

## PAGE SPRING SESSION – UPDATE ON HUMAN RIGHTS IN TURKEY

### CONTINUATION OF HUMAN RIGHTS ABUSES CALL INTO QUESTION A NEW HUMAN RIGHTS ACTION PLAN AND CAST DOUBT ON TURKEY'S COMMITMENT TO HUMAN RIGHTS, THE RULE OF LAW, AND THE PROTECTION OF WOMEN AND GIRLS

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A new Action Plan on Human Rights, announced by President Erdogan on 2 March after a two-year long preparation, represents another missed opportunity for the Turkish authorities to display a strong commitment to addressing the root causes of the most crucial problems of Turkey's human rights situation.<sup>1</sup> The Plan does not include any concrete steps to ensure the independence of the judiciary, with no measures foreseen to remove the executive control over the judiciary including through necessary constitutional changes.<sup>2</sup> It does not foresee any concrete action to prevent politically motivated and punitive pre-trial detention and convictions under overly broad and vague anti-terrorism laws against opposition politicians, political activists, journalists, and human rights defenders solely for peacefully exercising their human rights. Crucially, it does not include any commitment to implement the decisions of the European Court of Human Rights (ECtHR).

On the contrary, developments that took place since the announcement of the Action Plan confirm the ever-growing record of criminalization of human rights defenders and dissenting voices and severe backsliding on international human rights standards.<sup>3</sup> With the ink barely dry on the new Human Rights Action Plan, the withdrawal from the Istanbul Convention is the latest sign of contempt by Turkey to the Council of Europe based human rights protection system.

<sup>1</sup> Amnesty International, Turkey: The New Action Plan is a Missed Opportunity to Reverse Deep Erosion of Human Rights, 25 March 2021, <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

<sup>2</sup> The 2017 constitutional amendments changed the composition and the procedure for appointing members of the Council of Judges and Prosecutors (HSK). With the changes to Article 159 of the Constitution, no member of the HSK is selected by their peers; four of the thirteen members are appointed by the President of the Republic, and the seven by the Parliament in which the President's governing party and its coalition partner hold the majority; appointments by the Parliament do not require a procedure guaranteeing involvement of all political parties and interests; remaining two members are the Minister of Justice who chairs the Council and his/her deputy who would also be appointed and dismissed by the President.. See more here: <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

## PROSECUTION AND DETENTION OF HUMAN RIGHTS DEFENDERS, OPPOSITION POLITICIANS AND JOURNALISTS

While a protracted erosion of human rights in the country has been visible since the coup attempt in 2016, in recent months the Turkish authorities have further ramped up their repression of real or perceived dissent, orchestrating large-scale arrests, abusive investigations and unfounded prosecutions.

This relentless crackdown on freedom of expression and other human rights is enabled by the widespread executive control and political influence over the judiciary. In recent years, this has led courts to systematically accept bogus indictments and to detain and convict individuals who advocate different political ideas or represent dissenting voices, even when those prosecuted have not themselves advocated violence, hatred or discrimination, and are not prosecuted for direct involvement in violent acts.<sup>4</sup> In particular, overly broad and vague anti-terrorism legislation is abused against individuals in the absence of any compelling evidence of criminal activity for a range of activities protected by the rights to freedom of expression, association and political participation. Among others, Article 7/2 of the Anti-Terrorism Law, which criminalizes 'making propaganda for an armed terrorist organization' and the provisions of the Turkish Penal Code criminalizing "terrorism" related offenses such as Article 314 (membership of a terrorist organization) are routinely used to prosecute those who express their dissenting opinions.

On 15 February, prominent human rights defender and lawyer Eren Keskin was sentenced to six years and three months on grounds of "membership of a terrorist organization" in the main *Özgür Gündem* trial. The case is an example of how anti-terrorism laws are being used to criminalize legitimate, peaceful activities such as freedom of expression, including participating in a solidarity campaign alongside others.<sup>5</sup> Eren Keskin, who has dedicated her life to defending the rights of women, prisoners and fought for justice for the families of victims of enforced disappearances, has been investigated and prosecuted for decades for defending human rights and exercising her right to freedom of expression.

On 12 March, just over three months since the Istanbul Regional Court upheld the convictions of four human rights defenders in the *Büyükada* case, the prosecutor at the Court of Cassation issued his opinion asking for the conviction of Taner Kılıç, the former and now honorary chair of Amnesty International Turkey, to be upheld without justification, while the other three human rights defenders' convictions were requested to be overturned. The case originally was brought against 11 Human Rights Defenders including Amnesty International's former chair, ex-director İdil Eser, several members of Amnesty Turkey as well as women's and equality advocates, who faced absurd 'terrorism' charges without any credible evidence.<sup>6</sup> In July 2020, four of them, namely Günel Kurşun, İdil Eser, Özlem Dalkıran and Taner Kılıç were convicted on terrorism related charges, in the absence of any evidence of criminal activity and despite the fact that allegations against these defendants had repeatedly been disproven, including by the state's own evidence. The verdict focused on the human rights activism of the defenders and their legitimate human rights work was cited as evidence of 'terrorist' crimes; in the case of Taner Kılıç, Amnesty International public documents and reports<sup>7</sup> were cited as part of the evidence against him. If the Court of Cassation confirms the conviction, Taner Kılıç would be detained and taken to prison. After spending over 14 months in pretrial detention between June 2017 and August 2018, there remain approximately five years of his sentence. A conviction would also mean that his lawyer's license would be revoked permanently, making it impossible for him to practice law in Turkey after his release. The other three human rights defenders would face a retrial if the Court of Cassation rules with the prosecution and overturns the convictions; a possibility that the convictions of all four could be confirmed or overturned remains. The trial of these human rights defenders constitutes an emblematic case of Turkey's wider practice of targeting human rights defenders and independent civil society using counter-terrorism laws.

The quick issuing of the prosecutor's opinion at the Court of Cassation in March, a process which can usually take years, indicates that a decision in the case might be imminent. This is particularly worrying considering the clear lack

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<sup>4</sup> See Amnesty International, Turkey: Decriminalize Dissent, Time to Deliver on the Right to Freedom of Expression, 27 March 2013, <https://www.amnesty.org/en/documents/EUR44/001/2013/en/>; Amnesty International, Turkey: "Judicial Reform" Package is a Lost Opportunity to Address Deep Flaws in the Justice System", 8 October 2019, <https://www.amnesty.org/en/documents/eur44/1161/2019/en/>; Amnesty International, Turkey: The New Action Plan is a Missed Opportunity to Reverse Deep Erosion of Human Rights, 25 March 2021, <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>;

<sup>5</sup> <https://www.amnesty.org/en/latest/news/2021/02/turkey-we-are-not-going-anywhere-either-activists-pledge-solidarity-with-prominent-human-rights-defender/>

<sup>6</sup> <https://www.amnesty.org/en/latest/campaigns/2020/02/turkey-istanbul-human-rights-activists-justice/>

<sup>7</sup> <https://www.amnesty.org/en/press-releases/2013/06/turkish-prime-minister-s-words-will-only-exacerbate-violence/>;  
<https://www.amnesty.org/en/latest/news/2016/07/turkey-human-rights-in-grave-danger-following-coup-attempt-and-subsequent-crackdown/>

of effectiveness of domestic remedies in Turkey with national courts refusing to apply the European Convention on Human Rights (ECHR) or implement the binding judgments of the ECtHR.

This has become evident in the trials of Selahattin Demirtaş and Osman Kavala whose pre-trial detention continues, contrary to ECtHR rulings which found that their prolonged pre-trial detentions were unlawful and served an ‘ulterior purpose’ in violation of articles 18 and 5 ECHR, calling on Turkey to release them immediately.

In the case of Osman Kavala, despite various Committee of Ministers decisions and one interim resolution calling for his immediate release in four examinations of the case since September 2020,<sup>8</sup> Turkish authorities have persistently refused to implement the ECtHR’s 2019 binding judgment, based on the argument that his ongoing pre-trial detention was under a new and different investigation file with new charges. The sequence of criminal proceedings against Osman Kavala following the Court’s judgment and the Committee of Ministers decisions are further signs of the relentless judicial harassment he has been enduring and confirm that Osman Kavala’s current detention constitutes an extension of the violations found by the Court. Amnesty International has recently urged all Council of Europe member states to initiate an infringement procedure under article 46 §4 ECHR in the case of Kavala v. Turkey to ensure the release of Osman Kavala and show their resolution against political persecution.<sup>9</sup> On 15 April, the Committee of Minister urged the authorities once again to ensure Osman Kavala’s immediate release, and affirmed “their readiness, if necessary, to actively consider all means at their disposal to ensure implementation of the judgment.”

On 19 March, Öztürk Türkdoğan, chairperson of Turkey’s Human Rights Association (IHD), was arrested in a raid by police in his home, together with 10 other individuals, on the suspicion of ‘membership of a terrorist organization’. He was released on the same day with judicial control measures including a foreign travel ban and requirement to report in person to the nearest police station twice a month.

Selahattin Demirtaş, a prominent former parliamentarian and co-chair of the pro-Kurdish Peoples’ Democratic Party (HDP), has been remanded in pre-trial detention for more than four years. Following the Grand Chamber judgment in *Selahattin Demirtaş v Turkey* (No. 2) on 22 December 2020<sup>10</sup>, the Committee of Ministers, in a decision adopted in March 2021, urged the authorities to “ensure the applicant’s immediate release” and underlined that “the obligation of *restitutio in integrum* calls for the negative consequences of the violation to be eliminated without delay, including as regards the two sets of proceedings pending before Turkish courts”.<sup>11</sup>

Yet, the Turkish courts have been refusing to implement the European Court’s judgments in relation to Osman Kavala and Selahattin Demirtaş and government officials have publicly stated that the judgments of the Court in both cases were not binding on Turkey.<sup>12</sup>

Members of the HDP, the second biggest opposition party, continue to be targeted<sup>13</sup> as members of an armed terrorist organization without material proof of membership of such organizations. Thousands of its members have been jailed as part of a years-long political crackdown on the party over having alleged links with the armed PKK, including its former co-chairs Selahattin Demirtaş and Figen Yüksekdağ as well as the party’s provincial and district mayors and chairs. A most recent high-profile example is the conviction of the prominent human rights defender and member of parliament for the HDP, Ömer Faruk Gergerlioğlu, for a tweet he had shared in 2016, two years before he was elected. On 17 March 2021, Gergerlioğlu was stripped of his parliamentary immunity after the Court of Cassation upheld his conviction and two and a half years prison sentence. On 2 April, he was forcefully detained at home and subjected to mistreatment by police. He was sent to prison to serve his sentence. This decision against Ömer Faruk Gergerlioğlu who has dedicated his life to defending human rights, is another massive manifestation of the government’s accelerated crackdown on the opposition. On the same day that Ömer Faruk Gergerlioğlu was stripped of his parliamentary status, the chief public prosecutor of the Court of Cassation filed a case with the Constitutional Court requesting the closure of the HDP and a political ban on 687 former and current HDP politicians on the basis of ongoing prosecutions against them, disregarding the presumption of innocence. After examining the indictment of

<sup>8</sup> CM/Del/Dec(2020)1377bis/H46-38, 3 September 2020; CM/Del/Dec(2020)1383/H46-22, 1 October 2020; Interim Resolution CM/ResDH (2020)361, 3 December 2020, CM/Del/Dec(2021)1398/H46-33, 11 March 2021.

<sup>9</sup> Amnesty International, Turkey: The Case of Kavala v. Turkey and the Need for Infringement Proceedings under Article 46.4 ECHR, 23 February 2021, <https://www.amnesty.org/en/documents/eur44/3742/2021/en/>; Nils Muižnieks, Time for dither and delay with Ankara’s rights record is over, <https://euobserver.com/opinion/151168>

<sup>10</sup> *Selahattin Demirtaş v Turkey* (No. 2) (application no. 14305/17)

<sup>11</sup> CM/Del/Dec(2021)1398/H46-40, 11 March 2021.

<sup>12</sup> <https://m.bianet.org/english/law/238299-erdogan-s-legal-adviser-argues-ecthr-rulings-not-binding-on-the-merits>

<sup>13</sup> <https://www.amnesty.org/download/Documents/EUR4432212020ENGLISH.PDF>

the file requesting closure, the Constitutional Court returned it to the chief public prosecutor's office due to procedural deficiencies. It is expected that once the procedural deficiencies in the indictment are rectified, it will be sent back to the Constitutional Court for its re-examination.

The crackdown on dissenting voices has brought independent journalism in Turkey to the edge of the precipice. Journalists and other media workers continue to be prosecuted, detained and convicted under anti-terrorism laws, with their legitimate journalistic work presented as evidence of criminal offences. Prominent cases of jailed journalists successfully act as deterrents and have a chilling effect on the media. On 13 April, the ECtHR issued judgments in the cases of journalist Murat Aksoy<sup>14</sup> and renowned author and journalist Ahmet Altan<sup>15</sup>, finding violations of their rights to freedom of expression (Article 10 ECHR) and right to liberty (Article 5 ECHR). In a rare positive development, the Court of Cassation on 14 April reversed the verdict for Ahmet Altan and ordered his release, based on his prolonged imprisonment of over four-and-a-half years. Ahmet Altan was released on the same day. Yet, charges against him have not been dropped. His case will now return to the lower court for re-trial, which could decide to resist the ruling given by the top appeals court. The verdict on his co-defendant, journalist Nazlı Ilıcak, was also reversed by the Court of Cassation on 14 April; she had already been released in 2019 pending appeal. These cases are only few amongst a large number of imprisoned journalists illustrating the criminalization of dissent in the country.<sup>16</sup> Dozens of journalists remain behind bars for their journalistic work.

Continuing judicial harassment through punitive prosecutions and convictions targeting human rights defenders, opposition politicians, journalists and independent civil society clearly show that Turkish authorities have not shifted from their policy of persecuting dissenting voices.

## THE CRACKDOWN ON THE RIGHT TO FREEDOM OF ASSEMBLY

Over the last six years, the authorities have also systematically violated the right to peaceful assembly through blanket bans and the use of excessive force against protesters.

The most recent examples include the case of the Saturday mothers/people, in which 46 individuals including human rights defenders, political activists, journalists, and relatives of victims of enforced disappearances have been charged with 'refusal to disperse despite warning and use of force' under Article 32/1 of Turkey's Law on Meetings and Demonstrations (Law No. 2911) during the 700<sup>th</sup> weekly vigil of the Saturday Mothers/People on 25 August 2018. Police used excessive force including water cannons and tear gas to disperse a large, peaceful crowd, which had gathered for the vigil in Istanbul and detained 46 individuals now on trial. If found guilty, they face a sentence of between six months and three years in prison for exercising their rights to freedom of expression and peaceful assembly.<sup>17</sup>

Since January, the police have detained more than 700 protestors<sup>18</sup> by using excessive force against those participating in peaceful demonstrations, following the appointment of Professor Melih Bulu as rector of Istanbul's Bogaziçi University on 1 January 2021. At least nine students have spent periods in pre-trial detention and 31 others were put under house arrest together with hundreds who have been subjected to judicial controls, facing prosecution under charges of allegedly 'inciting the public to enmity and hatred' and violating the law on demonstrations, in violation of their rights to freedom of expression and assembly.<sup>19</sup> Against the backdrop of these protests, several high-level officials, especially the Minister of Interior, have made homophobic comments, and issued misleading statements alleging terrorism links, thereby contributing to an already widespread climate of fear and repression.

## TURKEY'S WITHDRAWAL FROM THE ISTANBUL CONVENTION

On 20 March, Turkey announced its withdrawal from the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) by presidential decision. On 22 March, Turkey

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<sup>14</sup> Murat Aksoy v. Turkey (application no. 80/17)

<sup>15</sup> Ahmet Hüsrev Altan v. Turkey (application no. 13252/17)

<sup>16</sup> See for example Sabuncu and Others v. Turkey (application no. 23199/17)

<sup>17</sup> <https://www.amnesty.org/download/Documents/EUR4438902021ENGLISH.PDF>

<sup>18</sup> <https://www.hrw.org/news/2021/04/02/turkey-resumes-its-crackdown-student-protesters>

<sup>19</sup> <https://www.amnestyusa.org/urgent-actions/urgent-action-update-release-detained-bogazici-protestors-turkey-ua-2-21/>

formally notified the Council of Europe Treaty Office of the decision to withdraw from the Istanbul Convention. The withdrawal will enter into force on 1 July 2021.<sup>20</sup>

The Istanbul Convention was opened for signature on 11 May 2011 in Istanbul. Turkey was among the first countries to sign it, together with Austria, Finland, France, Germany, Greece, Iceland, Luxemburg, Montenegro, Portugal, Slovakia, Spain and Sweden, and the first country to ratify it on 14 March 2012.

The Istanbul Convention is the first European treaty specifically targeting violence against women and domestic violence and the most far-reaching international treaty to tackle violence against women. It provides a comprehensive framework to address gender-based violence against women and girls. Amnesty International considers the decision to withdraw from the treaty a retrogressive measure, contrary to international human rights law. It deprives women and girls of a vital instrument of protection from all forms of violence, including domestic violence, with internationally agreed actions that governments who ratify it must take to achieve this. Withdrawing from the Convention violates the rights of millions of women and girls in the country, jeopardizes their safety and flies in the face of any purported commitment by the Turkish government to protect the rights of survivors of sexual and domestic violence.

The announcement is especially dangerous at a time when many women are killed and there has been a surge of domestic violence cases during the COVID pandemic. In 2020 alone, according to the Minister of Interior, 266 women were killed by men in acts of gender-based violence, although the numbers provided by women's organizations were much higher.<sup>21</sup>

While the decision to withdraw was first announced without any explanation, on 22 March the Turkish government attempted to justify their decision claiming that the Istanbul Convention was being used to 'normalise homosexuality' which was 'incompatible with Turkey's social and family values',<sup>22</sup> exposing the misogyny and homophobia which were already the driving forces behind threats to leave the Convention in August 2020, following pressure from conservative groups. Such a rationale is not only dangerous and discriminatory but also diverts the attention away from the real threat to families, namely the perpetrators of violence against women who frequently benefit from impunity and a weak response by the criminal justice system in the country.<sup>23</sup>

Women's rights organizations and activists in Turkey courageously responded to the decision with several peaceful protests on the day the withdrawal was announced. Protests continued the following week and culminated with marches across the country on 25 March.

Turkey was the first country to ratify the Istanbul Convention in 2012, with staunch support at the time from President Erdogan's Justice and Development Party (AKP) and women's rights groups. Instead of withdrawing from it, Turkey should work towards implementing the Convention through national legislation, policies and other measures to protect women and girls from violence without discrimination. The measures Turkey has taken since becoming a Party to the Convention have been manifestly insufficient, as shown by the GREVIO Report on Turkey and judgments of the European Court of Human Rights concerning violence against women.<sup>24</sup>

## RECOMMENDATIONS TO THE COUNCIL OF EUROPE

**Amnesty International urges the Council of Europe's Parliamentary Assembly, the Secretary General, and the Committee of Ministers to seize every opportunity to call on the Turkish authorities, in the strongest terms, to:**

- Promptly implement the judgments of the European Court of Human Rights and immediately and unconditionally release Osman Kavala and Selahattin Demirtaş from their prolonged and arbitrary detention;

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<sup>20</sup> [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p\\_auth=CP6HTSep](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?p_auth=CP6HTSep)

<sup>21</sup> Official twitter account of the Turkish Minister of Interior, Süleyman Soyulu: <https://twitter.com/suleymansoylu/status/1345321325825503232>; compared to for example the Turkish advocacy platform "We Will Stop Femicide" which refer to at least 300 cases in 2020 <http://www.kadincinayetlerinidurduracagiz.net/for-english>, and the digital monument for women dying from violence, which counted over 400 in 2020 <http://anitsayac.com/?year=2020>

<sup>22</sup> <https://www.iletisim.gov.tr/english/haberler/detay/statement-regarding-turkeys-withdrawal-from-the-istanbul-convention>

<sup>23</sup> <https://www.amnesty.org/en/latest/news/2021/03/turkey-targeting-of-lgbti-people-to-justify-quitting-convention-on-combating-violence-against-women-is-dangerous/>

<sup>24</sup> See for example *Opuz v. Turkey* (application no. 33401/02)

- Take all necessary measures to ensure the independence of the judiciary, including by removing political pressure on judges and prosecutors;
- End the prolonged and arbitrary detention and prosecution of politicians, human rights defenders, lawyers, journalists, writers, and others, solely for exercising their rights to freedom of expression, association and peaceful assembly, and ensure that human rights defenders can exercise their work free from reprisals and threat of judicial harassment; and in particular ensure the implementation of fair trial standards to end the unjust prosecution of Taner Kılıç, İdil Eser, Özlem Dalkıran and Günel Kurşun in the Büyükada case; overturn the unjust conviction of Ömer Faruk Gergerlioğlu and drop all charges against Ahmet Altan;
- Ensure the implementation of fair trial standards to end the unjust prosecution of the 46 people charged in the Saturday mothers/people trial; drop all criminal investigations in relation to the Boğaziçi university protests against protestors for peacefully exercising their rights to freedom of expression and peaceful assembly; and ensure an immediate, thorough and impartial investigation into the allegations of excessive use of force and ill-treatment by the police in these cases;
- Bring its anti-terrorism legislation in line with international human rights law and standards;
- Reverse the decision to withdraw from the Istanbul Convention, and ensure women and girls have access to the protection afforded by this key instrument designed to prevent violence and domestic abuse against all women and girls, without discrimination;
- Ensure that all those defending the Istanbul Convention – including women and LGBTI activists – are free from reprisals and their rights to freedom of peaceful assembly and expression are fully respected and protected.
- Ensure that the technical assistance of the Council of Europe in Turkey is dedicated to effectively addressing systemic roots of human rights violations, in particular those identified by the European Court of Human Rights;