Submission to the Human Rights Committee

142nd Session (October 14 – November 7, 2024)
For the consideration of Türkiye's second Periodic Report

International Association for Human Rights Advocacy Geneva (IAHRAG)

September 2024

1. The International Association for Human Rights in Geneva (IAHRAG) thanks the Human Rights Committee (Committee) for its engagement with civil society and for providing this opportunity to be associated with the process of considering Türkiye's second periodic report.

2. IAHRAG was created in 2017 to assist, support, guide, and sustain victims of human rights violations. One of its main concerns of interest is the violations of human rights in Türkiye. It particularly provides support and guidance to sympathizers of the "*Hizmet* Movement" (also known as the Gülen Movement) who are victims of a relentless witch-hunt and persecution, particularly since the coup attempt on July 15, 2016, from the Turkish authorities.

3. IAHRAG's report provides inputs on:

- the constant deterioration of civil and political rights recognized by all international institutions (***section 1 – inputs on paras. 1 and 18 of the LOIPR***);
- the abuse of counter-terrorism legal frameworks, particularly against *Hizmet* Movement sympathizers, since July 15, 2016 (***section 2 - inputs on paras. 6, 20 and 23 of the LOIPR***);
- Türkiye's state of emergency: permanent unnecessary and disproportionate measures, gross human rights violations, and impunity (***section 3 - inputs on paras. 4, 10, 16, 17, 19 and 27 of the LOIPR***) ;
- Enforced disappearances, renditions, and extraditions in the context of so-called "counter-terrorism" measures (***section 4 – inputs on paras. 9 and 14 of the LOIPR***).

1. Constant deterioration of civil and political rights and the rule of law in Türkiye since July 2016: an illustration with the increase of complaints and communications/statements from human rights mechanisms (*inputs on paras. 1 and 18 of the LOIPR*)

4. Türkiye ratified the Covenant in 2003 and the First Optional Protocol in 2006. It is quite remarkable that between 2007 and 2016, only 2 individual complaints were registered by the Human Rights Committee against Türkiye. In comparison, **36 complaints were registered by the Human Rights Committee between 2017 and 2023**. Most of the complaints are related to the post-coup attempt's numerous human rights violations and accusations of membership to a (so-called) terrorist group *(ie*. being a sympathizer, real or alleged, of the *Hizmet* Movement: unfair trial, unfair conviction based on vague counterterrorism legal frameworks, unfair dismissal, enforced disappearance, incommunicado detention, arbitrary detention…).

5. The Committee rendered already 3 violations decisions since 2016: ***Özçelik et al. v. Türkiye***, 2980/2017, ***Alakuş v. Türkiye***, 3736/2020, ***Açikkollu v. Türkiye***, 3730/2020. The three decisions reveal serious violations against *Hizmet* Movement sympathizers: transnational repression and abroad abductions, death in prison and ill-treatment, unfair trial and retroactivity of criminal law, and arbitrary detention. Although inadmissible due to the Turkish reservation to article 5 (2) (a) of the Optional Protocol, in ***S.N.K. and Y.T. v. Türkiye***, 4275/2022, Ms. Hélène Tigroudja and Mr. Hernan Quezada Cabrera expressed in their joint opinion that "*there was a pattern both of enforced disappearances used against Gülen movement's supporters and of impunity of the State-sponsored perpetrators*".

6. Similarly, from March 2011 to July 2016, 32 communications were sent to Türkiye from Special Procedures (equivalent to 1 communication per 2 months). In comparison, **106 communications were sent to Türkiye between July 2016 and July 2024** (equivalent to 1 communication per month). The communications reveal a large involvement of the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on counterterrorism and human rights and the Working Group on Arbitrary Detention. The latest allegation letter was sent on June 21, 2024 (AL TUR 3/2024), to which the Turkish government did not provide any answer; the Special Rapporteur on the independence of judges and lawyers stated that the extent and nature of her concerns "*suggests a systematic impact on the right to a fair trial for anyone accused of alleged links with the Hizmet/Gülen Movement*" (p. 11).

7. While Türkiye accepted the jurisdiction of the Committee and the European Court of Human Rights, it is also remarkable that **the Working Group on Arbitrary Detention adopted since July 2016, 28**

opinions against Türkiye, from which 23 opinions concerned *Hizmet* Movement sympathizers[1] (for an element of comparison, during the same period, the WGAD only issued 25 opinions against Iran, which did not accept the jurisdiction of the Committee to receive individual communications). In its opinions "*the Working Group has noted a significant increase in the number of cases brought before it concerning arbitrary detention in Turkey. The Working Group expresses grave concern about the pattern established by all these cases and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity*" (A/HRC/WGAD/2020/47, para. 101).

8. Regarding enforced disappearances, **while the Working Group on Enforced and Involuntary Disappearances transmitted no case at all from 2008 to 2016, it communicated 17 cases between 2016 and 2020** (see Working Group's annual report to the Human Rights Council, A/HRC/75/54) to the Turkish government (see Ms. Hélène Tigroudja and Mr. Hernan Quezada's opinion in ***S.N.K. and Y.T. v. Türkiye***, 4275/2022, above para. 6).

9. Regarding the European institutions, it is important to note the progression in the reporting narrative. The 2013 EU Commission report (SWD/2013/0417) noted that

> "*good progress was made in terms of establishing Turkey's human rights mechanisms and institutions*" (para. 2.2.)

10. The 2015 EU Commission report (SWD(2015) 216 final) started casting doubts on the progress and evolution of Türkiye on human rights and the rule of law

> "*Recent dismissals and demotions in the context of the fight against the 'parallel structure' were a source of concern* (…) *The independence of the judiciary and the principle of separation of powers have been undermined and judges and prosecutors have been under strong political pressure. The government's campaign against the alleged 'parallel structure'*[2] *within the state was actively pursued, at times encroaching on the independence of the judiciary. Substantial efforts are needed to restore and ensure its independence.* (…) *After several years of progress on freedom of expression, serious backsliding was seen over the past two years, with some level of preparation in this field*".

11. Since 2016, the EU Commission reports have been consistently expressing serious concerns over the rule of law and human rights situation in Türkiye. The 2016 EU Commission report (SWD(2016)366 final) noted

> "*Following the attempted coup, very extensive suspensions, dismissals and arrests took place over alleged links to the Gülen movement and involvement in the attempted coup. There were reports of serious human rights violations, including alleged widespread ill-treatment and*

[1] Ali Ünal, A/HRC/WGAD/2023/3; Muhammet Şentürk, A/HRC/WGAD/2023/29; Alettin Duman, Tamer Tibik, A/HRC/WGAD/2022/8 ; Osman Karaca, A/HRC/WGAD/2020/84; Ahmet Dinçer Sakaoğlu, A/HRC/WGAD/2020/67; Levent Kart, A/HRC/WGAD/2020/66; Nermin Yasar, A/HRC/WGAD/2020/74; Arif Komiş, Ülkü Komiş and four minors, A/HRC/WGAD/2020/51; Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, A/HRC/WGAD/2020/47; Faruk Serdar Köse, A/HRC/WGAD/2020/30; Akif Oruc, A/HRC/WGAD/2020/29 / Abdulmatip Kurt, A/HRC/WGAD/2020/2; Ercan Demir, A/HRC/WGAD/2019/79; Melike Göksan, Mehmet Fatih Göksan, A/HRC/WGAD/2019/53; Mustafa Ceyhan, A/HRC/WGAD/2019/10; Hamza Yaman, A/HRC/WGAD/2018/78; Muharrem Gençtürk, A/HRC/WGAD/2018/44; Ahmet Caliskan, A/HRC/WGAD/2018/43; Mestan Yayman, A/HRC/WGAD/2018/42; Mesut Kaçmaz, Meral Kaçmaz and two minors, A/HRC/WGAD/2018/11; 10 individuals associated with the newspaper *Cumhuriyet*, A/HRC/WGAD/2017/41; Kursat Çevik, A/HRC/WGAD/2017/38; Rebii Metin Görgeç, A/HRC/WGAD/2017/1; Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, A/HRC/WGAD/2020/47.

[2] For the information of the Committee, the term "parallel structure" referred to in the report designates the *Hizmet* Movement.

torture of detainees. The crackdown has continued since and has been broadened to pro-Kurdish and other opposition voices. The measures affected the whole spectrum of society, with a particular impact on the judiciary, police, gendarmerie, military, civil service, local authorities, academia, teachers, lawyers, the media and the business community. Overall, as of the end of September 2016, some 40 000 people had been detained and more than 31 000 remain under arrest, including 81 journalists. 129 000 public employees remain either suspended (66 000) or have been dismissed (63 000). Over 4 000 institutions and private companies were shut down, their assets seized or transferred to public institutions. Additional 10 000 civil servants were dismissed by decrees under the state of emergency at the end of October and further media outlets closed and journalists detained. Turkey also reached out to a number EU Member States concerning, for example the closing of schools and other institutions allegedly linked to the Gülen movement. In this context, there are reports of members of the Turkish diaspora living in these Member States being under pressure to report on other members of these communities".

12. The 2020 EU Commission (SWD (2020) 355 final) report mentioned that

"*The deterioration of human and fundamental rights continued. Many of the measures introduced during the state of emergency remained in force and continued to have a profound and devastating impact*".

13. The 2023 EU Commission (SWD (2023) 696 final) mentioned once again

"*The deterioration of human and fundamental rights continued. The Turkish legal framework includes general guarantees of respect for human and fundamental rights, but the legislation and its implementation need to be brought into line with the European Convention on Human Rights (ECHR) and European Court of Human Rights (ECtHR) case law. No legislative amendments were adopted to eliminate the remaining elements of the 2016 state of emergency laws. Türkiye's refusal to implement certain ECtHR rulings is a source of concern regarding the judiciary's adherence to international and European standards*"

14. **Regarding the European Court of Human Rights** (ECtHR), on December 31st, 2014, Türkiye had 9.500 cases representing 13.6% of all pending applications; **as of December 31st, 2024, Türkiye is now the first State regarding pending applications, with 23.400 cases** representing 34.2% of all pending applications (see 2023 Annual report of the ECtHR, here, p. 6)

15. On the landmark ECtHR' judgement *Yüksel Yalçinkaya v. Türkiye*, 15669/20, the Court reviewed the case of a teacher at a state school in Kayseri, Türkiye, convicted on March 21, 2017, by the Kayseri Heavy Penal Court for membership in an armed terrorist organization "FETÖ", in reality for his connections with the *Hizmet* Movement. The conviction was notably based on the applicant's use of an encrypted messaging application called "ByLock".

22. The Court, quoting the Committee's decision *Alakus v. Türkiye*, 3736/2020 (para. 197) found eventually that the mere use of ByLock is insufficient to support a conviction for membership in a terrorist organization, unless corroborated by additional objective evidence. Following on the Committee's *Alakus* case law, it states that the applicant's conviction for membership of an armed terrorist organization was secured without duly establishing the presence of all constituent material and mental elements (in particular the required special intent element) of that offence in an individualized manner, in contravention of the requirements under domestic law and the principles of legality and foreseeability.

23. Even more important, the Court found that the

"***situation that led to a finding of violations of Articles 7* (non-retroactivity of criminal law) *and 6* (right to a fair trial)** *of the Convention in the present case was not prompted by an isolated incident or attributable to the particular turn of events, but* ***may be regarded as having stemmed from a systemic problem****. This problem has affected – and remains capable of affecting – a great number of persons. This is evidenced by the fact that* ***there are currently over***

> ***8,000 applications in the Court's docket involving similar complaints*** *raised under Articles 7 and/or 6 of the Convention relating to convictions that were based on the use of ByLock as in the present case*" (para 114).

The Court has already communicated 3,000 of those cases to the Turkish Government indicating that it does not expect observations as to the merits of the communicated applications.

24. In a recent allegation letter (June 21, 2024, AL TUR 3/2024), the Special Rapporteur on the independence of judges and lawyers echoed the judgment and stated that

> "*In view of the systemic nature of the problem, the Turkish judiciary should order retrials in all cases in which ByLock evidence was relied upon, and should urgently implement safeguards to address the existing disparities in cases relying on digital evidence to ensure equality of arms*"

25. Right after the announcement of the judgment on September 26, 2023, Turkish authorities made concerning public statements undermining and impacting the implementation of the judgment by Turkish courts. The Minister of Justice Yılmaz Tunç said:

> "*It is unacceptable for the ECtHR to overstep its authority and issue a judgment of violation by examining the evidence in a case where our judicial authorities at all levels, from the court of first instance to the Court of Appeal, from the Court of Cassation to the Constitutional Court, have deemed the evidence sufficient*."

President Recep Tayyip Erdoğan stated on October 1st, 2023:

> "*The recent decisions of the European Court of Human Rights (ECtHR), a body of the Council of Europe, have been the final straw. Let the members and supporters of the terrorist organization, who have taken courage from this decision, not get their hopes up in vain; there will be no gain for the vile FETÖ members, who have already been condemned in the collective conscience, from this decision*".

Such public statements at the highest and most relevant part of the government undermined all attempts, if any, of impartial judges to adapt his/her decision to the *Yalçinkaya* judgement.

26. **On September 12, 2024, after Yuksel Yalçinkaya's lawyer petition for a retrial following the judgment of the ECtHR, the Turkish first instance Court of Kayseri rendered the same conviction, totally disregarding the *Yalçinkaya* judgement**. IAHRAG, in all its individual communications, has been consistently explaining to the Committee that there was no independent and impartial judiciary, nor effective remedies, in Türkiye for persons accused of links with the *Hizmet* Movement (see SR the independence of judges and lawyers "*systematic impact on the right to a fair trial for anyone accused of alleged links with the Hizmet/Gülen Movement*", para. 6 above). **This decision is the ultimate proof that there is no effective remedy at all for *Hizmet* Movement sympathizers in Türkiye.** The Human Rights Defender and Parliamentarian, Ömer Faruk Gergerlioğlu, whose name is mentioned twice in the LOIPR (para. 23 and 28) immediately tweeted on X that the "*Court's decision was rendered upon instructions of the Government*" (see here).

27. In their recent concluding observations, the Committee on the Elimination of Discrimination against Women in 2022, the Committee on the Rights of the Child in 2023, and the Committee against Torture in 2024 expressed serious concerns about the deterioration of human rights and the rule of law in Türkiye, in particular since 2016:

> "*The Committee is concerned about the negative impact that the adoption of the constitutional amendments in 2017 had on the State party's judiciary, further undermining its ability to independently discharge its mandate. It is also concerned that the changes in the structure of both the Turkish Constitutional Court and the Council of Judges and Prosecutors, the body*

responsible for ensuring self-governance of the judiciary, seriously undermine the independence of the judiciary by positioning it under close oversight by the executive" (CEDAW/C/TUR/CO/8, para. 18);

"*The Committee is deeply concerned about the ongoing repression of children's freedom of expression, association and peaceful assembly in the name of combating terrorism, noting that, since 2016, thousands of children have been arrested, detained and convicted on terrorism-related charges.* (para. 24) *Concerned about children whose parents have been deprived of liberty on terrorism-related charges, the numbers of whom have drastically risen following the attempted coup in 2016, the Committee recommends*… (para. 33)" (CRC/C/TUR/CO/4-5);

"*The Committee is concerned about what appears to be a severe regression in the independence of judges, prosecutors and lawyers in the State party during the period under review. While taking into account the exceptional measures that the State party considered necessary to adequately respond to the attempted coup in July 2016, the Committee expresses concern about the effects that the increased influence of the executive over members of the judiciary, prosecutors and other members of the legal profession may have on the investigation and prosecution of torture and ill-treatment*" (CAT/C/TUR/CO/5, para. 38).

28. The evolution of the number of complaints/communications, reports and concurring concerns expressed by various international human rights mechanisms suggests the collapse of the rule of law and human rights in Türkiye since July 2016. **The April 2021 Human Rights Action Plan and related "efforts" mentioned in the Turkish report (CCPR/C/TUR/2, paras. 8 to 16) have proven to be totally ineffective**.

29. On para 1. of the 2021 LOIPR (CCPR/CTTUR/QPR/2), the Committee asked to "*indicate the procedures for the implementation of the Committee's Views under the Optional Protocol and provide information on measures to ensure full compliance with each of the Views in respect of the State party, including in Özçelik et al. v. Turkey*". **Türkiye made no effort to implement the opinions/decisions/judgments of international human rights mechanisms, including the opinions of the Human Rights Committee**: Mr. Özçelik (CCPR 2980/2017) is still in prison and denied release (since 9 November 2022) in spite of serious health issues; Ms. Alakuş (CCPR 3736/2020) has been released but not on the basis of the Committee's violation decision: she was released baceause of a retrial based on the Constitutional Court's decision of 15 March 2023, which ruled that his right to a fair trial had been violated as her testimony was taken by the trial court via video conference, despite her express request to be present in court to defend herself (ignoring violations found by the Committee). She was released after spending 55 months 9 days in prison. The widow of Mr. Açikkollu (CCPR 3730/2020) received no reparation for the death of her husband.

30. As to the WGAD' opinions, no efforts were made to actually implement the opinions. The latest annual report of the WGAD (A/HRC/57/44) mentioned the cases of Mr. Ali Ünal (A/HRC/WGAD/2023/3), Muhammet Şentürk (A/HRC/WGAD/2023/29) and Cihangir Çenteli (A/HRC/WGAD/2023/66).

31. As to the ECtHR' *Yalçinkaya* judgment (15669/20), the Turkish government submitted an action plan on August 5, 2024, which dramatically lacks substantial and concrete information on the general measures taken to prevent similar violations from occurring. Indeed, the government has taken no legislative steps to align domestic judicial practices with the judgment and there has been strictly no change in the case law or judicial practice in order to meet the requirement of the judgement which identified a systemic issue. Criminal investigations and prosecutions continued for the exact same acts and under exact same circumstances of those in the judgement. The September 12, 2024 first instance Court of Kayseri re conviction of Mr. Yalçinkaya disregarding the requirements of the ECtHR's violation judgment is the best evidence (see para. 26)

32. Every day, people in Türkiye are being arrested for wrongful convictions similar to the ones in the *Yalçınkaya* and *Alakuş* cases, investigations and prosecutions continue with arrests and detentions on charges similar to those arising from the systemic problem identified in the *Yalçınkaya* and *Alakuş* cases.

SUMMARY OF CONCERNS AND SUGGESTION OF QUESTIONS FOR THE DIALOGUE

- IAHRAG is deeply concerned at the severe deterioration of the rule of law principle, fundamental freedoms and human rights in Türkiye resulting from the measures to respond to the coup attempt, as evidenced by the multiplicity of concurring communications, decisions, and reports issued by international human rights mechanisms since 2016. IAHRAG is particularly worried at the lack of implementation of the views adopted by the Committee, the opinions of the WGAD and judgments of the ECtHR, in particular the *Yalçinkaya* judgment (15669/20) which identified a systemic issue, depriving victims of their rights to an effective remedy.

IAHRAG respectfully suggests the following questions to the delegation: Information related to the Human Rights Action Plan was provided in the second periodic report. Yet there has been a significant increase in individual communications transmitted under Optional Protocol 1, with currently more than 30 communications registered since 2016 and on the role of the Committee, recalling that since the ratification of the Protocol in 2007 until 2016, only 2 communications were registered against Türkiye. This equally echoes the increase of cases before the ECtHR, as the latest Court's annual report mentions 23.400 Turkish pending cases representing 34.2% of the Court's role, but also the increase of opinions of the WGAD since 2016. Could you provide some comments on this increase? Also worrying are reports underlying the lack of implementation of the Committee's views, but also of the WGAD's opinions and of the ECtHR's judgements, in particular the *Kavala* judgement (28749/18) referred by the Council of Europe's Committee of Ministers under article 46 of the Convention, but also the Grand Chamber *Yalçinkaya* judgement in which the Court identified "a systemic problem affecting large number of people" and calling for "general measures at the national level" to be taken for the execution of the judgement (para. 416). Could you provide some information on the recent first instance Criminal Court judgement condemning Mr. *Yalçinkaya* in the exact similar terms, in spite of the Grand Chamber's judgement? Could you provide some elements of answer regarding the Government's plan of action to implement international human rights mechanisms' decisions, in particular the views of the Committee? Could you elaborate on the situation of Mr. Özçelik (CCPR 2980/2017) who according to reports is still in jail? What is the reason for his being in jail although his right to early release was reportedly due on 9 November 2022? What concrete actions are foreseen to remedy the systematic and systemic human rights violations stemming from post-coup attempt responses and ongoing violations?

2. Context: abuse of counter-terrorism legal frameworks, in particular against *Hizmet* Movement sympathizers since July 15, 2016 (*inputs on paras. 6, 20 and 23 of the LOIPR)*

33. IAHRAG brings to the attention of the Committee that the Turkish second periodic report (CCPR/C/TUR/2) contains 15 references to the term "*FETO*". "*FETO*" stands for "*Fethullah Terrorist Organization*", the derogatory name given by the Turkish government to the *Hizmet* Movement. Based on the Turkish second periodic report, "*FETO*" seems to be at the root of all the ills and concerns in Türkiye, and in view of the importance given to "*FETO*" by the Turkish government, IAHRAG considers it appropriate to bring to the attention of the Committee a few elements of clarification.

34. The Turkish designation of the movement as a terrorist organization has not been accompanied by any concrete nor credible evidence and failed to convince the vast majority of governments and international organizations. **The Turkish designation of the *Hizmet* Movement as a terrorist**

organization is a counter-terrorism abuse, an arbitrary administrative measure[3] disguised into a judiciary measure with a large scale and still ongoing impact on the institutional and legal Turkish landscape: more than 1 million and a half persons have been investigated under "FETÖ" charges, more than 300.000 persons have been convicted on "FETÖ" charges, more than 100.000 persons have been dismissed for alleged links with "FETÖ", including more than 4.000 judges, 2.761 newspapers, televisions, associations have been closed for alleged links with "FETÖ", more than 100 laws amended by executive decree-laws during the State of emergency. Such misuse and abuse must be rejected and countered.

2.1 On the Turkish allegations that the Hizmet Movement fomented the July 15, 2016 Coup attempt and is a terrorist organization

35. The 15 references to "*FETO*" in the Turkish report aim at defining the *Hizmet* Movement as a terrorist organization causing "*grave threat to the security of the state*" through the infiltration of the State organs, responsible for the July 15, 2016 coup attempt.

36. Türkiye designated the *Hizmet* Movement as a terrorist organization for the first time back to May 2016 through the decision of the National Security Council, an advisory body of the executive. However, according to Turkish law, a judicial decision is required for a structure to gain legal recognition as a terrorist organization.

37. On April 24, 2017, the 16th Chamber of Court of Cassation retrospectively described, in its leading judgement E. 2015/3 K. 2017/3, that the goal of "*FETO*" was to seize the State institutions and to replace the constitutional order, and this, allegedly on the basis of intelligence reports issued by the *MİT* (*Milli İstihbarat Teşkilatı*, the Turkish National Service agency), although neither suspects nor judges were/are in a position to fully access the *MİT*' information or reports.

38. It should be noted first that the object of the Court of Cassation' decision was the trial of judges Metin Özçelik and Mustafa Başer, who had been tried for their decision to release police officers, who were arrested on the ground that they had conducted -or been involved in- the investigations into the notorious 17/25 December 2013 corruption incidents.[4] However, in reviewing the case, the 16th Penal Chamber of the Court of Cassation, which conducted the trial, and the General Assembly of Penal Chambers of the Court of Cassation opportunely changed the object of the decision to engage in a decision qualifying the *Hizmet* Movement as a terrorist group.

39. Interestingly, the Court of Cassation's decision fails to establish what kind of a terrorist organization the *Hizmet* Movement was, how it resorted to, or aimed to resort to violence and armed actions, how and in what way the sympathizers of the Movement had - if ever - engaged in terrorist activities.

40. For an organization to be declared a terrorist, it must indeed be formed with the aim of committing crimes or crimes of a political nature by force and violence, which would ultimately indicate a certain level of physical violence required by the relevant Turkish laws.

41. However, **until today, all convictions against *Hizmet* Movement sympathizers rely only on perfectly legal activities protected by international human rights law and fail to establish proper**

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[3] See the recent 2024 OHCHR report on the *Use of administrative measures in countering terrorism* (A/HRC/57/29).

[4] The corruption cases of December 2013 refer to notorious anti-corruption operations on 17-25 December 2013, in which some ministers of Mr. Erdoğan, including his own family members, were allegedly involved. After the cases, Mr. Erdoğan initiated a demonizing campaign against the *Hizmet* Movement –by blaming the Community for setting up a "parallel state" and plotting a "judicial coup" to bring down his elected Government. After the corruption cases, Mr. Erdoğan constantly blamed the *Hizmet* Movement sympathizers to seek to overthrow his government and branded them the enemy of the State and a proscribed schism in Muslim society that should be annihilated. Caught in credible corruption scandals, Mr. Erdoğan's strategy was to undermine the Movement in order to redirect public attention.

criminal activities. Adhering to an ideology, simply sharing opinions, and having values in common with others or getting together to gain an ideological benefit is not, however, sufficient to qualify a structure as a criminal armed terrorist organization.

42. In reality, the Court of Cassation's decision heavily relied on the opinions taken at the meetings of the National Security Council on October 30, 2014, April 29, 2015, and May 26, 2016 in which the *Hizmet* Movement was arbitrarily designated as an outlawed organization for it allegedly constitutes a threat to the constitutional order.

43. In more than 60 years of history, the *Hizmet* Movement has never been associated with any violent acts, except for the government's arbitrary and unfounded accusation of the July 2016 coup attempt and the subsequent confirmation of this accusation by domestic courts without proper and independent investigation and prosecution. It is also worth noting that the Court of Cassation on June 24, 2008, acquitted Mr. Fethullah Gülen and found the activities carried out by the structure to be in accordance with the law.

44. **The label FETÖ is in reality used to label and deter any voice in Türkiye: people as diverse as Osman Kavala, UN judge Aydin Sefa Akay, exiled journalist Can Dündar, writer Ahmet Altan have been accused/investigated/sentenced for allegedly been *Hizmet* movement sympathizer.** Back in December 2016, the Venice Commission expressed concerns that "*the criteria used to assess the links of individual to the Gülenist network have not been made public, at least not officially*" (CDL-AD(2016)037, para. 103): in 2024, the situation is still the same and everyone lives under the threat of "FETÖ" accusation and related unfair treatment.

45. Despite consistent international human rights decisions and judgments finding Türkiye in violation of its obligation for arbitrarily convicting *Hizmet* Movement sympathizers,[5] despite recognition of the political persecution of *Hizmet* Movement by almost every country and the Committee itself, the Committee against Torture (in relation to asylum seeking[6]), **the Turkish Government continues to mobilize the entire state apparatus, including the judiciary, to impose its performative narrative that the *Hizmet* Movement is a terrorist organization. Repeating again and again, as in this second periodic report, that the *Hizmet* Movement is a terrorist organization will only undermine the Government's international credibility: however, from a human rights perspective, *Hizmet* Movement sympathizers (or alleged sympathizers) are still arbitrarily persecuted in Türkiye.**

2.2 On the ongoing and continuous misuse of counter-terrorism legal frameworks against Hizmet Movement sympathizers: mass arrest and surveillance (role of intelligence services MİT), ill-treatment and targeting of journalists and human rights defenders

46. The Turkish government's policy to counter-terrorism is mainly characterized by legislative measures, including prosecutions. Such measures, particularly Article 314 of the Penal Code, have been consistently denounced for their incompatibility with human rights frameworks, particularly for their lack of predictability enhancing infringement upon the freedom of opinion, expression, association, and the right to personal liberty and freedom from arbitrary arrest and detention (see JOL TUR 13/2020).

[5] The Working Group on Arbitrary Detentions noted that "*the Working Group has noted a significant increase in the number of cases brought before it concerning arbitrary detention in Turkey. The Working Group expresses grave concern about the pattern established by all these cases and recalls that, under certain circumstances, widespread or systematic imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity*", A/HRC/WGAD/2020/47, para. 101. See also *Alakus v. Türkiye* (CCPR 3736/2020) and *Yalçinkaya v. Türkiye*, (15669/209).

[6] CAT/C/AZE/CO/5: "The Committee particularly expresses its deep concern over extraditions and renditions of individuals with perceived or real affiliations to the Hizmet/Gülen movement to Türkiye (…) **The State party should** (…) **Immediately cease all extrajudicial extraditions and renditions, including of individuals with perceived or real affiliations with the Hizmet/Gülen movement**" (para. 14 and 15). See also the constant case law of the Committee (latest decision *X and Y vs. Switzerland*, 1081/2021).

47. July 15, 2016, was the turning point in the weaponization of counter-terrorism legal frameworks. The Turkish government indeed immediately accused the *Hizmet* Movement of plotting the Coup attempt. This resulted in 1,576,566 terrorist investigations launched between 2016 and 2020 against people accused of links with the Movement (official data of the Ministry of Justice).[7]

48. Türkiye is the country with the highest percentage of prisoners sentenced for terrorist activities. On the 31st of January 2021, **in all Council of Europe member States, including Russia, 30.524 inmates were in jail convicted for terrorism; of those, 29.827 were in Turkish prisons** (the Council of Europe, SPACE I – 2021, p. here). **Conviction for terrorism based on perfectly legal activities is a systemic problem in Türkiye**.

49. Both the Human Rights Committee and the European Court of Human Rights adopted landmark decisions condemning Türkiye for its practice of weaponizing counter-terrorism legal frameworks (in particular to target *Hizmet* Movement sympathizers): *Alakus v. Türkiye*, 3736/2020 and *Yüksel Yalçinkaya v. Türkiye*, 15669/20).

50. As for the cases *Alakus v. Türkiye* and *Yüksel Yalçinkaya v. Türkiye*, most terrorism convictions against *Hizmet* Movement sympathizers are mainly based on the use of ByLock as the Turkish government indeed sustains that the phone chat application was being used exclusively by the members of that organization for internal communication. In a recent allegation letter (June 21, 2024, AL TUR 3/2024), the Special Rapporteur on the independence of judges expressed her concerns at

> "*allegations that simply downloading one of these applications (ByLock) has been used systematically by the Turkish judiciary as evidence to support an accusation of terrorism*".

51. In early 2016 the *MİT* (Turkish intelligence services) accessed the main server of the encrypted messaging application ByLock, located in Lithuania, to gather information on the alleged illegal activities of the *Hizmet* Movement.

52. *MİT*'s activities are initially regulated by the 1983 Law No. 2937 on State intelligence services and the national intelligence organization (here) amended in 2014 by Law No. 6532 (here in the official Gazette); the agency is **responsible for providing intelligence related to national security, counter-intelligence activities, and combatting terrorism activities, is in a limitless position towards access to information and surveillance, with no safeguards providing limits or preventing abuse.**

53. Among the concerning provisions, article 3 of Law No. 6532 notably allows the *MİT* to

> "*Receive information, documents, data and records from public institutions and organizations, professional organizations in the nature of public institutions, institutions and organizations within the scope of the Banking Law dated 19/10/2005 and numbered 5411, other legal entities and organizations without legal personality, make use of their archives, electronic data processing centers and communication infrastructure and establish contact with them. Those who are requested within this scope cannot refrain from fulfilling the request by citing the provisions of their own legislation as justification*" (unofficial translation[8], Deepl).

In other words, the *MİT* is legally in a position to order, without any court decision, private data, records, documents, or information to any entity, public or private, with or without legal personality.

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[7] Between 2021-2023, 93,304 investigations were launched against people accused of links with the Movement; see official statistics here.

[8] Original: "*b) Kamu kurum ve kuruluşları, kamu kurumu niteliğindeki meslek kuruluşları, 19/10/2005 tarihli ve 5411 sayılı Bankacılık Kanunu kapsamındaki kurum ve kuruluşlar ile diğer tüzel kişiler ve tüzel kişiliği bulunmayan kuruluşlardan bilgi, belge, veri ve kayıtları alabilir, bunlara ait arşivlerden, elektronik bilgi işlem merkezlerinden ve iletişim alt yapısından yararlanabilir ve bunlarla irtibat kurabilir. Bu kapsamda talepte bulunulanlar, kendi mevzuatlarındaki hükümleri gerekçe göstermek suretiyle talebin yerine getirilmesinden kaçınamazlar*".

54. In addition, article 11 of the Law No. 6532 provides that

> "*Information, documents, data and records of an intelligence nature and analyses conducted by the National Intelligence Organization may not be requested by judicial authorities*" (unofficial translation[9], Deepl).

This provision is particularly problematic in relation to the right to a fair trial: indeed, in practice findings of the *MİT* are used on a daily basis as ground for criminal prosecutions and convictions[10] with suspects and judges not in a position to fully access the *MİT*' information or reports (although in view of article 4 of Law No. 6532 information and data processed by the *MİT* should be limited to intelligence activities usages and not for conviction purposes). The Special Rapporteur on the independence of judges and lawyers in its allegation letter (June 21, 2024, AL TUR 3/2024) stated that

> "*The information received indicates many concerns related to the use of ByLock data, including: In relation to investigations and prosecutions concerning ByLock, Turkish police and judicial authorities exclusively rely on the findings of Turkey's National Intelligence Organisation (Millî İstihbarat Teşkilatı, MIT). There is no concrete information as to how the ByLock data was acquired. MIT has said that its services came across the ByLock app "through using the methods, tools and techniques of technical intelligence that are unique to the Agency [MIT]"which would normally diverge from standard legal safeguards. The information suggests that an MIT team had cracked the main ByLock servers, which were located in Lithuania. ByLock evidence appear to have been seized and used in breach of the requirements laid out in Turkish law, specifically article 6(2)-(4) of the MIT Law and articles 134-135 of the TCCP. Article 6(2) of the MIT Law stipulates that a prior court order is required for the MIT to interfere with communications performed via telecommunication. Turkish courts reportedly do not themselves have possession of the ByLock data, so they can only ask the Turkish police for this data in relation to any specific defendant. The police share with the court a document called either "ByLock Inquiry Module Minute" or "ByLock Determination or Evaluation Minute", which includes some raw data (including phone numbers and activation data) as well as very limited and often self-contradictory log data*".

2.2.a. Continuous and ongoing mass arrests based on counter-terrorism legal frameworks, including ill-treatment

55. On May 7, 2024, the Istanbul Chief Public Prosecutor issued an arrest warrant for 50 people, mostly women, including 16 girls below 18 for being in charge of the "female pilar of the *Hizmet* Movement" aiming at reorganizing the Movement. The oldest arrested girl was 17 and the youngest 12. **The children were interrogated without a lawyer, deprived of food, subjected to psychological pressure, not allowed to communicate with each other and intimidated by the police.** Among the testimonies of the children:

> "*Our families tried to bring us food, but they didn't give us the food they brought, and they themselves brought us food in the evening. They left us hungry and thirsty*";

> "*At the police station, there was a female police officer standing over you. We asked her 'why are we here'. She told us 'You will see inside, they will make you vomit blood'. A policeman was passing by, for example, and she pointed at him, saying, 'This one will*

[9] Original: "*Millî İstihbarat Teşkilatı uhdesindeki istihbari nitelikteki bilgi, belge, veri ve kayıtlar ile yapılan analizler adli mercilerce istenemez*".

[10] See notably *Yüksel Yalçinkaya v. Türkiye*, 15669/20, September 26, 2023, here, para. 334: "*between their collection by the MİT and the magistrate's court's subsequent order for their examination, the ByLock data had already been processed and used not only for intelligence purposes, but as criminal evidence to initiate investigations and arrest suspects, including the applicant*".

make you vomit blood.' We didn't understand why we were there. What have we done that will make us vomit blood?"

"*We cannot say alhamdullilah we survived. This has remained a trauma for all of us. Yesterday there was a knock on the door. I was scared. This will always happen. It will go on like this for a while and they put us through this. They had no right to do this in any way. We can't say alhamdullilah we got out. You shouldn't have taken us then. The treatment we received there for 16 hours was torture. This has remained a trauma for us at the age of 15. For 16 hours what we went through was torture. We don't want other children to go through this. These practices must stop as soon as possible*".

56. Human Rights Association Co-Chair Eren Keskin also delivered the following statement:

"*The method applied to these children is completely illegal. Because they took their statements in the form of an interrogation memo. Most of the girls are already 12-13 years old and keeping them in detention for 16 hours, cutting off their communication with everyone, taking their statements without a lawyer, these are completely illegal methods. It is irrational. It is also against Turkey's own domestic law. They are also very scared*"[11]

57. After 16 hours of illegal interrogation, the children were released, while the detention of the individuals over the age of 18 continued, after which their statements were taken by the Terror and Organized Crime Investigation Bureau of the Istanbul Chief Public Prosecutor's Office. The adults were detained for 4 days and subjected to severe pressure, some of them were forced to take effective remorse and all those who refused were arrested. **Among the 50 people, 29 were arrested.**

58. On May 14, Operation 'Kıskaç-15' deployed over 60 cities in Türkiye led to the arrest of 544 people, allegedly for facilitating recruitment exams organized by the Ministry of Justice in 2012-2013 and for using ByLock (a messaging application which the Government claims it has only been used by *Hizmet* Movement sympathizers).

59. Since July 2016 up to now, there have been, on average, 3 police operations per day targeting *Hizmet* Movement sympathizers, real or alleged, and the average daily number of persons arrested is 74 on terrorism charges.[12]

60. In a statement made in July 2022, former Minister of Interior Soylu announced that 332,884 people were detained between 15 July 2016 and 20 June 2022 because of their alleged *Hizmet* Movement links.[13]

61. According to current Minister of Interior Ali Yerlikaya, between January 1, 2023, and December 31, 2023, there were **6,775 operations conducted** against members of the Hizmet Movement. In these operations, 9,639 people were detained, **1,689 people were arrested**, and judicial control measures were applied to 1,677 people.[14] Still, according to the public declarations of Minister of Interior Ali Yerlikaya **5,191 operations** were carried out against members of the *Hizmet* Movement in the 11-month period (June 1, 2023-May 15, 2024) since the day he took office, and **8,153** people were detained in these operations.[15]

62. IAHRAG, in its pending communications (CCPR/4448/2023 and CCPR/4516/2023), particularly brought to the attention of the Committee the situation of women in prison, with health issues and

[11] See here.
[12] See Solidarity with others, here.
[13] See here.
[14] Declaration on X, here.
[15] Declaration on X, here.

deprived of their children, and sustains that there is a systematic and deliberate malicious practice to separate parents through arbitrary detentions. Indeed, here are a few testimonies of people facing prosecutors on terrorism charges (for more see our report to the CRC, p. 7 and f., here):

> "*The prosecutor told me "There are also reports about your wife. If you do not tell what you know, you know what will happen. Think about your children**. If their mother is also arrested, your children will grow up in a child protection institution** with the information that their parents are terrorists.*"
>
> "*You were used, son," the prosecutor said, "repent, save yourself." He put a list of union members in front of me. "Tell me that these names are also involved in this, and I will let you go," the prosecutor said. 'Don't push me. I will keep you in custody for 30 days in a filthy environment. **I will arrest your wife. The state will take away your children**,' the prosecutor said*".

63. The situation was so dramatic that in June 2021, a few opposition parliamentarians and human rights defenders proposed tackling this deliberate issue by amending the law on the execution of criminal sentences. The proposed bill, which had been rejected, aimed to postpone the prison sentences of mothers with children under the age of 15 whose husbands were also in prison. It was eventually adopted on March 28, 2023 (article 23 of Law No. 7445) but with a limited scope: mothers of children below 18, in need of care due to disability or illness, are now eligible to postponement of execution of sentence.

2.2.b. Continuous and ongoing weaponization of counter-terrorism legal frameworks to target human rights defenders and journalists

64. IAHRAG brings to the attention of the Committee that human rights defenders and journalists are still harassed and targeted on the grounds of counter-terrorism legal frameworks, in particular for their alleged links with the *Hizmet* Movement. The Special Procedures Mandate holders of the Human Rights Council have repetitively expressed their

> "*concern over the widespread arrest and detention of human rights defenders, human rights lawyers and civilians … who due to their supposed links with the Gülen Movement, were prosecuted and labeled as terrorists. Once again it appears that counter-terrorism legislation law was used to criminalize social, political and cultural affiliations*" (AL TUR 9/2021, in a letter including the case Of Mr. Osman Kavala).

65. The case of **Ahmet Altan** is particularly revealing of the situation faced by Turkish journalists characterized by judicial harassment, facing conviction after conviction, trial after trial, cycle of arrest-release-rearrest. He was indeed: arrested on September 19, 2016, for alleged connections with the *Hizmet* Movement, released on September 21, rearrested on September 2016, sentenced to life in prison on February 16, 2018, for plotting the Coup attempt, convicted on March 19, 2019 for insulting the President, provisionally released on November 4, 2019, under judicial control, rearrested on November 13, 2019, released on April 14, 2021 with the Court of Cassation overturning his guilty verdict as an answer to the European Court of Human Rights judgement finding violation of article 10 of the Convention (April 13, 2021, *Ahmet Hüsrev Altan v. Turkey*, 13252/17). Ahmet Altan was then sentenced for new charges on March 4, 2022, for illegally acquiring State secrets, to 3 years and 4 months in prison, free as long as his appeal is under review.

66. IAHRAG also brings to the attention of the Committee the public case of **Mr. Ali Ünal**, sentenced to 19 years and 6 months of imprisonment, which at his age represents a death sentence. On May 3, 2023, the Working Group on Arbitrary Detention published an opinion (A/HRC/WGAD/2023/3) on the violations suffered by Ali Ünal, finding that "*no trial of Mr. Ünal should have taken place*" (para. 79) and violations of the right to a fair trial, freedom of expression and association *inter alia*.

67. The situation of Turkish journalists in exile is also worrying as they are victims of transnational repression. In December 2022, Türkiye expanded its "terror list" of wanted persons for alleged links with terrorist organizations, particularly targeting human rights defenders and journalists to have connections with the *Hizmet* Movement. As of February 2019, the list included the names and

information of 345 people associated with the *Hizmet* Movement. With recent updates, the list now includes the names and information of 971 people allegedly from the *Hizmet* Movement. **The practice of Türkiye has been mentioned in the recent report of the OHCHR on the *Use of administrative measures in countering terrorism* (A/HRC/57/29):**

> "*In relation to terrorism listing practices, it is observed that many national procedures related to listing an individual on a terrorist list, and consequent administrative actions such as travel bans and asset freezes, often lack sufficient procedural safeguards to prevent an abusive use, such as guarantees of transparency and access to information, as well as effective oversight. In Türkiye, for example, many individuals were put on the grey lists of persons wanted for alleged links with terrorist organizations following the July 2016 attempted coup without judicial oversight or the possibility of challenging their inclusion on the list*" (para. 19).

68. Among the new additions, the Turkish Interior Ministry arbitrarily added the names of 15 exiled journalists: Can Dündar; Bülent Kenes; Abdullah Bozkurt; Ahmet Dönmez; Cehveri Güven; Tarik Toros; Adem Yavuz Arslan; Said Sefa; Arzu Yildiz; Levent Kenez; Hasan Cücük; Sevgi Akarçesme; Erhan Basyurt; Bülent Korucu; Hamit Bilici. This move intensifies the persecution of exiled journalists.

69. The establishment of such a list escapes judiciary supervision, amounts to a violation of the right to privacy, and the principle of the presumption of innocence, and enhances the risk of illegal abductions abroad.

70. The public case of **Bülent Kenes** is also quite edifying. Mr. Bülent Kenes, former founding editor-in-chief of *Today's Zaman*, the prestigious and most circulated English daily published in Türkiye until it was illegally seized on March 4, 2016[16], lives in Sweden as a refugee since August 5, 2016.

71. The attempts to silence Mr. Bülent Kenes date back to mid-2011 and as of 2015, **30 court cases had been opened against him**. He had been detained two times, arrested once and imprisoned for a few days. His passport had been canceled, under judicial control, and banned from international travel. On April 17, 2016, he was sentenced to 2 years 7 months and 15 days of prison for criticizing anti-democratic steps taken by the Turkish government as well as its support to jihadist organizations in the Middle East (particularly in Syria), in other words for exercising his job.

72. An arrest warrant and Interpol red notice were issued against him for the offence of insulting President Erdoğan (in addition to another arrest warrant for alleged cases of defamation).

73. It is notorious that the Turkish government made an official request to Sweden for the extradition of Mr. Bülent Kenes and that Türkiye was deliberately imposing its authoritarian agenda on Sweden over the NATO process adhesion, President Erdoğan having stated at the occasion of joint press briefing with Swedish Prime Minister Ulf Kristersson in Ankara (November 8, 2022): "*Extradition of this terrorist* (Mr. Bülent Kenes) *is of utmost importance for us*".

SUMMARY OF CONCERNS AND SUGGESTION OF QUESTIONS FOR THE DIALOGUE

- While recognizing Türkiye's need and obligations to adopt measures to answer to terrorism in its territory, IAHRAG is concerned about the arbitrary and abusive qualification of the *Hizmet* Movement as a "terrorist organization", relying only on perfectly legal activities, having a large-scale impact on the Turkish society, in particular by undermining the principle of legality;
- IAHRAG is also deeply concerned at the large number of prisoners sentenced for terrorist activities in Türkiye, and that persons accused of terrorism are often subject to arbitrary

[16] *Today's Zaman* was closed with the Decree No. 668 dated 27th July 2016 after the state of emergency declared immediately after the coup attempt, and all its assets were confiscated (see paragraph 51 below of the state of emergency).

mass arrests, torture, and ill treatment, including minors, and that court proceedings in terrorism cases often lack due process and fair trial safeguards, leading to arbitrary convictions and detentions;

- IAHRAG is concerned about the legislation and practices of the intelligence services in relation to counterterrorism operations, in particular at the limited oversight role of the judiciary on the *MİT* and on lack of conformity of certain powers of the *MİT*, particularly on the *de facto* impunity of the agency, with human rights law;
- IAHRAG is deeply concerned about the large number of detained journalists arbitrarily detained and convicted on bogus terrorism charges, in particular for association with the *Hizmet* Movement, including when international human rights mechanisms expressly recognized the arbitrary character of the detention as illustrated by the situation of Mr. Ali Ünal sentenced to 19 years and 6 months of prison (A/HRC/WGAD/2023/3);
- IAHRAG is deeply concerned about a large number of Turkish journalists, including those in exile, victims of harassment and judicial persecution, including arbitrary proceedings and charges for being a member of a "terrorist organization", politically motivated extradition requests, and abuses of the Interpol mechanisms, as illustrated by the situation of Mr. Bülent Kenes, an exiled journalist facing 30 court cases on terrorism and defamation charges whose name has been at the center of Sweden's NATO adhesion process.

IAHRAG respectfully suggests the following questions to the delegation: Numbers regarding the increase of the Turkish carceral population convicted for terrorism charges are particularly worrying. As noted in the Council of Europe SPACE report, 97.7% of the Council of Europe inmates convicted for terrorism were in Turkish prisons in 2021. Such an increase seems to correspond with the measures adopted to answer to the July 15, 2016 coup attempt for which the Government accuses the *Hizmet* Movement. Could you confirm the numbers that more than 1 million and a half persons have been investigated for alleged links with the *Hizmet* Movement and more than 300.000 persons convicted? Do you confirm that investigations and arrests are still going on as of today, including on minors? The cases reviewed by the ECtHR but also by the Committee reveal that at the heart of these investigations and convictions is the use of the chat application Bylock: could you clarify the process under which the *MİT* acceded to the data? Do you also confirm that on the basis of the *MİT* law, data processed are used for criminal prosecutions with suspects and judges not in a position to fully access the *MİT*' information or reports? If confirmed, how is this compatible with safeguards and right to a fair trial? The number of journalists under terrorism investigations is also in constant increase. Could you provide some information on the "grey list" of persons wanted for alleged links with the Hizmet Movement, in particular the process of selection of the targeted persons? It is indeed quite notable that Mr. Can Dündar is a journalist and fervent supporter of secularism; his association with the *Hizmet* movement, a religious movement, is very unlikely. Can you elaborate on the remedies available for the persons included on this list? What measures were taken to release Mr. Ali Ünal, a journalist sentenced to 19 years and 6 months of prison, for whom the WGAD found that no trial should even have taken place?

3. Türkiye's state of emergency: permanent measures and impunity (*inputs on paras. 4, 10, 16, 17, 19 and 27 of the LOIPR*)

74. Türkiye did proclaim a State of emergency, as a result of the July 15, 2016 coup attempt, from July 21, 2016[17] until July 18, 2018. On the basis of article 4 of the Covenant, some conditions must be met in order for a State to declare a State of emergency: *life* and *existence* of the nation must be threatened.

75. On August 19, 2016, a very large and diverse coalition of Special Procedures of the Human Rights Council[18] issued a press release, urging *Turkey to adhere to its human rights obligations even in time of declared emergency*, stating

[17] Declaration made by the Government on July 20 but endorsed on July 21 by the Grand National Assembly of Türkiye.

[18] UN Special Rapporteur in the field of cultural rights; UN Special Rapporteur on internally displaced persons; UN Special Rapporteur on contemporary forms of slavery, including its causes and consequences; UN

"***The invocation of Article 4 is lawful only if there is a threat to the life of the nation, a condition that arguably is not met in this case***" (…) "*Turkey is going through a critical period. Derogation measures must not be used in a way that will push the country deeper into crisis*".

76. To derogate from its obligation, some conditions must be met: measures derogating from the Covenant must be limited to "*the extent strictly required by the exigencies of the situation*" and "*must be of an exceptional and temporary nature*" (CCPR/C/21/Rev.1/add.11, General Comment no. 29 on Article 4). Article 4 of the Covenant also provides a list of absolute rights, to which States can never derogate, including during State of emergencies: right to life (art. 6); prohibition of torture (art. 7); prohibition of slavery (art. 8); non-imprisonment for contractual obligations (art. 11); non-retroactivity of the law (art. 15); recognition as a person before the law (art. 16).

77. In the Turkish notification under Article 3 (2016/11235663), the Government stated that

"*measures taken may involve derogation from obligations under the International Covenant on Civil and Political Rights regarding Articles 2/3, 9, 10, 12, 13, 14, 17, 19, 21, 22, 25, 26 and 27, as permissible in Article 4 of the said Covenant*".

78. **IAHRAG would like to recall that derogations to articles 2 (3) (right to an effective remedy), 10 (right to humane treatment in detention) and 27 (rights of minorities) should be considered as invalid as these obligations are absolute.**

79. In addition, the Turkish Government prolonged 7 times the State of emergency, each time informing the Secretary-General (see UN Treaty Collection here), however never providing information on the reasons for such a response to a Coup attempt that lasted 2 days.

3.1 State of Emergency Executive Decrees (KHK): amendments to legislation and harsh arbitrary punishment (dismissal, closure, seizure of properties, cancellation of passports, deprivation of nationality) without judicial overview

a. Permanent amendments to Turkish legislation through executive decree-laws

80. One of the main changes brought by States of emergency in Türkiye is the fact that the Government can enact decrees, with the force of law, without *ex-ante* approval by the Grand National Assembly of Türkiye.

81. As of December 2016, the Venice Commission already expressed concerns that

"*there is a risk of de facto "permanentisation" of certain extraordinary measures, which may be afterwards made permanent de jure through the Parliament's approval of the emergency*

Special Rapporteur on freedom of religion or belief; UN Special Rapporteur on extrajudicial, summary or arbitrary execution; UN Special Rapporteur on the human rights of migrants; UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence; Independent Expert on the promotion of a democratic and equitable international order**;** UN Special Rapporteur on the right to housing; UN Special Rapporteur on the situation of human rights defenders; UN Special Rapporteur on the human right to safe drinking water and sanitation; UN Special Rapporteur on minority issues; UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; UN Special Rapporteur on the rights to freedom of peaceful assembly and of association; UN Special Rapporteur on human rights and the environment; UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; UN Special Rapporteur on the independence of judges and lawyers; UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; UN Special Rapporteur on violence against women, its causes and consequences; the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; and the Working Group on the Use of Mercenaries.

decree law introducing such measures. That represents, in the eyes of the Venice Commission, a danger for democracy, human rights and the rule of law. As stressed above, permanent changes of the legislation should not be enacted in the framework of an emergency regime: their permanent necessity should rather be debated in ordinary parliamentary procedures, without any time pressure and far from emotional reactions caused by the dramatic events which led to the state of emergency" (CDL-AD(2016)037, para. 155)

82. During the 2 years State of emergency, the Turkish government indeed issued **32 executive decree-laws** (KHK), **representing 1194 articles translated into 1000 amendments of the national legislation**.

83. **It is worth noting that the Constitutional Court decided that it would not review the constitutionality of these decree-laws, granting *de facto* full power to the government to modify as many laws as it wished and this without judiciary supervision**, including the law on the foundations and rules of procedure of the Constitutional Court, a measure far from qualifying as "*strictly required by the exigencies of the situation*" or necessitated by the emergency situation. This initial refusal has been transformed into a Constitutional preclusion after the 2017 reform; indeed new article 148 of the Constitution provides that "*presidential decrees issued during a state of emergency shall not be brought before the Constitutional Court alleging their unconstitutionality as to form or substance*". Administrative Courts also refused to review complaints related to the decree-laws stating that "*although emergency decrees were issued by the executive branch, they could not be the subject of judicial review by administrative courts since they were legislative acts by function*".

84. In reality, with the KHKs, the Turkish government restructured the whole of Turkish society. Here below is the list of all laws that have been amended as a result of the KHKs.[19]

Law on the Foundation and Rules of Procedure of the Constitutional Court (6216) Law on the Basic Provisions for Elections and Voter Records (298) Law on Highway Traffic (2918) Law on High Council of Judges and Prosecutors (6087) Law on Passports (5682) Law on Highway Transportation (4925) Law on Legal Procedures (6100) Law on Turkish Citizenship (5901) Law on Turkish Civilian Aviation (2920) Law on Supreme Court of Appeal (2797) Law on Unemployment Insurance (4447) Law on Execution and Bankruptcy (2004) Law on Judges and Prosecutors (2802) Law on Value Added Tax Law on Mukhtars Salaries and Social Security (2108) Law on Military High Administrative Court (1602) Law on Capital Markets Law on Villages (442) Military Penal Code (1632) Turkish Commercial Code Law on Provincial Administration (5442) Law on Military Judges (357) Law on Protection of Consumers (6502) Law on Municipalities (5393) Law on the Structure and Duties of First Instance Judiciary Courts and District Courts (5235) Law on the Foundation of the Turkish Wealth Fund Inc. (6741) Law on Turkish Republic Retirement Fund (5434) Law on Counterterrorism (3713) Law on the Turkish Republic Retirement Fund Law on Allowances (6245) Law on Turkish Penal Code (5237) Law on Special Consumption Tax (4760) Law on Patient Nutrition in Turkish Armed Forces (5715) Law on Criminal Procedure Code (5271) Law on Public Finance Management and Control (5018) Law on the General Command of Cartography Law on the Execution of Punishment and Security Measures (5275) Law on Public Tenders (4734) Law on Turkish Armed Forces Personnel (926) Law on the Settlement Through Arbitration of Legal Disputes (6325) Law on Trade Unions and Collective Bargaining (6356) Law on Establishment of the National Landmine Operations Center and Revision of Certain Laws (6586) Law on Public Notaries (1512) Law on Turkish Radio and Television (2954) Law on the Structure and Powers of the Gendarmerie (2803) Law on the Foundation of the Turkish Development Bank Inc. Law on the Foundation and Broadcasting Services of Radios and TVs (6112) Law on Military

[19] See Ali Yildiz, *Turkey's Recent Emergency Rule (2016/2018) and Its Legality under the European Convention on Human Rights and the International Covenant on Civil and Political Rights*, on ssrn, here; Ismet Akça and others, *When a State of Emergency Becomes The Norm: The Impact Of Executive Decrees On Turkish Legislation* (*Heinrich Böll Stiftung*, 15 March 2018), here.

Schools (4566) Law on Meetings and Demonstrations (2911) Law on Expert Witnesses Law on Contracted Privates and Sergeants (6191) Law on the Supervision of Narcotic Drugs (2313) Provision on the powers of special administrators and the powers of SDIF Law on Turkish Armed Forces Disciplinary Procedures (6413) Law on the Manufacturing, Purchase, Sale and Possession of Rifles, Handguns and Knives for Hunting and Sports (2521) Law on State Intelligence Services and National Intelligence Organization (2937) Law Defense Industry Security (5202) Law on Police Powers and Duties (2559) Law on Horse Races (6132) Law on Population Services (5490) Law on Turkey Maarif Foundation (6721) Law on Foundation of the National Lottery Organization Law on Social Security and General Health Insurance (5510) Law on Anti-Smuggling (5607) Law on the Duties and Powers of the Chief of General Staff (1324) Law on Veterinary Services, Plant Health, Food and Animal Feed (5996) Law on Regulating Online Publications and Preventing Crimes Committed (5651) Law on Reserve Officers and Reserve Military Clerks (1076) Law on Nutrition in Turkish Armed Forces (5668) Law on Firearms, Knives and other Instruments (6136) Law on Military Service (1111) Law on Flight, Parachute, Submarine, Diving and Frogman Services Compensation Law on Prevention of Certain Actions Concerning Security Law on the Structure and Organization of the Ministry of National Defense (1325) Law on Coast Guard Command (2692) Law on Foreigners and International Protection (6458) Law on Salaries of Military Officers and Functionaries (1453) Law on Specialist Gendarmes (3466) Law on Civil Servants (657) Law on Turkish Armed Forces Internal Service (211) Law on the Application of Medicine and Medical Sciences (1219) Law on Turkish Flag (2893) Law on Military Forbidden Zones and Security Zones (2565) Law on Legal Medicine Institution (2659) Law on Basic Health Services (3359)

85. **The above list could not have a broader material scope** and it would be hard for any good faith government to explain why for instance the Law on the Foundation and Rules of Procedure of the Constitutional Court (6216), Law on Legal Medicine Institution (2659), Law on Basic Health Services (3359), Law on Foundation of the National Lottery Organization Law on Social Security and General Health Insurance (5510), Law on Public Notaries (1512), Law on Turkish Radio and Television (2954), Law on the Settlement Through Arbitration of Legal Disputes (6325), Law on Trade Unions and Collective Bargaining (6356) and Turkish Commercial Code Law on Provincial Administration (5442) had to be amended as a result of a coup attempt.

86. With Law No. 7145 adopted on July 31, 2018, measures of the State of emergency have been made permanent, leading the Mandates of Special Procedures of the Human Rights Council to express

> "*serious concern with the process of normalizing emergency powers into ordinary law through Law No. 7145, given the restrictions and limitations placed by international human rights law on the exercise of exceptional legal powers that profoundly affect the enjoyment of fundamental rights*" (OL TUR 13/2020).

87. The current sectors were deeply impacted by the KHKs:

- Defense and Security sector;
- Judiciary sector and rights of the defense;
- Economy sector;
- Education sector;
- Social security sector;
- Media sector.

88. The defense and fair trial rights in particular had been deeply and permanently impacted. Here are some illustrations:

- Executive Decree Law no. 676 states that "*the trial can continue when the defense counselor abandons the trial without an excuse*";
- Executive Decree Law no. 676 limits representation in trial "*in investigations into organized activities, at most three attorneys can be present at the trial*";
- Executive Decree Law no. 676 specifies that the attorney meetings of those convicted of certain crimes listed in the Turkish Criminal Code and crimes falling under the Law on Counterterrorism can be recorded with audio or video devices for a period of three months upon the demand of the public prosecutor and the decision of the judge of execution; an officer can attend the meeting between the convict and attorney; the documents, files and meeting notes shared by the convict and attorney can be seized; and the days and hours of these meetings can be reduced;
- Executive Decree Law no. 668 specifies that it is sufficient to have one of the neighbors present while searching a residence, workplace or another indoors area.
- Executive Decree Law no. 668 provides that prosecutors will be able to issue arrest warrants in non-delayable cases;
- Executive Decree Law no. 668 provides that prosecutors will be able to confiscate in non-delayable cases;
- Executive Decree Law no. 668 allows a person to be wiretapped for 10 days without a court order, only with the prosecutor's decision;
- Executive Decree Law no. 668 allows prosecutors the right to assign secret investigators and decide on technical surveillance measures;
- Executive Decree Law no. 668 provides that the attorney's right to examine the file's content and get a copy can be limited upon a decision of the public prosecutor,
- Executive Decree Law no. 676 allows a judge to reject a witness or specialist called to the trial by the defendant;
- Executive Decree Law no. 694 provides that the testimony of public officers, assigned to the position of secret investigator called as witness in court, can be heard even in the absence of the defendant and her / his attorney;
- Executive Decree Law no. 694 provides that when necessary, the defendant's interrogation can be conducted outside of the court, by means of audio and visual means of communication;
- Executive Decree Law no. 684 extends the custody period up to 14 days.

b. Harsh punishment without judiciary supervision imposed on real and moral persons

89. On the basis of seventeen Executive decree-law, established in the form of *ad hominem* legislation, **125.678 persons public servants from public services, among them 4.662 judges and prosecutors, were dismissed.** Following the closure of all military schools and academies, 16.409 military students were dismissed and transferred to civil universities.

90. The decrees also impose that those dismissed:

(i) shall be deprived of their ranks and their positions as public officials,
(ii) may not use their titles, if any, such as ambassador, governor, and professional names and titles, such as undersecretary, district governor, etc.
(iii) shall not be re-admitted to the organization in which they previously took office,
(iv) shall be stripped of rank (for the already retired public servants), and of combat medals,
(v) may not be re-employed and assigned, either directly or indirectly, to any public service,
(vi) may not become the founders, partners and employees of private security companies,
(vii) shall be evicted from public residences or foundation houses.

91. Way after the lifting of the State of emergency, on April 10, 2019, the High Election Board (Decision No: 2019/2363) established that **the dismissed public servants could not be elected to office within local administrations, such as mayor, alderman and mukhtar.**

92. Reason for dismissal is having 'membership, affiliation or connection to', or 'membership, relation or connection with' the 'Fetullahist Terrorist Organization (FETO/PDY)'.

93. These criteria could not be vaguer and more arbitrary keeping in mind the Council of Europe Commissioner for Human Rights' statement that

> "*It is also beyond doubt that many organisations affiliated to this movement, which were closed after 15 July, were open and legally operating until that date.* ***There seems to be general agreement that it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another***"[20].

94. As for the moral persons, ten Emergency Decrees closed down **146 foundations, 1427 associations, 15 foundation-owned universities, and 19 trade unions, 49 private health institutions, 2271 private educational institutions (schools, student dorms and boarding houses) and 174 media outlets, belonging to private corporations, were closed down**. All the closings had for legal basis affiliation, connection, or relation to, or having belonged to "Fetullahist Terrorist Organization" (FETÖ/PDY).

95. In addition, measures were taken to deprive the Turkish citizenship of people allegedly linked with the *Hizmet* Movement, living abroad if they did not come back in Türkiye (KHK no. 680, January 6, 2017). Article 75 of the KHK provides that

> *"In cases where investigation or prosecution has been carried out on the grounds of the crimes stated in the Turkish Penal Code dated 26/9/2004 and numbered 302, 309, 310, 311, 312, 313, 314 and 315 of the Turkish Penal Code, citizens who cannot be reached because of not being in the country shall be notified to the Ministry for the revocation of their citizenship within one month after investigation by the public prosecutor or by the court during the proceedings. In the event that they do not return to the country within three months despite the announcement made in the Official Gazette by the Ministry of Interior, the Turkish citizenship of these persons may be deprived by the proposal of the Ministry and the decision of the Council of Ministers*".

96. The Institute of Statelessness and Inclusion and the European Network on Statelessness reports for the 2020 Universal Periodic Review of Türkiye (here) mentioned that

> "*Further to the issuance of Decree 680, the Turkish Ministry of Justice declared that it would issue a "return home" Gazette Notice naming those who were overseas and being investigated for the crimes outlined. On 5 June 2017, a "return home" notice published in the Official Gazette contained the names of 130 individuals who were issued summons to return to Turkey and present themselves for criminal investigation. Recipients of the notice were given three months to surrender themselves for investigation. On 10 September 2017, a second return home "Gazette Notice" was issued by the Turkish Government, threatening 99 Turkish citizens in exile with the stripping of their citizenship. ISI will aim to further update its information on the impact of Decree 680, beyond 2017. However, it is evident that those deprived of citizenship will not be able to return to their country and may not be able to leave their country of residence. Those who have no second nationality risk being rendered stateless. They will rely on international protection under the 1954 Convention Relating to the Status of Stateless Persons, the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol or subsidiary protection under other mechanisms. Those who do not receive any international protection will be particularly vulnerable.* ***In addition to the risk of being arbitrarily deprived of nationality, parents are likely to be unable to transfer nationality to their children, potentially resulting in the denial of the child's right to acquire a nationality under Article 7 of the Convention on the Rights of the Child***" (para. 20, 21 and 22).

[20] Council of Europe Commissioner for Human Rights, *Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey*, October 7, 2016, here.

97. In addition, the State of emergency allowed mass passport cancellations. Former Minister of Interior Süleyman Soylu stated: "*234,419 passports have been cancelled within the scope of FETO investigations*."[21] **The cancellation of passports is not limited to people who have undergone judicial or administrative investigations, and the law adopted following the decree[22] allowed for the cancellation of passports of people who are allegedly related to the *Hizmet* Movement and their family members, especially their spouses and children**. The Constitutional Court on July 24, 2019 annulled the regulation that allowed the government to cancel the passports of the spouses and children. The judgment was not published until October 31, 2019. In the meantime, the parliament passed a law (Law no. 7188, October 24, 2019) with the same effect as the annulled regulation. As a result, the Constitutional Court's annulment did not help to improve the situation. On 3 June 2021, the Constitutional Court issued a new decision (E.2019/114, K. 2021/36) and again on 24 June 2021 (E.2018/81, K.2021/45). As a consequence, the cancellation of passports is now possible only on the basis of a judicial decision. It is however reported that the Ministry of Interior continues to withdraw passports in disrespect of the decision of the Constitutional Court.

98. The measures adopted during the State of emergency affecting the legislation, the dismissal of public servants and the closure of moral persons reveal long-term impact on and serious violations under articles 2 (3), 9, 12, 14, 15, 17, 19, 20, 25 and 26 that cannot be described as proportional and strictly required by the emergency of the situation.

3.2 Lack of remedies: the non-effectivity of the State of Emergency Inquiry Commission

99. Following external pressure, Executive Decree Law no. 685, January 23, 2017, established the State of Emergency Inquiry Commission in charge of reviewing the complaints of dismissed persons and dissolution/closures of moral persons. The Commission was initially established for 2 years and in view of the mass of requests was extended for two more years. The Commission has been overwhelmed by cases and stopped its functioning on 22 January 2023.

99. Applications rejected by the Commission are to be reviewed in appeal by the administrative courts with limited power: they cannot review the legality of the dismissal by decree-law, and can only formally review the lawfulness of the Commission's decision.

100. The State of Emergency Inquiry Commission received 127,292 applications during its mandate. The Commission decided to accept 17,960 of the applications and rejected 109,332 cases. Decisions of the Commission were not made public. This number and lack of transparency on its decisions cast serious doubt on the effectiveness of the Commission.

101. Serious criticisms were also made with regard to the composition of the Commission deeply under influence and loyal to the executive power. The EU Commission 2020 report (SWD (2020) 355 final) states that

> "*The lack of institutional independence, lengthy review procedures, the absence of sufficiently individualized criteria, and the absence of a proper means of defence cast serious doubt over the Inquiry Commission on the State of Emergency Measures' ability to provide an effective remedy against dismissals*".

102. Indeed, one of the most pressing systemic problems affecting the effectiveness of the remedy is the fact that persons dismissed were given no other reasoning than the one provided in the global executive decree-laws. They had strictly no clue about the content of the Government information provided to the Commissions. Since the process was written-based, with no hearing, the building of a decent defense was in these conditions impossible.

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[21] See here, statement on 12 December 2017.
[22] Article 5 of the Law 6749 on the Adoption of the Decree-Law on the Measures Taken Under the State of Emergency, October 18, 2016.

103. IAHRAG invites the Committee to consult the Turkey Human Rights Litigation Support Project 2019 report, *Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission* (here), highlights that the Commission applied the "presumption of guilt" instead of presumption of innocence.[23] The report concluded that

> "*The 193 decisions examined within the scope of this report raise major concerns about the ineffectiveness of the review of the state of emergency measures in Turkey. Both the structural problems stemming from the legal regulation concerning the Commission and the practices developed by it to date demonstrate that the Commission cannot be regarded as an effective remedy. Moreover, the lack of safeguards against unjust processing of the applications means that decisions are being made arbitrarily and with no transparency*" (p. 43)

3.3 Gross human rights violations committed during the State of emergency

104. The *OHCHR Report on the impact of the state of emergency on human rights in Turkey*[24] pointed out that

> "*Thousands of uncensored images of torture of alleged coup suspects in degrading circumstances were circulated widely in Turkish media and social networks after the coup, along with statements inciting violence against opponents of the Government. OHCHR received reports of individuals detained and ill-treated without charge by anti-terrorism police units and security forces in unconventional places of detention such as sports centres and hospitals. The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment visited Türkiye in November 2016 and found that torture was widespread following the failed coup, particularly at the time of arrest and subsequent detention*".

In the aftermath of July 15, 2016, more than 35,000 people were detained and subjected to heavy torture.

106. The Ankara Police Anti-Terror Department was one of the institutions deeply involved in heavy torture in the aftermath of July 15, 2016. Erhan Dogan, a history teacher, had been taken to the Ankara Police Anti-Terror department a few hours after the coup and then to a gym, handcuffed and placed against the wall, full of blood stains**. He heard people screaming, including women screaming** "***please don't rape us"***… Among the various torture methods he was exposed to, he was threatened that if he didn't disclose information on other people, his wife and daughter would end up the same way as the women he had heard screaming. He made a public testimony before the *Turkey Tribunal*.[25]

107. Başkent Sports Hall was also turned into an unofficial detention site where most torture and abuse of detainees took place between July and August 2016. Testifying under oath at the Ankara 17th High Criminal Court, Lt. AB, a 27-year-old lieutenant, explained how in Başkent Sports Hall generals were stripped naked and forced to parade among some 700-800 detainees who were kept in inhuman, unsanitary conditions and denied food and water for a few days. "*They were trying to force everybody to watch* [the naked generals*], and those who didn't want to look and bowed their heads were slapped. They also harassed a commander by forcing a baton between his legs at the same time*." The lieutenant testified that a special torture chamber was set up in a shooting range at the Special Forces Command headquarters and that officers including women were tortured under orders of the then-commander of the Special Forces. Waterboarding, electrocution, and being thrown downstairs while handcuffed were practiced on victims at this site. Calling on the judges, he said "*Did you know that one of the female*

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[23] "*It is clear from the decisions reviewed that the Commission accepts "facts" such as the applicant's child attending a certain school, the applicant working in a certain company before becoming a public official, or shopping at a certain establishment, as facts which are "known by all" and which are capable of corroborating an applicant's links with a terrorist organization. In this sense, it can be concluded that the Commission applied a "presumption of guilt," rather than a presumption of innocence*", p. 42.

[24] March 2018, available here.

[25] See here.

officers was raped and had her baby aborted? I appeal to those women's rights advocates who stand together against rape and harassment; Why have they remained silent about this unconscionable incident?".

108. **IAHRAG particularly also highlights the situation of the young Air Force military students, known in the Turkish society as the cadets.** 313 Air Force Academy students, the cadets (aged between 17 and 22), were trapped, and scapegoated on July 15, 2016, brought by their Commanders (in particular on the Bosphorus Bridge but also in other places in Istanbul), in a bus, not having a single idea of the situation (just obeying to the orders). The WGAD released one opinion for one of these cadets, Ahmet Dinçer Sakaoğlu (see WGAD/2020/67).

109. They have been victims of mob attacks: Murat Tekin and Ragıp Enes were slaughtered that night on the bridge and no investigation was ever carried out because of the regime of impunity instated with the executive decree-laws (see para. 114 below). The 313 arrested cadets were subjected to heavy torture in the direct aftermath of their arrest but also in the long term (wards for 7 with 42 people, severe beatings, lack of adequate nutrition, restriction to access to heal…)

110. Here is the extract of one of the cadets' testimony, still in prison:

> *I was verbally insulted and subjected to violence at the police station. I was beaten by the police officers as I entered the police station and spent four days lying on the floor handcuffed behind my back. I could not sleep during this time. My family was not informed at the police station and I could not get the help of a lawyer. When I was taken to the hospital to get a medical report, the doctor did not examine me at the direction of the police officers and I was subjected to ill-treatment there as well; I was also forced to sign documents. I was transferred to the courthouse in the evening on July 20, 2016. The courthouse was much dirtier and more crowded than the police station, and again we were all handcuffed behind our backs. People were lying on the floor and it was impossible not to step on each other when going to the toilet. There was canned food waste everywhere, it was an environment where even animals could not stand. I was taken directly to court without being interrogated at the police station, without meeting with a lawyer, and without having my statement taken by the prosecutor's office. 20 armed police officers entered a small courtroom. (There were around 20 detainees and 20 police officers in these small rooms in Çağlayan; most of the detainees stood, there was no place to sit.) I gave my first interrogation sleepless, hungry and thirsty, under pressure from the police. I was only able to see my family a week after I went to prison. I was half-naked for about 10 days and could not take a bath. My father is deceased and my mother cannot visit me due to health problems and financial difficulties. During the trial between 09 - 13/10/2017, the presiding judge, upon questions from the complainant lawyers that were incompatible with the law, said, "Let's not make it too much of a torment, it has started to be a torment for us too" and recorded that he allowed us to be tormented a little. For 7 years I have been subjected to ill-treatment, discrimination and hate speech in prison. While forensic prisoners are allowed 60 minutes of video calls per week, I am only allowed 10 minutes of audio calls per week*".

111. As of today, 146 of these young cadets are still in prison with aggravated life sentences, with no perspective of release.

3.4 Impunity for acts committed during the State of emergency

112. The first executive decree-law (no. 667, article 9 para. 1) provided that

> "*legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and who fulfill their duties within the scope of this Decree Law*".

113. Executive decree-law no. 668 (article 37) has further expanded this principle of impunity, stipulating that there shall be no criminal legal, administrative, or financial liability for individuals

making decisions, implementing actions or measures, or assuming duties in accordance with the judiciary or administrative measures for suppressing coup attempts or terrorist incidents, as well as individuals taking decisions or fulfilling duties as per executive decrees. Executive decree-law 690 (article 52) provides that members of the State of Emergency Inquiry Commission shall not bear criminal, legal, administrative, or financial responsibility for their decisions, duties, or actions.

114. Executive Decree-law no. 696 has further expanded the scope of this impunity for civilians acting to suppress the coup attempt and ensuing events will have no legal, administrative, financial, or criminal responsibility. The expression "ensuing events" is so broad that it could retroactively exonerate anyone of any kind of responsibility.

115. The government has established a total regime of impunity for all actions related to July 15, 2016; officials that violated human rights through actions or decisions will have no responsibility, legal, administrative, or criminal. History seems to repeat itself in Türkiye, the situation echoing article 15 of the 1982 Constitution instituting total impunity for the regime.

SUMMARY OF CONCERNS AND SUGGESTION OF QUESTIONS FOR THE DIALOGUE

- While recognizing Türkiye's need and obligations to shed full light on July 15, 2016, including through independent and impartial investigations and convictions, IAHRAG is deeply concerned at the deep lack of necessity and proportionality of the measures adopted during the State of emergency that was proclaimed from July 21, 2016, until July 18, 2018;
- IAHRAG particularly deplores the impressive number and large scope of laws permanently affected by the executive decree laws, deeply modifying the institutional and legal landscape in Türkiye, without any judicial supervision, in particular concerning the rights of the defense, fair trial, and basic safeguards in relation to article 9 of the Covenant;
- IAHRAG also deeply deplores: (a) the impressive number of public servants dismissed, including judges and prosecutors, and of moral persons, including associations and media outlets definitively closed, with their assets confiscated; (b) the measures of deprivation of nationality implemented during the State of emergency, enhancing the risk of statelessness; (c) the arbitrary massive measures of passports cancellation during the State of emergency; and (d) the lack of effectiveness of the State of Emergency Inquiry Commission depriving real persons and moral persons affected by measures incompatible with the Covenant of remedies;
- IAHRAG is deeply concerned at the gross human rights violations committed during the State of emergency, including torture and mass arrests, and at the total impunity resulting from the executive decree-laws.

IAHRAG respectfully suggests the following questions to the delegation: The information provided suggests that the measures adopted during the State of emergency did not follow the principle of necessity and proportionality, nor were strictly required by the exigencies of the situation. The list of laws permanently affected by the executive decree-laws, without judicial supervision, is impressive, in number but also material scope: could you for instance explain the reasons how and why the Law on the Foundation and Rules of Procedure of the Constitutional Court (6216), Law on Legal Medicine Institution (2659), Law on Basic Health Services (3359), Law on Foundation of the National Lottery Organization Law on Social Security and General Health Insurance (5510), Law on Public Notaries (1512), Law on Turkish Radio and Television (2954), Law on the Settlement Through Arbitration of Legal Disputes (6325) had to be amended? Permanent amendments to legal provisions related to liberty and security of the person, related to the rights of the defense or a fair trial are also extremely worrying. What measures and steps are foreseen by the Turkish government to align these provisions with their obligations under the Covenant but also other international instruments? As to the impressive number of persons, real or moral, dismissed or closed by executive decree-laws, it seems that the main criteria of sanction was to have had links with the *Hizmet* Movement: how do you answer to criticisms, including from the Venice Commission and the EU Commission that "*it would be rare for a Turkish citizen never to have had any contact or dealings with this movement in one way or another*"? Information suggests

that the State of Emergency Inquiry Commission did not prove effective: what measures and steps are foreseen by the Turkish government to reinstate or compensate the persons whose rights under the Covenant have been violated due to State of emergency measures? What measures are foreseen to remove impunity provisions for all actions related to July 15, 2016, resulting from executive decree-laws? Regarding the cases of torture but also of death, as for Mr. Murat Tekin and Mr. Ragıp Enes, young cadets military students slaughtered by a mob on the Bosphorus bridge on the night of July 15, 2016, could you inform of any investigation and related progress?

4. Enforced disappearances, renditions and extraditions in the context of so-called "counter-terrorism" measures (*inputs on paras. 9 and 14 of the LOIPR)*

4.1 The resurgence of enforced disappearances

116. In its follow-up report to recommendations after its visit to Türkiye, the WGEID noted its concerns that

> "*an entrenched culture of impunity provided a fertile ground for cases of enforced disappearance to increase. The Working Group is particularly alarmed by allegations of enforced disappearances reported to have been perpetrated under the pretext of combatting terrorism against actual or perceived members of Gulen/Hizmet movement, classified by the Government of Turkey as 'Gülenist Terror Organization (Fethullahçı Terör Örgütü, FETÖ)' or 'Parallel State Organisation (Parallel Devlet Yapılanması, PDY)'.* ***Distressing reports of abductions by state agents in broad daylight, followed by months of torture and ill-treatment in clandestine detention sites aimed at extracting confessions for future prosecutions should be investigated as a matter of urgency.*** *The Working Group is gravely concerned at what appears to be a systematic practice of State-sponsored extraterritorial abductions and forced returns of Turkish nationals from numerous States to Turkey. To date, at least 100 individuals suspected of involvement with the Gulen/Hizmet movement are reported to have been subjected to arbitrary arrests and detention, enforced disappearance and torture, as part of covert operations reportedly organized or abetted by the Government of Turkey in coordination with authorities of several States. In addressing the issue of extraterritorial abductions, the Working Group underlines that a failure to acknowledge deprivation of liberty by state agents and a refusal to acknowledge detention constitutes an enforced disappearance, even if it is of a short duration*" (A/HRC/45/13/Add. 4, para. 7 et 8).

117. The EU Commission 2021 Turkey report (SWD (2021) 290 final/2.) stated that

> "*Alleged cases of abductions and enforced disappearances by security or intelligence services in several provinces continue to be reported since the attempted coup with no adequate investigations carried out. The cases of at least two dozen persons allegedly abducted by state agents for many months have not yet been effectively investigated by the Turkish authorities*" (p. 31).

118. The judges of the *Turkey Tribunal*, a people tribunal composed notably of former ECtHR judges as well as human rights renowned experts (among them Ms. Françoise Barones Tulkens, Mr. Giorgio Malinverni, Mr. Ledi Bianku, former ECtHR judges, Mr. John Pace, former Secretary to the UN Commission on Human Rights, Mr. Johann van der Westhuizen, former Constitutional Court judge in South Africa) found that the Tribunal

> "*is of the view that, at least since the attempted coup d'État in July 2016****, the acts of torture and enforced disappearances have occurred in a systematic and organised manner*** (…) ***the Tribunal is of the view that the acts of torture and enforced disappearances committed in Turkey****, in applications brought before an appropriate body and subject to the proof of the specific knowledge and intent of the accused,* ***could amount to crimes against humanity***" (here, para. 123).

119. In March 2019, deputy Ömer Faruk Gergerlioğlu tabled parliamentary questions for Vice President Fuat Oktay regarding the disappearance of Mustafa Yılmaz [26], Salim Zeybek[27], Gökhan Türkmen[28], Erkan Irmak[29], Yasin Ugan and Ozgür Kaya.[30]

120. In December 2017, deputy Sezgin Tanrıkulu tabled a parliamentary question for then-Prime Minister Binali Yıldırım regarding the disappearance of Ümit Horzum.[31]

121. In May 2017, deputy Filiz Kerestecioğlu tabled a parliamentary question for then-Prime Minister Binali Yıldırım regarding the disappearance of Sunay Elmas, Ayhan Oran, Mustafa Özgür, Gültekin, Hüseyin Kötüce, Turgut Çapan, Mesut Geçer, Önder Asan, Cengiz Usta, Mustafa Özben and Fatih Kılıç.[32]

122. In May 2017, deputy Şenal Sarıhan tabled a parliamentary question for then-Prime Minister Binali Yıldırım regarding the disappearance of Sunay Elmas, Ayhan Oran, Mustafa Özgür Gültekin, Hüseyin Kötüce, Turgut Çapan, Mesut Geçer, Önder Asan, Cengiz Usta, Mustafa Özben and Fatih Kılıç.[33]

123. In April 2017, deputy Sezgin Tanrıkulu tabled a parliamentary question for then-Prime Minister Binali Yıldırım regarding the disappearance of Sunay Elmas, Mustafa Özgür Gültekin, Hüseyin Kötüce, Turgut Çapan, Mesut Geçer, Önder Asan and Ayhan Ora.[34] Tanrıkulu reiterated his question in July 2017.[35]

124. None of these questions have been given answers by the relevant authorities.

125. The ECtHR communicated recently the case of Mr Hüseyin Galip Küçüközyiğit, abducted, on 29 December 2020 in Ankara, and convicted for his link to the Movement (application no. 20325/21). One of the questions to the parties is the following:

> "*following the applicant's submission that an anonymous Twitter account had claimed that certain people, who had been allegedly involved in the FETÖ/PDY terrorist organisation, hadbeen abducted and tortured in a place known as the "Farm" in Ankara,what steps have been taken by the prosecution authorities to verify these claims?*".

126. In ***S.N.K. and Y.T. v. Türkiye***, 4275/2022, a case presented by IAHRAG and declared inadmissible due to Turkiye's reservation last session, **Ms. Hélène Tigroudja and Mr. Hernan Quezada Cabrera expressed in their joint opinion that "*there was a pattern both of enforced disappearances used against Gülen movement's supporters and of impunity of the State-sponsored perpetrators*".**

127. IAHRAG, as well as the family of the victim, is outraged that the said case is used by Türkiye in its second periodic report to the Committee (CCPR/C/TUR/2[36]) to pretend that

> "*allegations of abduction are part of a widespread and malicious strategy of FETO. The ringleader of the terrorist organization has clear directives indicating that those suspected of membership to FETO must hide in special houses called "gaybubet houses" ("hiding houses") and act as if they were victims of abduction. The main objective is to give the members the*

[26] See here.
[27] See here.
[28] See here.
[29] See here.
[30] See here.
[31] See here.
[32] See here.
[33] See here.
[34] See here.
[35] See here.
[36] "*The ECtHR found the application of Tunç et al./Türkiye (Application no.45801/19)[36] filed with a similar complaint, inadmissible stating that the complaints were manifestly ill-founded. Such tactics are deliberate attempts to deceive the international public and clearly constitute an abuse of international complaints mechanisms*" (para. 9.4 and 9.5).

opportunity to pursue the illegal activities of FETO and avoid the risk of being arrested. (…) *Such tactics are deliberate attempts to deceive the international public and clearly constitute an abuse of international complaints mechanisms*" (para. 9.3 to 9.5).

121. **We hereby respectfully request the Committee to expressly raise the case of Mr. Yusuf Bilge Tunç both during the dialogue and in the concluding observations.**

4.2 Abroad abductions perpetrated by the Turkish intelligence services

122. The Committee is well aware of these cases with two pending cases registered (Orhan Inandi, 3958/2021, and Koray Vural, 4504/2023).

123. IAHRAG submitted a report to the Committee against Torture on the occasion of the recent dialogue with Türkiye and does not wish to repeat itself (see our report here).

124. IAHRAG is also aware that the Committee against Torture's latest concluding observations devoted a paragraph to the issue:

> "*The Committee expresses concern in response to allegations regarding a systematic practice of State-sponsored extraterritorial abductions and forcible returns of individuals supposedly associated with the Hizmet/Gülen movement in coordination with authorities in Afghanistan, Albania, Azerbaijan, Cambodia, Gabon, Kazakhstan, Lebanon and Pakistan, as well as with authorities in Kosovo, as previously raised by several special procedure mandate holders. Such abductions are alleged to have taken place with the involvement of the National Intelligence Organization (Millî İstihbarat Teşkilatı) and to entail human rights violations such as enforced disappearance and other forms of torture and ill-treatment*" (CAT/C/TUR/CO/5, para. 26).

125. While grateful to the CAT, IAHRAG regrets the lack of concerns regarding allegations of heavy torture and incommunicado detention in secret places run by the *MİT* as well as lack of concerns related to the impunity of *MİT* agents for related abductions, for which the Government and the *MİT* accept full responsibility (see para. 74 and f. of our report to the CAT, here). **The 2022 *MİT* annual report, signed by former head and current Ministry of Foreign Affairs, Mr. Hakan Fidan, recognizes the involvement of his officials in the abductions and enforced disappearances of more that 100 Hizmet Movement supporters.**

126. We respectfully request the Committee to consider asking and raising follow-up concerns related to these issues.

4.3 Turkish attempts to return Hizmet Movement sympathizers through extradition proceedings and Interpol notices

127. Since 2016, Turkish authorities have made extensive use of extradition requests to bring back *Hizmet* Movement sympathizers that would then be subjected to torture, ill-treatment and unfair trial. The Ministry of Justice publicly stated

> "*So far (July 13, 2023), we have requested the extradition of 1,271 FETÖ members from 112 countries. 2 extradition requests were accepted from Romania and 1 extradition request was accepted from Algeria. 123 extradition requests were accepted by extraditing them to our country. A total of 126 FETÖ members have been extradited to our country*".[37]

128. Türkiye is also one of the champion States instrumentalizing the procedures of Interpol (notably the red notices system), which main objective is to "*ensure and promote the widest possible mutual assistance between all criminal police authorities within the limit of the laws existing in the different*

[37] See here.

countries and tin the spirit of the Universal Declaration of Human Rights," in order to repress dissident voices, including journalists in exile, and in particular *Hizmet* Movement sympathizers and to ensure their return to Türkiye.

129. It has been reported that Türkiye attempted to upload the names of **60,000** people to the Interpol database for red-notice purposes. To provide a perspective on that number, in 2020, all in all (all Interpol state parties taken together), 11,094 red notices were issued and 66,370 were valid at the end of the year. This led to the detention of German-Turkish writer Doğan Akhanli and Swedish-Turkish journalist Hamza Yalçin in August, 2017, on the basis of red notices (see paragraphs above on journalists and human rights defenders). In June 2021, Interpol rejected 773 red notice requests from Türkiye against *Hizmet* Movement sympathizers.[38]

130. Türkiye, facing a lack of cooperation from Interpol due to abuse of the "red notice" system, now abuses the Interpol procedures through the "Stolen and Lost Travel Document" system, which is subject to less scrutiny and checks from the organization. Through this process, Türkiye expects to secure *Hizmet* Movement sympathizers' deportation when they travel.

131. In 2017, renowned athlete and human rights defender, Enes Kanter got arrested following both an Interpol red notice and a "stolen and lost travel document" notice at the Bucharest airport. If it was not for the support of the U.S. Homeland Security, Senators, and for his *green card*, he would have been deported to Türkiye and would still be in jail.

132. Interpol notices also allow swift identification by the *MİT* to organize illegal renditions (see for instance the case of Mr. *Taci Senturk v. Azerbaijan*, ECtHR, March 10, 2022, Application No. 41326/17).

133. This led the Committee on the Elimination of Discrimination against Women to note with concerns

> **"*reports of Turkish citizens, including women, being placed on the Interpol Red Notice list and having their passports canceled while travelling abroad, in order to have them deported back to Türkiye*" (CEDAW/C/TUR/CO/8, para. 41)**

SUMMARY OF CONCERNS AND SUGGESTION OF QUESTIONS FOR THE DIALOGUE

- IAHRAG is deeply concerned at the resurgence of domestic enforced disappearances since 2016, in particular targeting *Hizmet* movement sympathizers, and at the blatant lack of investigation as illustrated by the Turkish second periodic report assuming that "*allegations of abduction are part of a widespread and malicious strategy of FETO*";
- IAHRAG is deeply concerned that the Turkish Intelligence services, *MİT* (*Milli İstihbarat Teşkilatı*), are publicly engaged in secret renditions of *Hizmet* Movement sympathizers (more than 100 cases) from abroad, praised by high-level authorities, and that many of the persons abducted or forcibly returned have been subjected to incommunicado detentions amounting to enforced disappearances, including in clandestine and undisclosed facilities, and have been heavily tortured and ill-treated in order to obtain confessions to crimes or to incriminate others;
- IAHRAG is deeply concerned that Türkiye has secured the return of at least 126 individuals labeled as *Hizmet* Movement sympathizers since July 15, 2016, through extradition proceedings, and that it continues to engage in abusing Interpol notices system, in particular, red notices and "stolen and lost travel document" notices, in order to have *Hizmet* Movement sympathizers deported;

[38] Interpol officially announced to Euronews that it had rejected an earlier request from Türkiye for a red notice for **Can Dündar (a journalist exiled in Germany),** arguing that this request did not comply with its founding principles.

- IAHRAG is deeply concerned that the Turkish Intelligence services, *MİT* (*Milli İstihbarat Teşkilatı*), use secret detention and torture facilities and that *MİT* agents are *de facto* benefiting of total impunity from prosecution in application of article 6 of Law No. 2937 on State intelligence services and the national intelligence organization.

IAHRAG respectfully suggests the following questions to the delegation: there are credible and concurring reports, including from the WGEID and Turkish Parliamentarians, that domestic enforced disappearances are a resurgent phenomenon in Türkiye. We see for instance that while the Working Group on Enforced and Involuntary Disappearances transmitted no case at all from 2008 to 2016, it communicated 17 cases between 2016 and 2020. What steps and measures are you taking to investigate, prosecute, and sentence those responsible? Is there any step envisaged to amend the domestic criminal legislation in order to recognize enforced disappearance as an autonomous crime and to ratify the International Convention for the Protection of All Persons from Enforced Disappearance? Could you provide information on the progress in investigating the disappearance of Mr. Yusuf Bilge Tunç, who disappeared in August 2019? As to abroad abductions and efforts to return Turkish citizens, it is particularly worrying that such operations are praised and encouraged, notably by the executive. What efforts, if any, are made to put an end to the campaign of abroad abduction and to provide redress and compensation to victims, in particular those who according to credible sources have been tortured and detained in secret detention center/s, allegedly run by the *MİT*? Could you provide some cases where allegations of torture formulated by abductees, such as Orhan Inandi for instance, were investigated, the responsible convicted, and adequately sentenced?