



COMMENTARIES

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Human Rights Jeopardized in Turkey: Governmental and Judicial Intentions to Erode Due Process and the Right to a Fair Trial

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Executive Summary: Human Rights Watch and other human rights organizations have drawn attention to abusive persecutions, the erosion of the right to a fair trial and torture during detention in Turkey. The government has ignored or sidestepped the European Convention on Human Rights' (ECHR) decisions pertaining to pre-trial detentions and fair trials by adding new grounds to indictments and continuing pre-trial detentions.

Crack-down after the coup attempt

After the failed July 15, 2016 coup attempt, 99,066 operations were carried out, 282,790 people were detained, and 94,975 people were arrested. Furthermore, from the time following the coup attempt until January 2020, a [total of 597,783 people](#) have been processed and are under investigation. During the period from July 16, 2016, to January 20, 2021, the U.S. State Department reported that the government dismissed or suspended more than 135,000 civil servants and including more than 45,000 police and military personnel; dismissed one-third of the judiciary; arrested or imprisoned more than 90,000 citizens; and closed more than 1,500 non-governmental organizations (NGOs) on terrorism-related grounds,

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primarily for [allegedly having ties to the Gülen Movement](#) (GM) and Kurdish-elected politicians. Media outlets connected with the GM organization, Kurdish media outlets, and including other opposition media groups were closed by decrees that were made following the [failed coup attempt](#). Throughout the nearly two-year official State of Emergency (OHAL) period lasting from July 20, 2016, to July 18, 2018, 79 media agencies (53 newspapers, 34 TV and 37 radio stations, 20 magazines and 6 news agencies) and 29 publishing houses were shut down.

Human rights violations reached unprecedented levels in Turkey after the July 15, 2016 failed coup attempt. Human rights activists, lawyers, journalists, and politicians and former members of parliament who opposed the Erdogan government, were subjected to, or victims of violations that contravened international law including [arbitrary killings; suspicious](#) deaths of persons in custody; forced disappearances; torture; arbitrary arrest and continued detention of tens of thousands of persons. Moreover, the imprisonment of innocents, the torture and abuse of prisoners, and the assault on the steps in the trial process encompassing the arrest procedure, pre-trial detention, and a free and fair public trial, amplified the evidence of the government's disregard for, and desecration of human rights. Thus, the measures that the government took after the failed coup attempt have impacted the development of democracy and human rights in [Turkey since July 2016](#).

Pre-trial

Arrest and Detention

Targeting individuals and institutions for their associations, real and alleged, without evidence of wrongdoing, is a violation of fundamental human rights. Two far-right parties, President Recep Tayyip Erdoğan's Justice and Development Party (AKP, *Adalet ve Kalkınma Partisi*) and a ruling alliance National Movement Party (MHP, *Milliyetçi Hareket Partisi*), have fundamentally altered Turkey's course of history. They have enjoyed a parliamentary majority that has enabled them to consolidate authoritarian rule by passing rushed legislation that contravenes international [human rights obligations](#). Erdoğan and his cabinet's interference in judicial and prosecutorial decisions are entrenched problems, reflected in the authorities' systematic practice of detaining, prosecuting, and convicting individuals the Erdoğan government regards as critics or political opponents, on bogus and overbroad terrorism charges, as well as other charges. Among those targeted are

journalists, opposition politicians, leftists, and activists—in particular, members with alleged ties to the GM, Kurdistan Workers Party (PKK, *Partîya Karkerên Kurdistanê*), and the pro-Kurdish Peoples’ Democratic Party (HDP, *Halkların Demokratik Partisi*). The jailing of former co-chair and presidential candidate, Selahattin Demirtaş restricted the ability of opposition candidates to compete on an equal basis and to campaign freely. Being a member of the GM, a Kurdish politician or a critic of the government was considered a crime in domestic law, and resulted in being labeled as a member of a terrorist organization. The names of the accused were announced on Official Gazette of the Republic of Turkey and on international media platforms and as a result, these individuals were sentenced to live as terrorists, they were stigmatized, and their recruitment in the private and public sectors has become almost impossible. For example, the Council of Europe has released an annual statistics report of prisoners in prison for 2020. Compared with all of Europe, for the last seven years, Turkey has the highest conviction rate, as well as the [“most populous” prisons](#). In addition, Turkey rates first in Europe for the percentage of inmates who have been convicted of [terrorist activities](#).

Fair Public Trial

Procedures

The Turkish constitution provides the right to a fair public trial. However, bar associations and rights groups asserted that the increase of executive interference with the judiciary, as well as the actions taken by the government through the state of emergency provisions, jeopardized this right. Although the law provides defendants with a presumption of innocence and the right to be present at their trials, in several high-profile cases, defendants appeared via video link from prison more frequently than attending in-person. Judges may restrict defense lawyers’ access to their clients’ court files. A single judge or a panel of judges decides all cases. Courtroom proceedings were generally public except for cases involving minors as defendants. However, the state has increasingly used a clause allowing closed courtrooms for hearings and trials related to security matters, such as those related to “crimes against the state.” Court files, which contain indictments, case summaries, judgments, and other court pleadings, were closed except to the parties involved in the case, making it difficult for the public, including journalists and watchdog groups, to obtain information on the progress or results of a case. In some politically sensitive cases, the government restricted access to Turkish

lawyers only, limiting the ability of domestic or international groups to observe some trials. For example, HDP Co-Leader Selahattin Demirtas was arrested on November 4, 2016, and his first hearing in the criminal court began 399 days after his detainment. Over 1,200 Turkish lawyers expected to attend his trial; however, international participants, [observers and lawmakers](#) were not allowed into the hall for security reasons.

Consultation with an Attorney

Some lawyers stated they were hesitant to take cases, particularly those accused of PKK or GM ties, because they feared government reprisal, including persecution. The international NGO Freedom House report stated that in many cases, the lawyers who defended those accused of [terrorism offenses](#), were arrested themselves. According to human rights organizations, authorities have targeted lawyers. Since 2016, more than 1,500 have been prosecuted, 605 have been arrested, and 441 have been sentenced to lengthy prison terms on terrorism-related charges. Of the arrested lawyers, 14 were presidents of provincial bar associations. This practice disproportionately affected access to legal representation in the southeast, where accusations of affiliation with the PKK were frequent, and the ratio of lawyers to citizens was low. In his speech, Erdoğan suggested that lawyers who were “intimate” with terrorist organizations should be disbarred. Furthermore, the government passed a new law in July 2017, to reduce the institutional strength of Turkey’s largest bar associations, who had strongly criticized Turkey’s backsliding on human rights and the rule of law. Defense lawyers representing defendants in terrorism prosecutions have faced arrest and prosecution for the same charges as their clients. The Court of Cassation upheld the conviction of 14 of 18 lawyers, including [Selçuk Kozağaçlı](#), president of the Association of Contemporary Lawyers (ÇHD, *Çağdaş Hukukçular Derneği*), for links with an outlawed leftist organization. Ebru Timtik, a Kurdish lawyer, died on August 27 after a prolonged hunger strike [in demand of a fair trial](#). Approximately 34 bar associations were shut down on the grounds of an alleged affiliation with a [terrorist organization](#). Another problematic issue is when government officials record all meetings or interviews of lawyers with their clients in prison. Even though meetings with clients and lawyers should be secret, the meetings were recorded and thus, clients’ rights regarding confidential meetings with their lawyers were violated. Furthermore, wardens were sitting at the same table with the lawyers and their clients (prisoners) during their meetings.

Production and Submission of Evidence

Human rights groups noted that, following the 2016 coup attempt, authorities continued to detain, arrest, and try hundreds of thousands of individuals for alleged ties to the GM or membership in the PKK, often with questionable evidentiary standards and without the full due process provided by the law. In addition, domestic and international legal and human rights experts questioned the quality of evidence presented by prosecutors in such cases; criticized the judicial process; asserted that the judiciary lacked impartiality; and highlighted that defendants were sometimes denied access to the [evidence underlying the accusations](#) against them. The courts, in some cases, applied the law unevenly, with legal critics and rights activists asserting that the courts and prosecutors' decisions were sometimes subject to executive interference. Observers noted that the prosecutors and courts often failed to establish evidence to sustain indictments and convictions in cases related to supporting terrorism, highlighting concerns regarding respect for due process and adherence to credible evidentiary thresholds. In numerous cases, particularly in cases related to national security, authorities used secret evidence or witnesses to which defense attorneys and the accused had no access or ability to cross-examine and challenge in court.

Presumption of Innocence

There are many cases that have caused observers to be concerned that the outcomes of trials were predetermined, or that they were tainted with judicial interference. Thus, there was evidence that a crisis of [individuals being denied](#) a fair trial had emerged.. For example, Osman Kavala and eight others were charged with attempting to use the 2013 Gezi Park protests to overthrow the state. Osman Kavala, a human rights defender and a founder of Anadolu Kültür, an organization dedicated to cross-cultural and religious dialogue, had been in pre-trial detention since 2017. His case is emblematic of the crisis facing civil society and the rule of [law in Turkey](#). Although the court acquitted Kavala of the charges and ordered him to be released immediately, on the day of his exit from prison authorities detained Kavala on new espionage charges and attempting to overthrow the state order in connection with the 2016 failed coup. In response, the ECHR and three non-governmental organizations, including Human Rights Watch, the International Commission of Jurists, and the Turkey Human Rights Litigation Support Project, recommended that Kavala be released. However, the Turkish government failed to comply with the order to release him. Thus, Kavala's case

supports the argument that a systemic practice in the Turkish courts, which are not independent, applies criminal law and procedures arbitrarily against critics of the government and evidences structural [failings in the judicial system](#).

Independent Judiciary

Many of the HDP's prominent members have been investigated, tried and jailed over terrorism charges. On March 17, 2021 at the general assembly of the parliament, Ömer Faruk Gergerlioğlu was stripped of his parliamentary seat when the speaker of Turkey's parliament read out the notification of his conviction for a social media post. Gergerlioğlu is a long-standing human rights defender, former president of the Association for Human Rights and Solidarity for the Oppressed (MAZLUMDER), and a lawmaker and an elected HDP member of parliament since 2018. HDP members are the most outspoken critics of the Erdoğan government's appalling record on human rights. He is also a member of a parliamentary commission responsible for monitoring human rights violations and has consistently drawn attention to allegations of rights abuses. Gergerlioğlu, a physician and longtime human rights advocate, was found guilty in February 2018, of "spreading terrorist propaganda" based on a 2016 social media post [advocating for peace](#). He was arrested at the Parliament building, and Turkey's top appeals court approved a jail sentence for [terrorism-related charges](#). Gergerlioğlu's conviction was seen as "a blatant violation of his right to free speech," and using it as a pretext to expel him from parliament showed deep disdain for democratic norms and the right to [political association](#).

Gergerlioğlu has made human rights his main focus, and has been a voice for tens of thousands of people arbitrarily dismissed and jailed in the aftermath of the 2016 coup attempt. According to Human Rights Watch, Gergerlioğlu's efforts to inform society has made a huge contribution to raising awareness of the violations that resulted from the actions of the Erdoğan government and its far-right party. He has shared the stories of ordinary people who were subjected to deep injustices and championed them in their struggle for dignity and recognition, regardless of their political and [social affiliations](#). At a time when few members of parliament or activists have been speaking up for the rights of people unjustly targeted for their links with the GM, which Turkey blamed for the coup attempt, Gergerlioğlu has not shied away from his principled and impartial stance in defending their rights. Gergerlioğlu has continuously advocated for the human rights of various

individuals, including those who survived torture and ill-treatment by security officials and civil servants dismissed from their posts by the emergency decrees on their alleged ties with GM and PKK members. Before his arrest, he brought the practice of strip searches of women in custody to the attention of the Parliament, but the representatives of the ruling AKP repeatedly denied the allegations. Observers believe that his arrest was an attempt to silence him and raised concerns that the outcome of some trials appeared predetermined or pointed to judicial interference. Therefore, while Gergerlioğlu was convicted for his social media post sharing a news article, the original news article was not incriminating. This raises strong doubts that his conviction was [politically motivated](#) because the judiciary faced several problems that limited judicial independence, including intimidation and reassignment of judges and allegations of interference by the executive branch. In spring of 2021, Turkey's Constitutional Court ruled that Gergerlioğlu's rights were violated when he [was detained on terrorism charges](#). The decision cleared the way for his immediate release and restoring of his parliamentary seat. However, Gergerlioğlu remained behind bars for an additional five days after the ruling. Finally, on July 1, he was [released from prison](#).

Conclusion

Individuals who opposed Erdogan's far-right party and its affiliates were exposed to severe criminal charges and sanctions after the 2016 failed coup attempt. These victims' human rights were violated when they were not granted the rights that Article 6 of the ECHR provided, including the right of access to court; the right to be judged by independent and unbiased courts established by law; the right to the presumption of innocence; the right to know the charges as soon as possible; the right to request the hearing of the charges face-to-face at a public trial; the right to have all kinds of facilities to prepare defense as well as to listen to the witnesses at a public trial; and the right to have the witnesses for listening under the same conditions. Therefore, there is a plethora of evidence that the right to be judged fairly was violated. The current practices of the government and judiciary are blatantly contrary to Article 15 of the European Convention on Human Rights. According to Article 15, "*measures strictly required by the exigencies of the situation*" can be put into action in a state of emergency. However, the actions taken under the Decree-Laws did not meet this threshold, and thus disregarded and violated the Convention's rights.