

**BY EMAIL**

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Date: 18 August 2020

**FOR THE ATTENTION OF:**

- **Special Rapporteur on the independence of judges and lawyers**
- **Special Rapporteur on the situation of human rights defenders**
- **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**
- **Special Rapporteur on the promotion and protection of human rights while countering terrorism**
- **Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

Dear Sir/Madam:

**URGENT ACTION: The arbitrary detention and long-term imprisonment of lawyers Ebru Timtik and Aytaç Ünsal in violation of fair trial principles and their right to freedom of expression.**

1. We are writing to express our grave concern about two lawyers who have been on hunger strike since 2 February 2020 in demand for a fair trial. We previously submitted an Urgent Action letter on 20 May 2019, which described further instances of what seems to be a systematic practice of persecuting lawyers in order to silence and intimidate human rights defenders and those critical of the Turkish government.<sup>1</sup>

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<sup>1</sup> Joint urgent action request by 25 organisations, 20 May 2019, <https://www.turkeylitigationssupport.com/blog/2019/5/21/urgent-action-the-arbitrary-detention-and-long-term-imprisonment-of-lawyers-from-hhb-the-peoples-law-office-and-hd-the-progressive-lawyers-association>

## **Background**

2. Following a violent coup attempt on 15 July 2016,<sup>2</sup> the Government of Turkey (Government) declared a state of emergency, which exacerbated the “purge” of State organs and civil society of those allegedly connected to the “Gülenists”<sup>3</sup> and supporters of the opposition critical of the Government.<sup>4</sup> Human rights defenders (including lawyers), journalists and politicians, among others, who had sought to expose rights violations have been persecuted and often arbitrarily detained and imprisoned.<sup>5</sup> The common thread is, under the guise of national security arguments, the suppression and criminalization of all expression or association of those who are perceived to *potentially* express, inspire or support criticism of state action or expose state wrongdoing.
3. The independence and impartiality of the judiciary has been substantially undermined by legislative and constitutional amendments (both pre and post-coup) which have increased executive influence over the judiciary. The judiciary now lacks the capacity to ensure a robust system of justice and uphold the rule of law, especially with reference to remedies for human rights violations by state actors flowing from the state of emergency measures.<sup>6</sup>
4. Further eroding the rule of law and justice, the Government has adopted a sustained practice of targeting members of the legal profession and interfering with their ability to perform their roles as a key part of the justice system.<sup>7</sup> The Government has prevented lawyers from performing their legitimate duties as lawyers by restricting access to case files and indictments, limiting clients’ access to their lawyers and committing breaches of

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<sup>2</sup> Amnesty International, *No End in Sight, Purged Public Sector Workers Denied a Future in Turkey*, 2017, <https://www.amnesty.org/en/documents/eur44/6272/2017/en/>, accessed 29 March 2019.

<sup>3</sup> This is a collective term for those followers of the now US-based Islamic cleric Fethullah Gulen who the Turkish Government blamed for orchestrating the 2016 coup attempt.

<sup>4</sup> Human Rights Joint Platform, *Updated Situation Report- State of Emergency in Turkey*, 21 July 2016 – 20 March 2018, [http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE\\_17042018.pdf](http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE_17042018.pdf), accessed 29 March 2019.

<sup>5</sup> Amnesty International, *Turkey: NGOs unite to defend civil society from destruction*, 27 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/turkey-ngos-unite-to-defend-civil-society-from-destruction/>, accessed 29 March 2019.

<sup>6</sup> See. International Commission of Jurists, *Turkey: the Judicial System in Peril : A briefing paper*, <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>; Council of Europe Group of State Against Corruption (GRECO), *Fourth Evaluation Round Turkey: Corruption Prevention In Respect of Members of Parliament, Judges and Prosecutors*, 15 March 2018, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792de8>; Parliamentary Assembly of the Council of Europe, *The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?*, Resolution 2260 (2019), 24 January 2019, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25425&lang=en>, accessed 29 March 2019.

<sup>7</sup> Human Rights Watch, *World Report 2019*, <https://www.hrw.org/world-report/2019/country-chapters/turkey>, accessed 5 April 2019.

legal professional confidences including by observing and recording confidential meetings with clients.<sup>8</sup> The rights of individuals accused of terrorist crimes to retain legal counsel while in pre-trial detention and to prepare their defence have been largely restricted since the coup attempt, including the right to privileged communication with their lawyer.<sup>9</sup> Concerns have also been raised regarding the principle of equality of arms between the prosecution and the defendant as the defendant's lawyers' role is significantly subverted and almost reduced to the simple formality of appearing at the court proceeding.

5. The Government has also interfered with the legal profession through the persecution of lawyers, both by way of intimidation but also through arbitrary arrests, detention, imprisonments and ill-treatment.<sup>10</sup> Several lawyers interviewed by the Human Rights Watch reported threatening remarks from police officers when they visited detainees in police station such as: "*Watch out. Representing these suspects could be bad for you*" and "*It'll be your turn next*".<sup>11</sup>
6. Lawyers in Turkey are being persecuted for simply performing their constitutionally protected roles, peacefully and lawfully. They are prosecuted, and often convicted, based on vague definitions of terrorism and related acts. They have been charged with terrorism-related offences such as membership in a terrorist organisation, forming and leading a terrorist organisation or aiding and abetting a terrorist organisation under Articles 314 and 220 of the Turkish Penal Code. The overly broad language and criteria used in these Articles has led to arbitrary convictions and arbitrarily imposed terms of imprisonment preventing the lawyers from carrying out their role effectively as one of the main pillars of the justice system.<sup>12</sup>
7. Lawyers are identified with their clients and clients' causes and prosecuted based on who they represent which is a practice going against the general principle of the prohibition of identification of lawyers with their clients and clients' causes. A lawyer described this

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<sup>8</sup> The Law Society of England and Wales, Bar Human Rights Committee of England and Wales, International Bar Association Human Rights Institute, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches Concerning the Independence of Legal Profession in Turkey*, 18 September 2018, p.18-30, <http://www.barhumanrights.org.uk/wp-content/uploads/2018/09/bhrc-ibahri-lsew-joint-submission-turkey-final2.pdf>, accessed on 5 April 2019.

<sup>9</sup> Human Rights Watch, *Lawyers on Trials; Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey*, April 2019, p.6 and 8, [https://www.hrw.org/sites/default/files/report\\_pdf/turkey0419\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf), accessed 18 April 2019.

<sup>10</sup> Ibid.

<sup>11</sup> Human Rights Watch, *Lawyers on Trials; Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey*, April 2019, p.7, [https://www.hrw.org/sites/default/files/report\\_pdf/turkey0419\\_web.pdf](https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf), accessed 18 April 2019.

<sup>12</sup> European Commission for Democracy Through Law, *Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey*, Adopted at 106th Plenary Session, Venice, 11-12 March 2016, Opinion No. 831/2015, 15 March 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e), accessed 29 March 2019; Council of Europe Commissioner for Human Rights, Third party intervention by the Council of Europe Commissioner for Human Rights, 10 October 2017, <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>, accessed 29 March 2019.

situation by stating that defending a Kurd in Turkey could be used as evidence against a lawyer to link her/him with Kurdistan Workers' Party (PKK) and, likewise, defending a FETÖ<sup>13</sup> suspect could "make" the lawyer a FETÖ member.<sup>14</sup> Confirming this worrying pattern, the Office of the High Commissioner for Human Rights (OHCHR), among other bodies, has also "*identified a pattern of persecution of lawyers representing individuals accused of terrorism offences*".<sup>15</sup>

8. In 2016, Progressive Lawyers Association (ÇHD), which was a lawyers' organization well-known for speaking out against State repression, practices of torture and other human rights violations,<sup>16</sup> was forced to close by virtue of a state of emergency decree (State of Emergency Decree No. 677). On 12 September 2017, sixteen lawyers from People's Law Office (HHB) and ÇHD were taken into custody on the basis of allegations that they were members of or leading members of the Revolutionary People's Liberation Party-Front (DHKP-C), a Turkish Marxist-Leninist Party which Turkey considers an armed terrorist organization.<sup>17</sup>
9. On 14 September 2018, the İstanbul 37th Heavy Penal Court ordered the release of all detained lawyers. However, less than 24 hours after their release, the Prosecutor's Office objected to it, and the lawyers were re-arrested.<sup>18</sup> The trial of the lawyers, six of whom had been held in pre-trial detention, occurred in three hearings. At the final hearing, held between 18 March and 20 March 2019, the İstanbul 37th Heavy Penal Court reaffirmed the Public Prosecutor's conclusion that by providing legal representation to individuals charged with links to the outlawed DHKP-C, the lawyers were themselves members of the illegal group. The lawyers were convicted of terrorism related offences linked to DHKP-C and sentenced to between three and 18 years prison terms on 20 March 2019.<sup>19</sup>
10. The trial was plagued by a distortion of procedures and lack of respect for universally accepted elements of a fair trial. Amnesty International criticized the trial as "a travesty

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<sup>13</sup> A term the Turkish authorities use to refer Gulenists, Fethullah Terrorist Organisation/Paralel State Structure (FETÖ/PDY).

<sup>14</sup> Human Rights Watch, fn no. 11, p.6.

<sup>15</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the Impact of the State of Emergency on Human Rights in Turkey, Including an Update on the South-East*, March 2018, <https://www.refworld.org/docid/5ab146c14.html>, accessed 29 March 2019.

<sup>16</sup> Stockholm Center for Freedom, *Lawyers association: Imprisoned Gulen followers subject to rape, nail extraction, object insertion*, January 18, 2017, <https://stockholmcf.org/lawyers-association-imprisoned-gulen-followers-subject-to-rape-nail-extraction-object-insertion/>, accessed 1 April 2019.

<sup>17</sup> Bianet, *14 Detained Attorneys of Gülmen, Özakça on Hunger Strike Arrested*, 21 September 2017, <https://bianet.org/english/law/190006-14-detained-attorneys-of-gulmen-ozakca-on-hunger-strike-arrested>.

<sup>18</sup> A similar example was seen in a case where 29 journalists were tried for being members of a terrorist organization aftermath of attempted coup d'état. Journalists were rearrested after courts had ordered their release and the judges and a prosecutor of the case were suspended by the Supreme Board of Judges and Prosecutors (HSYK), <http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-for-ordering-release-of-gulen-suspects-111576>.

<sup>19</sup> Human Rights Watch, fn no. 11, p.34.

of justice [that] demonstrate yet again the inability of courts crippled under political pressure to deliver a fair trial”.<sup>20</sup> Such concerns included arguments by the prosecution based on digital records which were not in the case file and not made available to the defence, and the judge not allowing the defence to speak or to engage in any effective manner to challenge evidence and refusing a request to facilitate the collection of further evidence and investigation.<sup>21</sup> The judges who initially ordered the release of the lawyers from pre-trial detention were removed from the case. Some witnesses’ identities were kept anonymous, and they testified remotely by video link system (SEGBIS), not in person, which prevented their identity or free will to testify from being verified and prevented the defence from being able to effectively examine the witnesses.<sup>22</sup> The judges also interrupted a request by the defence for the recusal of the presiding judge; they did not allow them to finish their submission and then had all the defendants and their lawyers removed from the court. The sentences were issued the following day without the defendants and their lawyers being allowed to return to court to submit their final defence statements and participate further in the proceedings.<sup>23</sup>

### **Urgent Action Necessary for Two Lawyers on Hunger Strike in Critical Condition**

- 11.** Ebru Timtik and Aytaç Ünsal are two of the ÇHD lawyers charged with “membership of a terrorist organization” under Article 314(2) of the Turkish Penal Code, for which they received sentences of 13.5 years and 10.5 years respectively.
- 12.** As of 11 August 2020, Ms Timtik and Mr Ünsal have been on a “death fast” for 222 and 191 days respectively in demand for a fair trial.<sup>24</sup> Ms Timtik went on a hunger strike in January 2020 and Mr Ünsal followed in February 2020<sup>25</sup>. On 5 April 2020, they turned their protest into a “death fast”<sup>26</sup> demanding a retrial while their case is currently examined by

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<sup>20</sup> ELDH, *18 Turkish lawyers sentenced to long prison terms*, March 20 2019, <https://eldh.eu/2019/03/21/18-turkish-lawyers-sentenced-to-long-prison-terms/>, accessed 3 April 2019.

<sup>21</sup> ELDH, *Summary of Trial Against 20 Lawyers*, fn no. 23.

<sup>22</sup> Joint report from a group of lawyers’ organisations, *Fact-finding mission on CHD’s trials Breach of Fair Trial, Independence of the Judiciary and Principles on the Role of Lawyers*, October 2019, [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Human\\_right\\_portal/EN\\_20200618\\_Final-Report-Fact-Finding-Mission-on-CHD-s-Trials-Oct-2019-June-2020.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Human_right_portal/EN_20200618_Final-Report-Fact-Finding-Mission-on-CHD-s-Trials-Oct-2019-June-2020.pdf), accessed 13 August 2020, p.p. 17-27.

See also Press Statement from a group of lawyers’ organisations, *Lawyers on hunger strike near death*, 12 August 2020, <https://lawyersforlawyers.org/en/joint-statement-lawyers-on-hunger-strike-near-death/>, accessed 13 August 2020.

<sup>23</sup> Ibid.

<sup>24</sup> Bianet English, *Death fasting lawyers: 'Conditions in prison were better than hospital'*, 3 August 2020, <http://bianet.org/english/human-rights/228428-death-fasting-lawyers-conditions-in-prison-were-better-than-hospital>, accessed 5 August 2020.

<sup>25</sup> Lawyers for Lawyers, *Concerns about Hunger Striking Lawyers Ebru Timtik and Aytaç Ünsal*, 25 June 2020, <https://lawyersforlawyers.org/en/concerns-about-hunger-striking-lawyers-ebru-timtik-and-aytac-unsal/>, accessed 21 July 2020.

<sup>26</sup> Ibid.

the Court of Cassation 16<sup>th</sup> Penal Chamber.<sup>27</sup> In a press conference in Istanbul on 17 July 2020, the Solidarity Platform for Justice stated that they had lesions in their mouths and had difficulties talking and drinking.<sup>28</sup>

- 13.** On 30 July 2020, the Istanbul Forensic Medicine Institution released a report on the health conditions of Ms Timtik and Mr Ünsal, after the İstanbul 37<sup>th</sup> Heavy Penal Court ruled that the lawyers should undergo a medical examination.<sup>29</sup> According to the medical report, “it is not suitable for them [Ms Timtik and Mr Ünsal] to stay in prison”.<sup>30</sup> The attorneys of Ms Timtik and Mr Ünsal submitted the report to the İstanbul 37<sup>th</sup> Heavy Penal Court, along with their request for release and 152 petitions by lawyers abroad and more signed by lawyers in Turkey.<sup>31</sup> The Court ruled that their arrest shall continue and that “a writ shall be written to the Istanbul Chief Public Prosecutor’s Office” to ensure their treatment in hospital conditions.<sup>32</sup> The Court had already sent the application to the Prosecutor’s Office, who demanded that “the execution of their arrest take place at a hospital”.<sup>33</sup> While Ms Timtik had been imprisoned in İstanbul’s Silivri prison and Mr Ünsal had been in the Burhaniye prison in Balıkesir<sup>34</sup>, they were hospitalised for a possible force-feeding shortly after the ruling of the Court.<sup>35</sup>
- 14.** Currently, Ms Timtik is at at Dr. Sadi Konuk Training and Research Hospital in İstanbul's Bakirköy district, while Mr Ünsal is at Kanuni Sultan Süleyman Training and Research Hospital in Küçükçekmece district. Ms Timtik is currently 35 kilos, while Mr Ünsal weighs 55 kilos.<sup>36</sup> Even one more day in prison can be irreversibly detrimental to their health and it is reportedly a matter of hours, not days.<sup>37</sup>

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<sup>27</sup> Bianet, *Death Fasting Lawyer Ebru Timtik 'Having Difficulties Talking'*, 17 July 2020, <http://bianet.org/english/print/227629-death-fasting-lawyer-eburu-timtik-having-difficulties-talking>, accessed 21 July 2020.

<sup>28</sup> Ibid.

<sup>29</sup> Bianet English, *Death-fasting arrested lawyers Ebru Timtik and Aytaç Ünsal not released*, 30 July 2020, <http://bianet.org/english/law/228296-death-fasting-arrested-lawyers-eburu-timtik-and-aytac-unsal-not-released>, accessed 5 August 2020.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Duvar English, *11,000 People Sign Petition in Turkey in Support of Lawyers on Hunger Strike in Prison*, 6 June 2020, <https://www.duvarenglish.com/human-rights/2020/06/06/11000-people-sign-petition-in-turkey-in-support-of-lawyers-on-hunger-strike-in-prison/>, accessed 21 July 2020.

<sup>35</sup> Bianet English, *Death fasting lawyers: 'Conditions in prison were better than hospital'*, 3 August 2020, <http://bianet.org/english/human-rights/228428-death-fasting-lawyers-conditions-in-prison-were-better-than-hospital>, accessed 5 August 2020.

<sup>36</sup> Bianet English, *Death fasting lawyers taken to Forensic Medicine Institution for examination*, 29 July 2020, <http://bianet.org/english/human-rights/228239-death-fasting-lawyers-taken-to-forensic-medicine-institution-for-examination>, accessed 5 August 2020.

<sup>37</sup> Ibid.

15. Ms Timtik's aunt said that the conditions in the hospital are worse than those in prison and that they left the air conditioners on even though Ms Timtik felt very cold.<sup>38</sup> The lawyer also asked for a pen and a piece of paper, but the hospital staff denied her request.<sup>39</sup> According to the spokesperson of the Assembly for Resistance, Volkan Çesme, Mr Ünsal was reportedly prevented from sleeping as the light in his room was left on throughout the night.<sup>40</sup> The two lawyers remain in the hospital. In his letter from the hospital Mr Ünsal described his room and said "...they put me in a room with white walls and just a bed It is surrounded by walls on three sides. There are only two small rectangular windows at the corner, facing the interior corridor. Gendarmes are watching me through these windows. Ten gendarmes are waiting in front of my door in the corridor...."
16. The case of Ebru Timtik and Aytaç Ünsal is currently under examination by the 16th Penal Chamber of the the Supreme Court of Appeals. More than 30 bar association chairs worldwide applied to the İstanbul Court with regard to the lawyers' request and nearly 100 petitions were received within 36 hours.<sup>41</sup> As of June 2020, more than 22 international bar associations have asked the Supreme Court in Turkey to release Ms Timtik and Mr Ünsal, submitting the final report from a fact-finding mission.<sup>42</sup> Petitions demanding the release of Ms Timtik and Mr Ünsal were also submitted to the Supreme Court of Appeals, showing the support of 400 lawyers from Turkey and 356 more lawyers from 20 other countries. Lawyers for Lawyers has continuously expressed concerns about the case and the health of Ms Timtik and Mr Ünsal<sup>43</sup>, especially given the "grave risk" at which prisoners are put in Turkey in light of the COVID-19 global pandemic.<sup>44</sup>

### **Turkey's Obligations Under Domestic and International Law**

#### **Right to Liberty and Security and Right to a Fair Trial**

17. Domestic law: The right to liberty and security, protecting an individual's right not to be arbitrarily deprived of liberty, is recognised under the Constitution of Turkey

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<sup>38</sup> Bianet English, *Death fasting lawyers: 'Conditions in prison were better than hospital'*, 3 August 2020, <http://bianet.org/english/human-rights/228428-death-fasting-lawyers-conditions-in-prison-were-better-than-hospital>, accessed 5 August 2020.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Bianet English, *Death fasting lawyers taken to Forensic Medicine Institution for examination*, 29 July 2020, <http://bianet.org/english/human-rights/228239-death-fasting-lawyers-taken-to-forensic-medicine-institution-for-examination>, accessed 5 August 2020.

<sup>42</sup> *Fact-finding mission on CHD's trials Breach of Fair Trial, Independence of the Judiciary and Principles on the Role of Lawyers*, fn no. 22.

<sup>43</sup> Bianet, *Death Fasting Lawyer Ebru Timtik 'Having Difficulties Talking'*, 17 July 2020, <http://bianet.org/english/print/227629-death-fasting-lawyer-eburu-timtik-having-difficulties-talking>, accessed 21 July 2020.

<sup>44</sup> Human Rights Watch, *Turkey: COVID-19 Puts Sick Prisoners at Grave Risk*, 3 April 2020, <https://www.hrw.org/news/2020/04/03/turkey-covid-19-puts-sick-prisoners-grave-risk#>, accessed 21 July 2020.

(Constitution).<sup>45</sup> Article 19 of the Constitution protects everyone's right to liberty and security. According to paragraph 3, *conditio sine qua non* for a lawful arrest is the presence of strong evidence of the commission of a crime. Article 90 of the Constitution provides that international agreements concerning fundamental rights and freedoms, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), "duly put into effect carry the force of law" and will prevail in the case of conflict with domestic law.

18. Moreover, under Article 100 of the Turkish Code of Criminal Procedure,<sup>46</sup> a pre-trial detention can be carried out *only if* facts show the existence of a strong suspicion of a crime and one of the listed grounds for arrest is present. Such grounds are as follows: specific facts supporting the suspicion that the suspect or accused is going to flee; suspicion that the suspect or the accused will attempt to destroy, hide or alter the evidence, or will attempt to put pressure on witnesses, victims or other individuals.
19. International law: The right to liberty and security is protected under existing human rights law instruments, both at an international and at a regional level. Article 9 of the Universal Declaration of Human Rights (UDHR),<sup>47</sup> Articles 9 and 14 of the ICCPR,<sup>48</sup> and Article 5 of the ECHR<sup>49</sup> guarantee everyone's right to liberty and security and prohibit any arbitrary violation of the right, with Article 14 of the ICCPR and Article 6 of the ECHR laying out detailed fair trial standards.
20. The main aim of the abovementioned provisions is to protect individuals from arbitrary deprivation of liberty. Thus, any substantive grounds for arrest or detention must be "prescribed by law" with sufficient precision to prevent arbitrariness. Even if an arrest or detention has legal basis and is administered following the procedures established by domestic law, it may still be arbitrary unless it is reasonable, necessary and proportionate. The notion of "arbitrariness" therefore is a broader concept which includes "elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality."<sup>50</sup> The UN Human Rights

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<sup>45</sup> Constitution of Turkey, [http://www.hri.org/docs/turkey/part\\_ii\\_2.html](http://www.hri.org/docs/turkey/part_ii_2.html), accessed 3 April 2019.

<sup>46</sup> Turkish Code of Criminal Procedure,

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi5kovg44vMAhUHbBoKHSO0BwMQFggdMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F17788&usg=AFQjCNH0fibE4WxXgabmlwqOjukpyOXObA&sig2=gCxh2lWoP9XMjelh0cdrWQ&cad=rja>, accessed 4 April 2019.

<sup>47</sup> UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, <http://www.refworld.org/docid/3ae6b3712c.html>, accessed 3 April 2019.

<sup>48</sup> UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, <http://www.refworld.org/docid/3ae6b3aa0.html>, accessed 19 April 2016). Turkey ratified the ICCPR on 23 September 2003 with one reservation and ratified the *Optional Protocol to the International Covenant on Civil and Political Rights* on 24 November 2006 and the *Second Optional Protocol to the International Covenant on Civil and Political Rights* on 2 March 2006. Both Optional Protocols entered into force on 24 February 2007.

<sup>49</sup> Council of Europe, *European Convention on Human Rights*, 4 November 1950,, accessed 4 April 2019.

<sup>50</sup> CCPR Human Rights Committee General comment no.35 on Article 9 concerning liberty and security of a

Committee notes that detention as punishment for the legitimate exercise of the rights of freedom of opinion and expression, freedom of assembly or freedom of association is considered to be arbitrary. Similarly, deprivation of liberty pursuing an aim of intimidation or reprisal against a person is also arbitrary.<sup>51</sup>

- 21. Application of the law:** The arrest and subsequent detentions of Ms Timtik and Mr Ünsal detailed above are unlawful both under Turkey's domestic laws and international human rights obligations. Their trial and resulting imprisonments seem to be a tool to harass lawyers, as they are being prosecuted and punished merely for carrying out their professional obligations. In addition, their arrests, detention and sentencing constitute an unlawful interference with the rights of their clients to petition the European Court of Human Rights (ECtHR) under the ECHR. Ms Timtik and Mr Ünsal have been imprisoned for their legal activities as members of their respective associations; these are legitimate activities carried out in the course of discharging their professional duties. Moreover, legal representation cannot be used as a tool to identify lawyers with their clients or their clients' causes.<sup>52</sup> To allow lawyers to be identified with their clients' alleged causes is certain to discourage lawyers from defending many accused persons, thereby depriving many accused individuals of their fundamental right to a proper legal defence. The lawyers in this case have been impermissibly identified with their clients and consequently prosecuted.
- 22.** The absence of due process rights and fair trial standards in the procedure followed against the lawyers amounts to violations under Article 14 of the ICCPR, and, regarding arbitrary detention, under Article 9 of the ICCPR. Such fair trial deficiencies include the failure to allow the defence to examine prosecution evidence and witnesses and the refusal by the judge to even hear certain defence arguments (including a request that the judge be recused).<sup>53</sup> Under Article 14 (1) of the ICCPR, there must be equality of arms between the parties in a proceeding.<sup>54</sup> This principle was undermined significantly in the trial as the lawyers' defence teams were prevented from cross-examining witnesses, as provided for under Article 14 (3)(e) of the ICCPR,<sup>55</sup> from accessing and actioning investigations into prosecution evidence (contrary to Article 14 (3)(b) of the ICCPR) and by the court refusing to hear defence legal arguments and then later expelling them from

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person, adopted on 16 December 2014, para.12.

<sup>51</sup> Ibid., paras.17 and 53.

<sup>52</sup> UN Basic Principles, fn o. 14, principles 16-18.

<sup>53</sup> ELDH, fn no. 23.

<sup>54</sup> UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial*, 23 August 2007, CCPR/C/GC/32, para 13, <https://www.refworld.org/docid/478b2b2f2.html>, accessed 10 May 2019.

<sup>55</sup> *Avocats Barreau Paris, Turkey: 18 lawyers sentenced to 18 years in prison, the Paris Bar calls for their release*, 21 March 2019, <http://www.avocatparis.org/turquie-18-avocats-condamnes-jusqua-18-ans-de-prison-le-barreau-de-paris-appelle-leur-liberation>, accessed 10 April 2018.

proceedings.<sup>56</sup> Article 14 3(d) of the ICCPR ensures that the accused be present during their trial and be able to defend themselves through legal representation of their choosing. The court, by removing all defendants and their legal representation towards the end of the trial and from the sentencing portion, has violated this right without any objective and reasonable basis.<sup>57</sup> There are therefore violations of Articles 9, 14 and 19 of the ICCPR in relation to the detention and prosecution of the 18 lawyers.

### **Rights of Lawyers and Rule of Law**

- 23. International Law:** The rights of lawyers, including their right to liberty and security, are protected by a number of instruments including the 1990 United Nations Basic Principles on the Role of Lawyers,<sup>58</sup> the Draft Universal Declaration on the Independence of Justice, paragraph 7 of UN Resolution No. 2004/33/19, and Recommendation No. 21 of the Committee of Ministers to Member States on the freedom of exercise of profession of lawyer adopted by the Council of Europe in 2000. These instruments clearly recognise the fundamental role of the legal profession in the administration of justice and maintenance of the rule of law.
- 24.** The Basic Principles on the Role of Lawyers state that lawyers' enjoyment of the rights and freedoms recognised under international human rights instruments and relevant to their professional conduct must be respected. Accordingly, States are obliged to recognise and uphold the independence of lawyers. Principle 16 states that Governments are under obligation to ensure that no restrictions, influences, inducements, pressures, threats or interference are to be imposed on lawyers while they are discharging their professional duties. States must enable lawyers to carry out their professional activities freely, diligently and fearlessly, without any inhibition or pressure. Lawyers shall enjoy the right to take full and active part in the political, social and cultural life of their country. Principle 18 provides that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions". According to Principle 23, lawyers are entitled to freedom of expression, opinion and association. Moreover, lawyers have the right to take part in public discussions of matters concerning the upholding of international human rights "without suffering professional restrictions".<sup>59</sup> Due to the increased incidents of harassment, threats and attacks against lawyers in a number of Council of Europe countries, including Turkey, and undue interference with their legitimate

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<sup>56</sup> Diyarbakir Barosu, *39 Joint Press Release Regarding the Trial of ÇHD Member Colleagues*, 21 March 2019, <http://www.diyarbakirbarosu.org.tr/39barodanchduyesimeslektaslarimizinyargilanmasinailiskinortakbasinaciklamasi-/1564>, accessed 10 April 2019.

<sup>57</sup> Human Rights Watch, *Case Against 20 Lawyers for Membership of the Revolutionary People's Liberation Party-Front*, 10 April 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>, accessed 10 April 2019.

<sup>58</sup> *UN Basic Principles*, fn no. 14.

<sup>59</sup> *UN Basic Principles*, fn no. 14, Principle 23.

activities, the Parliamentary Assembly of the Council of Europe has recommended the drafting of a binding Convention for the protection of lawyers in member states,<sup>60</sup> taking its previous recommendation a step forward.<sup>61</sup>

25. Furthermore, Article 9 of the United Nations Declaration on Human Rights Defenders states that “everyone has the right [...] to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”;<sup>62</sup> and Article 11 imposes an obligation on States to ensure everyone’s right “to the lawful exercise of his or her occupation or profession”.<sup>63</sup> Lastly, according to Principle 18 of the UN Basic Principles on the Role of Lawyers, “lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions”.<sup>64</sup>
26. Application of the law: The apprehension and detention of Ms Timtik and Mr Ünsal constitutes a serious interference with their rights and freedoms, as stipulated under the above-mentioned international instruments. By arresting and sentencing these lawyers, the Government not only prevents them from exercising their professional duties but also denies prospective or actual clients the right to be represented by a lawyer of their choice. These acts constitute a violation under both Article 6(2) of the ECHR and Article 14 of the ICCPR, as well as the above-mentioned principles stipulated under the UN Basic Principles on the Role of Lawyers including Principle 1 stating that “*all persons are entitled to call upon the assistance of a lawyer of their choice*”.
27. This case raises issues in relation to a number of other rights and freedoms including the right to freedom of expression, association and peaceful assembly, the right to respect for private life and correspondence of lawyers, the prohibition of torture and degrading treatment, including forced feeding. In this submission, however, the focus has been on the above-mentioned aspects of the violations resulting from unlawful detention and prosecution of the two lawyers.
28. Turkish State authorities are using arrests and detentions as tools to prosecute lawyers and other human rights activists for working on cases that shed light on possible human rights violations perpetrated by the Government. Such conduct by the Turkish State

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<sup>60</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24296&lang=en>.

<sup>61</sup> Council of Europe, *PACE Recommendation no (2000) 21 of the Committee of Ministers of member states on the freedom of exercise of the profession of lawyer*, 25 October 2000, [https://www.asianajaliitto.fi/files/19/R2000-21\\_Freedom\\_of\\_exercise\\_of\\_the\\_profession\\_of\\_lawyer.pdf](https://www.asianajaliitto.fi/files/19/R2000-21_Freedom_of_exercise_of_the_profession_of_lawyer.pdf).

<sup>62</sup> UN General Assembly, *Resolution No. A/RES/53/144*, 8 March 1999

<<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> accessed 4 April 2019

<sup>63</sup> Ibid.

<sup>64</sup> *UN Basic Principles, fn no. 14*, Principle 23.

constitutes a breach of Turkey's international obligation to ensure that lawyers are not being prevented from performing their professional functions freely.

### **ACTIONS REQUESTED**

- 29.** We request the Special Rapporteurs urge the Turkish authorities to give Ebru Timtik and Aytaç Ünsal the opportunity to await the outcome of their appeal in freedom and facilitate their immediate release as currently their lives are further endangered in light of the hospital and prison conditions in Turkey during the COVID-19 global pandemic.
- 30.** We further request the Special Rapporteurs urge the Turkish authorities to drop all criminal charges against Ebru Timtik and Aytaç Ünsal, to stop all forms of harassment, including judicial harassment, against these individuals as well as other lawyers and human rights defenders in Turkey, and allow them to perform their professional and lawful functions without intimidation or improper interference.
- 31.** We request the Special Rapporteurs intervene in these serious matters and raise these issues, as a matter of priority, with the Turkish authorities. In particular, the Special Rapporteurs are requested to communicate – if possible, jointly the concerns outlined in relation to the detention of lawyers Ebru Timtik and Aytaç Ünsal.
- 32.** We request that the Special Rapporteurs urge the Turkish authorities to respect and ensure the independence of the judiciary by law and practice and to prevent judges, prosecutors and lawyers from suffering undue interferences.
- 33.** We request the Special Rapporteurs call on the Government of Turkey to comply with the provisions of the ICCPR, the UN Basic Principles on the Role of Lawyers, the UN Declaration on Human Rights Defenders and other international instruments on the protection and promotion of fundamental rights and freedoms.
- 34.** We would be grateful if you would kindly confirm what action you will be taking and to inform us of any response received from the Turkish authorities.
- 35.** Finally, we would be grateful for your acknowledgement of receipt of this letter.

Yours faithfully,

Ayşe Bingöl Demir, Co-Director, Turkey Human Rights Litigation Support Project (United Kingdom)

Catherine Morris, Lawyers' Rights Watch Canada (Canada)

Francesco Caia, Coordinator, Human Rights Commission, Consiglio Nazionale Forense

(CNF) (Italy)

Irma van den Berg, President, Lawyers for Lawyers (Netherlands)

Martine JACQUIN, President, Defense Sans Frontiere-Avocats Solidaire ( DSF-AS) (France)

Mehmet Durakoğlu, President, İstanbul Bar Association (Turkey)

Melanie Aebli, Secretary General, Swiss Democratic Lawyers (Switzerland)

Peter Hanenberg, President, Rotterdam Bar Association (Netherlands)

Ranko Pelicarić, President, the Council of Bars and Law Societies of Europe (CCBE) (Brussels)

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Sandrin Giroud, President, Human Right Commission, Ordre des Avocats de Genève / Geneva Bar Association (Switzerland)

Serge Deygas, President, Lyon Bar Association (France)

Sonia Lama, Chairperson, Equal Opportunity Committee, Ravenna Bar Association (Italy)

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Thomas Schmidt, Secretary General, European Association of Lawyers for Democracy and World Human Rights (ELDH) (Germany)

Tony Fisher, Human Rights Committee, the Law Society of England and Wales (United Kingdom)