on 13 October 2016. On 2 August 2017, the 20 lawyers were convicted by the 6th High Penal Court of Konya and given sentences ranging from 10 years and six months to two years in prison. Mrs. Bal and Şimşek were sentenced to nine years in prison.
101. *Ali Aksoy*: a lawyer with the Izmir Bar Association, Mr. Aksoy was arrested on 21 July 2016 and prosecuted for a statement to the press in 2014 where he highlighted deficiencies/irregularities in the criminal proceedings against his client and the conduct of a law enforcement official. He was sentenced to three years' imprisonment for targeting a public agent by the 2nd High Penal Court of Izmir. Mr. Aksoy was also prosecuted for alleged membership of a terrorist organisation and was sentenced on 17 July 2018 to 19 years and nine months in prison by the 13th High Penal Court of Izmir.
102. *Taner Kılıç*: Mr. Kılıç, chair of Amnesty International Turkey, was detained between June 2017 and August 2018 and charged with membership of the Gülenist movement for allegedly downloading ByLock, a messaging application on his phone. Mr. Kılıç was released on 15 August 2018 after more than 14 months in detention. His trial is still ongoing.
103. *Dr. Hanifi Barış*: Mr Barış, lawyer and University of Aberdeen PhD graduate, was arrested on 4 July 2018 for creating 'terrorist propaganda' after sharing news articles and commentaries criticising President Erdoğan on Facebook and Twitter. His first hearing will be held on 18 September 2018.
104. *Can Tombul, Sezin Uçar, Özlem Gümüştas*: Human rights lawyers and members of the Law Bureau of the Oppressed (EHB) have been arrested while conducting their professional duties. Mrs. Uçar and Gümüştas were first arrested for attending the autopsy of a client who died in Syria (called Rojava) and providing legal support to the family. Mrs. Uçar and Gümüştas, representing then former co-chair of the Peoples' Democratic Party, Figen Yüksekdağ, were detained just before the hearing of the Suruç Massacre case. Mr. Tombul was also arrested after the hearing of Mrs. Uçar and Gümüştas.

¹⁰⁵ The signing organisations could not obtain the consent of all the lawyers sentenced to disclose their names in the present submission.

105. *Selcuk Kozagacli*: Lawyer and president of CHD¹⁰⁶ ('Peace in Kurdistan' shut down by an emergency decree law) was arrested in Istanbul for allegedly being a member of a terrorist organization. 19 other CHD members have also been arrested in less than a year.
106. These prosecutions and other measures, such as threats, arrests, and detentions, make it prohibitive for lawyers to carry out their professional duties which are protected by the UN Basic Principles on the Role of Lawyers (especially Principles 16-18, 20, and 23).

Conditions of detention and ill-treatment

107. We have received reports of ill-treatment and alleged torture in Turkish prisons.¹⁰⁷

C. Attacks on Bar Associations and Law Societies

108. Since 2016, Bar Associations and Law Societies in Turkey have been targeted in four main ways
109. *Direct interference with the independence of Bar Associations and the Union of Turkish Bar Associations*: On 15 July 2018, Presidential Decree No 5 created a State supervisory board (acting under the order of the Presidency) in charge of monitoring, overseeing, and investigating, among others, public institutions (including Bar Associations and the Union of Turkish Bar Associations¹⁰⁸).¹⁰⁹ According to this new decree, the supervisory board can request access to any document, including confidential material, from public institutions.¹¹⁰ Finally, the president of the board has been granted disciplinary powers and can dismiss public agents working in public institutions.¹¹¹
110. *Admission to the Bar*: the government has targeted prosecutors, academics, and judges dismissed during the state of emergency, as well as law graduates accused of having links with terrorist organisations, who are seeking admission to the Bar. Although Bar Associations, and subsequently the Union of Turkish Bar Associations,¹¹² accepted their applications, the Ministry of Justice refused to issue licences on the basis that the emergency decree laws prevented them from being hired in any public service position for

¹⁰⁶ See < <https://peaceinkurdistancampaign.com/tag/chd/> > accessed 29 August 2018.

¹⁰⁷ The signing organisations did not receive consent from the victims to disclose the names in the victims. For information on specific cases, please see: www.frontlinedefenders.org/en/case/lawyer-engin-gokoglu-tortured-prison/; <https://arrestedlawyers.org/2017/11/04/lawyer-engin-gokoglu-was-subjected-torture-in-prison/>; www.yeryuzupostasi.org/2017/09/19/gozaltindaki-avukat-engin-gokogluna-polisler-tarafindan-iskence-yapildi/; www.evrensel.net/haber/299933/bestas-tugay-bekin-iskenceye-ugramasini-meclise-tasidi; <https://arrestedlawyers.org/2017/07/25/despite-the-footage-of-ill-treatment-prosecutor-drops-investigation-against-police-officers/>.

¹⁰⁸ In Turkey, Bar Associations and the Union of Turkish Bar Associations are public institutions according to Law No 1136, Article 76, and Article 109 paragraph 2.

¹⁰⁹ Presidential Decree No 5, published in the official Gazette no 30479 on 15.07.2018, Article 4 < <http://www.mevzuat.gov.tr/MevzuatMetin/19.5.5.pdf> > accessed 30 August 2018.

¹¹⁰ Presidential Decree No 5, Article 5.

¹¹¹ Presidential Decree No 5, Article 6.

¹¹² According to the procedure provided for in Law No:1136, Articles 6 and 7.

life, including being admitted to the Bar.¹¹³ The Union of Turkish Bar Associations tried to object by obtaining a two-thirds majority necessary to force the Ministry of Justice to issue the licences.¹¹⁴ The Ministry of Justice challenged the decisions before Administrative Courts.¹¹⁵ Cases are still ongoing. The cases of academics Yasin Bedir¹¹⁶ and Cenk Yiğiter¹¹⁷ are of particular relevance.

111. *Persecution of presidents and board members of Bar Associations*: several key members of Bar Associations have been detained for their alleged affiliation with the Gülenist movement. In April 2018, the Arrested Lawyers Initiative reported that 14 presidents and former presidents of provincial bar associations had been either arrested or detained.¹¹⁸ These individuals include:

1. Fevzi Kayacan, president of Konya Bar Association (sentenced to ten years and six months in prison on 25 October 2017)
2. Orhan Öngöz, president of Trabzon Bar Association
3. Cemal Acar, president of Siirt Bar Association
4. Ismail Tastan, president of Gumushane Bar Association
5. Levent Bozkurt, president of Aksaray Bar Association
6. Vahit Bagci, president of Kahramanmaraş Bar Association
7. Hacı İbis, former president of Yozgat Bar Association
8. Fahri Acikgoz, former president of Yozgat Bar Association
9. Cemalettin Ozer, former president of Erzincan Bar Association (sentenced to eight years and nine months in prison on 27 July 2017)
10. Talip Nayir, former board member of Erzincan Bar Association (sentenced to ten years in prison on 27 July 2017)
11. Zeynel Balkiz, former president of Manisa Bar Association
12. Mehmet Guzel, former president of Erzurum Bar Association (sentenced to thirteen years in prison)
13. Mehmet Akalin, former president of Afyon Bar Association

¹¹³ IHOP, Updated Situation Report, p. 24.

¹¹⁴ According to Law No1136, Article 8.4.

¹¹⁵ According to Law No1136, Article 8.6.

¹¹⁶ Ankara 2nd Administrative Court, File Number: 2018/498. See also https://www.cumhuriyet.com.tr/haber/turkiye/992794/Baris_akademisyenine_avukatlik_da_yasak.html > accessed 29 August 2018.

¹¹⁷ See < <https://www.evrensel.net/haber/342283/yigiter-khk-ile-ihrac-yurttasliktan-cikarilmanin-gostergesi> > accessed 29 August 2018.

¹¹⁸ The Arrested Lawyers Initiative ‘Incarceration of Turkish Lawyers | En Masse Arrests and Convictions (2016-2018)’ (April 2018) p. 2 < <https://arrestedlawyers.files.wordpress.com/2018/03/incarceration-of-turkish-lawyers-en-masse-arrests-and-convictions-2016-2018.pdf>> accessed 08 August 2018.

14. Gurcan Sagcan, president of Usak Bar Association¹¹⁹

112. *Persecution of members of Bar Associations or lawyers' associations*: Entire Bar Associations have also been targeted. For example, on 21 July 2016, 45 members of the Konya Bar Association, including its President Fevzi Kayacan, were subject to an arrest warrant. On 25 October 2017, the sixth High Penal Court of Konya sentenced 20 lawyers, including Fevzi Kayacan, to prison with sentences ranging from two to 11 years.¹²⁰ In October 2017, an arrest warrant was issued against eight members of the Mesrin and Van Bar Associations.¹²¹

113. Lawyers associations and law societies have been systematically targeted since July 2016, as part of the widespread attack against associations in the country.¹²² Emergency decree laws have closed down 34 lawyers' associations or law societies in 20 different provinces. This was the case for:

- Çağdaş Hukukçular Derneği (Contemporary Lawyers Association) and Özgürlükçü Hukukçular Derneği (Association of Lawyers for Freedom) representing victims of torture and ill-treatment and people affected by the curfews in the southeast Anatolia, and
- Mezopotamya Hukukçular Derneği (Mesopotamia Lawyers Association) representing people affected by the curfews in the southeast Anatolia.

114. In addition, Turkish authorities have confiscated their assets without justification or providing compensation.

115. These practices contravene the UN Basic Principles on the Role of Lawyers (especially Principles 10, 16, 23, and 24).

¹¹⁹ The Arrested Lawyers Initiative '14 Presidents or Former Presidents of Provincial Bar Associations were detained or arrested in Turkey' (*The Arrested Lawyers Initiative*, 24 July 2017) < <https://arrestedlawyers.org/2017/07/24/14-presidents-or-former-presidents-of-provincial-bar-associations-were-detained-or-arrested-in-turkey/> > accessed 08 August 2018.

¹²⁰ The Arrested Lawyers Initiative 'The 20 Members of Konya Bar Association Including Former President Kayacan were sentenced range to 2 and 11 years imprisonment' (*The Arrested Lawyers Initiative*, 27 October 2017) < <https://arrestedlawyers.org/2017/10/27/the-20-members-of-konya-bar-association-including-former-president-kayacan-were-sentenced-range-to-2-and-11-years-imprisonment/> > accessed 08 August 2018.

¹²¹ The Arrested Lawyers Initiative 'Detention warrant was issued for 8 lawyers by Mersin Prosecutorial Office' (*The Arrested Lawyers Initiative*, 4 October 2017) < <https://arrestedlawyers.org/2017/10/04/detention-warrant-was-issued-for-8-lawyers-by-mersin-prosecutorial-office/> > accessed 08 August 2018.

¹²² According to the human rights joint platform, 1419 associations, especially human rights and civil rights organisations, have been closed between July 2016 and March 2018. IHOP, Updated Situation Report, p. 51.

6. Requests

116. In light of the information presented above, we respectfully request that you send a communication to the Government of Turkey seeking guarantees from the Government as to the following urgent requests:
- a. Guarantee the independence of the judiciary and the prosecution services, in accordance with the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.
 - b. Amend legislative and constitutional provisions that allow the Turkish government to appoint a large number of members of the HSK and the Constitutional Court;
 - c. Guarantee that all applications against dismissal decisions are considered in a fair and public hearing in a reasonable time by a competent, independent and impartial tribunal established by law as provided for in Article 14.1 of the ICCPR, Article 6.1 of the ECHR;
 - d. Regarding all applications against dismissals under consideration by the Inquiry Commission for State of Emergency Measures, ensure:-
 - that the majority of the members of the Commission are independent and impartial; not appointed by the executive,
 - that applicants have access to case files and grounds for dismissals,
 - that applicants can present evidence and challenge evidence filed against them,
 - that the decisions of the Commission are reasoned, based on evidence presented by both parties, made public, and directly notified to the applicant, and
 - that the Commission is provided enough resources to address its backlog as soon as possible;
 - e. Ensure that lawyers can effectively perform their professional functions in accordance with the guarantees provided for in Article 14 of the ICCPR, the UN Basic Principles on the Role of Lawyers, and Articles 5 and 6 of the ECHR by:-
 - Repealing legislation enacting emergency decree laws which impact legal professional privilege, access to a lawyer of one's choice, and which extend detention periods without access to a lawyer, and
 - Removing any practical obstacles;
 - f. Amend the anti-terror legislation (including the new Anti-Terrorism Bill adopted on 25 July 2018), and provisions in the Criminal Code as recommended by the Council of Europe, the European Court of Human Rights, and the European Union;¹²³

¹²³ Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights, CommDH (2017) 29, 10 October 2017.

- g. Ensure that lawyers are not identified with their clients or clients' causes and can perform their duties without intimidation, hindrance, harassment or improper interference, in accordance with the UN Basic Principles on the Role of Lawyers;
- h. Immediately end the arbitrary and systematic arrest, prosecution and detention of lawyers, drop the charges against those arbitrarily accused, and release those who are detained, unless credible evidence is presented in proceedings that comply with international fair trial standards;
- i. Ensure the independent and prompt investigation and prosecution of all cases of torture and ill-treatment of lawyers committed by law enforcement officers, in accordance with applicable international standards;
- j. Immediately end the interference in and systematic persecution of bar associations and lawyers' associations and arbitrary arrest and prosecution of their members; and
- k. Ensure that lawyers are entitled to form and join independent and self-governing professional associations as protected by Principle 24 of the UN Basic Principles on the Role of Lawyers.

117. We remain willing to assist with reforms and to advise the Turkish government as to amendments required in order for Turkey to comply with its international law obligations to the rights and protections of its people.

Annex 1: International Reactions

Bar Associations

Letters to Turkish authorities

118. The Law Society of England and Wales, letter “Turkey: Law Society raises concern regarding the investigation into the murder of human rights lawyer Tahir Elci”, January 2016, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/turkey-law-society-raises-concern-regarding-the-investigation-into-the-murder-of-human-rights-lawyer-tahir-elci/5053240.article>
119. The Law Society of England and Wales, Lawyers’ Rights Watch Canada, Lawyers for Lawyers, the Bar Human Rights Committee, the Council of Bars and Law Societies of Europe, Foundation for Society and Legal Studies, London Legal Group, les Barreaux de Limoges, les Barreaux de Aix-en-Provence, Syndicat des Avocats de France, Défence Sans Frontières - Avocats Solidaire, Joint letter “URGENT ACTION, Unlawful and arbitrary arrest and detention of two human rights lawyers in Turkey, Ms. Ayse Acinikli and Mr Ramazan Demir”, 04 May 2016, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/joint-call-for-action-to-un-special-rapporteurs-on-behalf-of-two-detaianed-turkish-lawyers/5055342.article>
120. The Law Society of England and Wales, letter “Dismissal of 2,745 judges”, 22 July 2016, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/turkey-dismissal-of-2745-judges/5056932.article>
121. Belgium Flemish Bar Association, letter, 22 July 2016: <https://arrestedlawyers.org/2017/07/24/belgium-bar-associations-react-arbitrary-arrests-of-lawyers/>
122. The Law Society of England and Wales and Lawyers for Lawyers, joint letter “Arrest – Lawyer Levent Piskin”, 16 November 2016, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/joint-intervention-letter-on-the-arrest-of-the-lawyer-levent-piskin-in-turkey/5058979.article>
123. German Federal Bar, Open letter concerning the detention of lawyers and closure of lawyer’s association in the Republic of Turkey, 18 January 2017, <https://stockholmcf.org/german-federal-bar-president-asks-bozdog-to-guarantee-lawyers-to-perform-their-duties/>
124. Bar Council of England and Wales and Bar Human Rights Committee of England and Wales, Open letter to Prime Minister of UK Theresa May urging her to raise human rights concerns in Turkey during President Erdogan visit, 27 January 2017, <http://www.barhumanrights.org.uk/wp-content/uploads/2017/01/BHRC-Bar-Council-Turkey-open-letter.pdf>

125. Bar Human Rights Committee of England and Wales, Open letter to the Turkish Constitutional Court calling on them to urgently address the thousands of cases pending since Turkey's abortive coup in July 2016, 7 February 2017 <http://www.barhumanrights.org.uk/bhrc-calls-on-turkish-constitutional-court-to-address-human-rights-abuses/>
126. The Law Society of England and Wales, the Bar Council of England and Wales, the Law Society of Scotland, the Faculty of Advocates of Scotland, the Law Society of Northern Ireland, the Bar of Northern Ireland, the Law Society of Ireland and the Council of the Bar of Ireland, joint letter, 13 March 2017: <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/joint-intervention-letter-on-turkey/5060999.article>
127. Joint statement by lawyers, judges and journalists on the ongoing crackdown on the rule of law in Turkey (CCBE, European Association of Judges and European Federation of Journalists), 05 April 2017 <https://europeanjournalists.org/blog/2017/04/05/joint-statement-by-lawyers-judges-and-journalists-on-the-ongoing-crackdown-on-the-rule-of-law-in-turkey/>
128. Observatoire International des Avocats, Communiqué de l'OIAD: "La répression s'intensifie contre les avocats turcs", 6 April 2017 <http://www.avocatparis.org/la-repression-sintensifie-contre-les-avocats-turcs>
129. The Council of Bars and Law Societies of Europe (CCBE), letter "Concerns regarding the arrest of 23 Turkish lawyers" 13 June 2017, https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Turkey_-_Turquie/2017/EN_HRL_20170613_Concerns-regarding-the-arrest-of-23-Turkish-lawyers.pdf
130. The Law Society of England and Wales, letter "Detention – 9 Human Rights Defenders", 12 September 2017, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/detention-of-9-human-rights-defenders-in-turkey/5062895.article>
131. Bar Human Rights Committee of England and Wales, Statement "BHRC calls on the Turkish authorities to release İdil Eser and Taner Kılıç, the Director and Chair of Amnesty Turkey, and other defendants charged with them, immediately and unconditionally, 25 October 2017, <http://www.barhumanrights.org.uk/wp-content/uploads/2017/10/Amnesty-Turkey-trial-statement.pdf>
132. The Council of Bars and Law Societies of Europe (CCBE), letter "Concerns regarding the situation of lawyers in Turkey", 16 November 2017 https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/HUMAN_RIGHTS_LETTERS/Turkey_-_Turquie/2017/EN_HRL_20171116_Turkey_Concerns-regarding-the-situation-of-lawyers-inTurkey.pdf
133. The IBA Human Rights Institute, letter on the Day of the Endangered Lawyer 2018, 24 January 2018, <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=33739fd3-43dd-420a-8b88-474915fabf7>

134. The Law Society of England and Wales, letter “Detention and other human rights violations against lawyers and human rights defenders in Turkey”, 6 March 2018, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/intervention-letters/intervention-letter-on-cases-of-detention-of-lawyers-and-human-rights-defenders-in-turkey/5064419.article>
135. The Law Society of England and Wales, the IBA Human Rights Institute, the Bar Human Rights Committee, the Union Internationale des Avocats, the Bar Council of England and Wales, joint letter on the occasion of the Day of the Lawyer in Turkey, 5 April 2018, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/five-associations-of-lawyers-issue-an-open-letter-to-turkish-authorities-in-support-of-turkish-lawyers-on-the-day-of-the-lawyer-in-turkey/5064680.article>
136. Bar Council of England and Wales and Bar Human Rights Committee of England and Wales, Urging the British Prime Minister Theresa May to address the persecution of judges, lawyers, journalists and human rights defenders with President Erdoğan during state visit, 16 May 2018, <http://www.barhumanrights.org.uk/pressure-mounts-on-prime-minister-to-raise-barristers-urgent-concerns-with-turkey/>

Oral statements

137. The Law Society of England and Wales, the IBA Human Rights Institute, Lawyers for Lawyers, the Bar Human Rights Committee, Union Internationale des Avocats, Lawyers’ Rights Watch Canada and Judges for Judges, Joint oral statement on Turkey before the UN Human Rights Council on the occasion of the presentation of his annual report by the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Mendez, 1 March 2018, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/joint-oral-statement-on-the-situation-of-lawyers-and-judges-in-turkey/5064417.article>
138. International Commission of Jurists, oral statement "Attacks on lawyers: Turkey, Azerbaijan, Kazakhstan, and China" before the UN Human Rights Council on the occasion of the presentation of his annual report by UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Juan Mendez, co-signed by the Law Society of England and Wales, the IBA Human Rights Institute, Lawyers for Lawyers, the Bar Human Rights Committee, Union Internationale des Avocats and Lawyers’ Rights Watch Canada, 1 March 2018, <http://communities.lawsociety.org.uk/international/international-rule-of-law/lawyers-at-risk/joint-oral-statement-before-the-un-special-rapporteur-on-torture-on-attacks-on-lawyers-turkey-azerbaijan-kazakhstan-and-china/5064364.article>
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Trial Observations

140. Bar Human Rights Committee of England and Wales, “Hearing of ‘Taraf’ journalists Istanbul High Criminal Court, October 2016 <http://www.barhumanrights.org.uk/wp-content/uploads/2016/11/BHRC-Interim-Taraf-Report.pdf>
141. Bar Human Rights Committee, “Altan and Others v Turkey: Journalists on trial after the coup,” June 2017, <http://www.barhumanrights.org.uk/wp-content/uploads/2017/09/Turkey-Report-June-2017.pdf>, addendum September 2017 <http://www.barhumanrights.org.uk/wp-content/uploads/2017/11/Turkey.Altan-trial.part-2.v1-.pdf>
142. Bar Human Rights Committee of England and Wales, “Şahin Alpay & others v Turkey Zaman Newspaper: Journalists on trial,” June 2018, <http://www.barhumanrights.org.uk/wp-content/uploads/2018/07/Zaman-TRIAL-OBSERVATION-INTERIM-REPORT-FINAL-1-1.pdf>

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