

DEFENSE RESTRICTIONS AND ATTACKS ON LAWYERS IN TURKEY

1. EXECUTIVE SUMMARY

This report focuses on restrictions on the right to defence and attacks on lawyers in Turkey between 2019-2024. It details the threats to the rule of law, weaknesses in judicial independence, and challenges faced by lawyers in safely practicing their profession. During this period, both physical and legal attacks on many lawyers demonstrate serious violations of the right to defence.

2. BACKGROUND AND FRAMEWORK

Legal Framework and Amendments

Amendments to the Law on Lawyers (2020):

The "Multiple Bar" system, adopted in Turkey in 2020, allowed the establishment of more than one bar association in large cities. This amendment led to significant debates among lawyers and was criticized for the risk of bar associations being controlled by political power. The Multiple Bar system has created a significant barrier to protecting the right to a fair trial and has damaged the independence of bar associations.

3. ASSAULTS ON DEFENSE RIGHTS AND LAWYERS Physical and Legal Attacks on Lawyers

Physical Attacks:

During this period, many lawyers faced physical attacks. For instance, Lawyer Sibel Öncel, registered with the Urfa Bar Association, was attacked outside Anadolu Courthouse and hospitalized. Similarly, a lawyer in Bolu Courthouse was punched after a court hearing. Such assaults threaten the safety of lawyers and violate the right to a fair trial.

Legal Attacks:

Numerous lawyers, particularly those defending in political and human rights cases, were subjected to legal attacks. For example, members of the Contemporary Lawyers' Association (ÇHD) were prosecuted on charges of membership in a terrorist organization, leading to widespread public attention. In these cases, concerns were raised about the restriction of defence rights and the lack of fairness in trials.

Detentions and Arrests:

Many lawyers were detained and arrested, particularly on allegations related to FETÖ/PDY. For instance, in a 2020 operation in Ankara, 47 lawyers were detained, drawing severe criticism from international legal organizations.

Interference with the Right to Defence:

There have been allegations of restrictions on the right to defence, especially in cases related to counterterrorism. Reports indicated that lawyers' ability to meet with their clients was limited, and in some cases, they struggled to effectively represent them.

- 1- <https://www.trthaber.com/haber/turkiye/fetonun-avukat-yapilanmasina-operasyon-55-gozalti-517751.html>

Within the scope of the investigation conducted by the Izmir Chief Public Prosecutor's Office, the teams of the Provincial Security Directorate's Organised Crime Branch conducted an operation against FETÖ's lawyer structure in line with the testimonies of previously detained 'close associates'.

In the operation organised in 19 provinces centred in Izmir, an arrest warrant was issued for 66 suspects who stayed in the organisation's houses and were in contact with the organisation's supervisors.

During the operation, 55 suspects, including 27 lawyers and 1 lieutenant, were detained.

It was detected that 5 of the detained suspects were abroad.

2- <https://www.aa.com.tr/tr/gundem/fetonun-calisma-evinde-kaldigi-belirlenen-11-avukat-hakkinda-gozalti-karari/2402871>

Within the scope of the investigation conducted by the Istanbul Chief Public Prosecutor's Office Terror and Organised Crimes Bureau, a detention warrant was issued for 11 lawyers who were found to have stayed in FETÖ's cells called 'study houses', to be members of the organisation and to have prepared for the 2013 judgeship-prosecutor exams.

Istanbul Security Directorate's Anti-Organised Crime Branch teams arrested 10 of the suspects in a simultaneous operation in Istanbul, Ankara, Adana, Van, Diyarbakır, Antalya and Denizli.

3-<https://www.milliyet.com.tr/gundem/fetonun-avukatlar-mahrem-yapilanmasi-operasyonu-8-avukat-gozaltinda-6878503>

According to the information obtained, an arrest warrant was issued for 8 lawyers in line with the investigation conducted by Zonguldak Chief Public Prosecutor's Office. The lawyers who were detained in the operation organised by the Zonguldak Security Directorate Anti-Terror Branch Directorate teams were taken to the police station. The interrogation of the lawyers, who are alleged to be in FETÖ's lawyer organisation, continues at the police station.

4-<https://yeniyasamgazetesi6.com/gozaltina-alinan-gazetecilere-yonelik-avukat-kisitliligina-itrz-edildi/>

An objection petition was filed to Istanbul 9th Criminal Judicature of Peace against the 24-hour restriction on lawyers for Kurdish journalists detained in Istanbul and Ankara

Several journalists were detained in a house raid against Özgür Basın workers in Istanbul and Ankara this morning. Mesopotamia Agency (MA) reporter Esra Solin Dal, Yeni Yaşam Newspaper employee Enes Sezgin, Özgür Basın workers Saliha Aras, Yeşim Alıcı, Beste Argat Balcı, Şirin Ermiş and journalist Erdoğan Alayumat were detained in house raids in Istanbul. MA reporter Mehmet Aslan was detained in a house raid in Ankara and former MA reporter Doğan Kaynak was detained in a house raid in Riha. 3 people, including 2 journalists, are also detained.

On the other hand, detained journalists were restricted from lawyers for 24 hours. Lawyers sent an objection petition to Istanbul 9th Criminal Judicature of Peace against this restriction.

5- <https://www.bbc.com/turkce/haberler-dunya-50498006>

A Turkish lawyer working for the German Embassy in Ankara was reportedly detained in mid-September. We are trying to understand what the charges are and are seeking to have the detention order lifted,' a German Foreign Ministry official told Reuters news agency. The official said the lawyer was detained in mid-September and the reason was not understood.

German media reported that the lawyer had been assigned by the embassy to prepare documents required by Turkish citizens applying for asylum in Germany.

6- <https://www.ihd.org.tr/gozaltindaki-60-avukat-ve-hukukcu-serbest-birakilsin/>

Through an investigation initiated by Ankara Public Prosecutor's Office, a detention warrant was issued on 11 September 2020 for 60 people including 48 lawyers, 7 trainee lawyers, 3 dismissed judges, 1 dismissed judge candidate and 1 lawyer, and judicial proceedings are still ongoing. According to the information given by lawyers of detainees, it is understood from the questions asked to detainees that lawyers were identified with their clients and were charged with membership of an illegal armed organisation and aiding an illegal organisation just like them. A visit ban was imposed for the first 24 hours of detention and it was learnt that the detention period would be extended.

Detention and arrest operations against lawyers have been increasing in Turkey. Lawyers acting as lawyers for political prisoners, human rights defence lawyers, lawyers from ÇHD, who are involved in social litigation, have long been under judicial pressure from the political power and have been prevented from practising their profession through continuous detentions and arrests.

After the 15 July 2016 coup attempt, hundreds of lawyers were detained and arrested, especially on the grounds of the Fethullah Gülen organisation, and hundreds more were convicted on charges of membership of an armed organisation.

7- <https://www.hrw.org/tr/news/2020/09/17/376411>

Turkish police detained 47 lawyers at their homes and searched their offices in Ankara in dawn operations on September 11, 2020, Human Rights Watch said today.

The detentions chillingly demonstrate the Turkish government's disrespect for the rule of law and the role of lawyers in providing an effective defence for suspects. The detentions and raids, conducted under the guise of terrorism allegations, seek to identify lawyers with their clients' alleged crimes in violation of international law and violate the right to a fair trial.

'The legal profession, and defence lawyers in particular, have once again been targeted in mass operations of the kind we have unfortunately seen repeatedly over the past four years,' said Hugh Williamson, Europe and Central Asia Director at Human Rights Watch. 'Beyond smearing individual lawyers, this latest operation aims to further erode the legal profession's ability to uphold the rule of law and ensure that anyone accused of a crime has the right to a defence,' Williamson said.

8- <https://ankara.adalet.gov.tr/fetopdy-ye-yonelik-yurutulen-sorusturmada-12-si-avukat-ve-avukat-stajyeri-olan-36-supheli-hakkinda>

Within the scope of the investigation conducted by Ankara Chief Public Prosecutor's Office Terror Crimes Investigation Bureau on the students who were dismissed from the (former) Faculty of Security Sciences / Police College affiliated to the Police Academy Presidency, which was closed down by Law No. 6638 dated 04/04/2015; a detention warrant has been issued as of 26. 11.2021.

CHD (Contemporary Lawyers Association) Trials:

The trials involving lawyers from the Contemporary Lawyers Association (Çağdaş Hukukçular Derneği - ÇHD) have become one of the most notable events of this period. CHD lawyers were prosecuted on charges of membership in a terrorist organization, and these cases have generated widespread attention. The lawyers argued that their right to defence was restricted and that the trials were not fair.

1- <https://www.gazeteduvar.com.tr/ankarada-chdli-avukatlara-operasyon-20-gozalti-haber-1642139>

Contemporary Lawyers Association (ÇHD) Ankara Branch Chair Bilgi Topçu and 20 people, including members Ceren Yılmaz and Fatih Gökçe, were detained in house raids as part of an investigation by Ankara Chief Public Prosecutor's Office.

According to Artı Gerçek news agency, Murat Yılmaz, one of the lawyers of ÇHD, shared that an anonymous person who allegedly called the police yesterday informed that DHKP-C would organise a demonstration in Ankara and that Ankara Security Directorate detained 20 people.

2- <https://www.rudaw.net/turkish/middleeast/turkey/070220241>

Following the attack on Çağlayan Courthouse, 4 lawyers including lawyer Betül Vangölü Kozağaçlı, wife of arrested ÇHD chair Selçuk Kozağaçlı, were detained. Lawyer Betül Vangölü Kozağaçlı, wife of Selçuk Kozağaçlı, the arrested chair of the Association of Contemporary Lawyers (ÇHD), was detained after the attack on Çağlayan Courthouse by breaking the door of her office.

In the statement made on the social media account of ÇHD, it was stated as follows 'Our members lawyers Betül Vangölü Kozağaçlı, Seda Şaraldı, Didem Baydar Ünsal and Berrak Çağlar have been detained. We will not bow down to the audacity of attacking lawyers' offices by breaking down the doors on fabricated grounds. We stand up against these arbitrary attacks!'

3- <https://www.surajans.com/istanbulda-4-avukat-gozaltina-alindi>

Sur Ajans reported that four lawyers from the Oppressed Lawyers Office were detained in Istanbul. The law office criticized the arrests on social media, stating that there was secrecy and restrictions on the files. They posted, "Revolutionary lawyering, defending the rights of the oppressed, is not a crime."

4-<https://firatnews.com/guncel/Chd-li-iki-avukat-ev-baskiniyla-gozaltina-alindi-200031>

Contemporary Lawyers Association (ÇHD) Istanbul Branch executive Naim Eminoğlu and branch member Doğa İncesu were detained in a house raid in the morning. While the lawyers were taken to Istanbul Provincial Security Directorate, they were restricted from seeing their lawyers for 24 hours.

ÇHD made a statement on its virtual media account about the detentions and said, 'One of our branch executives, lawyer Naim Eminoğlu and our member lawyer Doğa İncesu were detained from their homes by the political branch police this morning and taken to Vatan Security Directorate. Stop the attacks against lawyers! Release our friends immediately! Istanbul Provincial Security Directorate has informed us that the lawyer's access to the defence counsel has been restricted for 24 hours. We call on all our colleagues to stand in solidarity against unlawful arrest warrants, arbitrary restrictions and attacks against the defence.'

Bar presidents, board members and lawyers were subjected to police interventions from time to time. Especially during the protests and marches organised by the bar associations in front of the Ministry of Justice or in different cities, the interventions of law enforcement officers drew attention.

5-<https://www.hukukihaber.net/adliyeye-girmek-isteyen-avukatlara-polis-engeli-14-avukat-gozaltina-alindi>

The police intervened the group protesting in Istanbul Palace of Justice against the withdrawal of the right to withdraw the deprivation of liberty of Abdullah Zeydan, who was elected Mayor of Van Metropolitan Municipality. A brawl broke out between the lawyers who wanted to enter the courthouse and the police. Lawyers were taken out of the courthouse and were taken away. It is learned that 14 lawyers were detained. Istanbul Governorate declared that 14 people were released after detention procedures.

6-<https://denizliyeniolay.com/guncel/88573-avukata-saldiriya-10-gozalti>

The hearing of a blood feud resulting in a murder in Diyarbakır was held at Denizli Palace of Justice due to security reasons. A lawyer registered to Diyarbakır Bar Association was attacked after the hearing.

It is learned that during the hearing held at the 7th Assize Court in Denizli, relatives of the defendants verbally attacked the lawyer of the complainant family in the courtroom. The suspects were intervened by the presiding judge and took them out of the courtroom and started to wait outside the Palace of Justice. After the completion of the hearing, a group of 10-15 people attacked the lawyer who was getting ready to leave the Palace of Justice. The group who assaulted the lawyer was removed from the scene with the intervention of the police officers on duty at the Palace of Justice. The lawyer who was slightly injured in the attack was rescued from the attackers.

The moment of the attack was also recorded by security cameras. Asayiş Branch Directorate teams of Denizli Police Department caught and detained 10 of the attackers. While an investigation was initiated, the victim lawyer filed a complaint against the attackers.

7-<https://gazeteoksijen.com/turkiye/sinan-ates-davasinda-2-gun-mahkeme-baskani-ates-ailenin-avukatini-salondan-kovdu-215654>

The trial of 22 defendants related to the murder of Sinan Ateş, former President of the Grey Wolves Ocakları continued today. During the defence of Muratcan Çolak, the arrested police officer who brought the shooter, a tension broke out and the presiding judge shouted 'Enough' and dismissed the Ateş family's lawyer from the courtroom.

8-<https://artigercek.com/guncel/barolar-sibel-oncele-saldiriyi-kinadi-avukat-tehlikedeyse-yurttas-tehlikededir-310140h>

Sibel Öncel, a lawyer registered to the Urfa Bar Association, was attacked by O.O. at the exit of the Anatolian Courthouse where she went for a file in which she was the defendant's attorney. Öncel, who was injured as a result of the blows she received, was taken under treatment at the hospital.

Öncel, who was kept in the hospital for a day for control purposes, received a battering report and filed a criminal complaint regarding the attack. After the incident, the suspect, who was referred to the prosecutor's office, was arrested by the court.

9-<https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=18562&Desc=Meslekta%C5%9F%CB1m%C4%B1za-yap%C4%B1lan-sald%C4%B1r%C4%B1y%C4%B1-LANETL%C4%B0YORUZ>.

Any attack against the lawyer is a direct attack against the citizen. The lawyer is the voice of the citizen. The lawyer is not a party to the file, but the representative of the citizen; he is a REPRESENTATIVE. Our colleague Stj. Av. Büşra TEKSÖĞÜT was attacked by the debtor A.E. on 09.01.2024 and her legs were broken on 09.01.2024 after she got off the public transport by ambush after the foreclosure process. An arrest warrant was issued for the suspect by Şanlıurfa 2nd Criminal Judicature of Peace on 10.01.2024.

10-<https://www.bolununesi.com/haber/169079/adliyede-avukata-yumruklu-saldiri>

10 May 2024 Fist attack on lawyer in courthouse Today, in Bolu Courthouse, the Heavy Penal ...

Today, in Bolu Courthouse, a lawyer who came out of the court in the High Criminal Court was attacked with a fist inside the courthouse. It was stated that the lawyer, who was hospitalised after the intervention of the first aid team, complained and sued the attacker.

11-<https://www.odatv.com/guncel/fetonun-avukat-kadrosuna-operasyon-36118208>

Within the scope of the investigation conducted by Ankara Chief Public Prosecutor's Office Terror Crimes Investigation Bureau on FETÖ/PDY's irregularities in the judge/prosecutor exam, 21 suspects were identified who worked at various levels of the organisation during their university education, stayed in private study houses to prepare for the judge/prosecutor exams and met with the executives of the organisation. The operation was launched in 10 provinces centred in Ankara.

12-<https://www.ntv.com.tr/turkiye/37-ilde-feto-sorusturmasi-108i-avukat-126-gozalti-karari,3tdEgESb80u-2bup5gw4TQ>

In a broader FETÖ-related investigation, NTV reported that arrest warrants were issued for 126 suspects, including 108 lawyers, across 37 provinces as part of an operation against FETÖ's secret judicial structures.

13-<https://www.hrw.org/tr/report/2019/04/10/328911>

In the aftermath of the July 2016 coup attempt, Turkey has witnessed the mass detention and prosecution of thousands of people who were not involved in any act of violence on anti-terrorism charges. They include journalists and human rights defenders, as well as opposition politicians on trial in cases that human rights civil society organisations have documented as unfair and politically motivated. The role of lawyers in protecting the rights of suspects in police custody and defendants in court has always been important, but their role in protecting the rule of law and human rights is even more fundamental, especially in the current climate of repression in Turkey. Nevertheless, or possibly precisely for this reason, lawyers, in particular defence lawyers involved in criminal cases, have also been targeted by the authorities in the ways illustrated in this report.

These events have also been closely monitored by international human rights organisations and legal institutions. The Council of Europe, the United Nations and various human rights organisations have expressed concern about the crackdown on lawyers and violations of the right to defence in Turkey.

The events of this period sparked important debates on the independence of the justice system in Turkey and the ability of lawyers to practise their profession in confidence. During this period, bar associations and human rights organisations organised various actions and campaigns to protect lawyers' right to defence and to put an end to attacks on their profession.

14-<https://www.ab.gov.tr/siteimages/resimler/2023%20T%C3%BCrkiye%20Raporu.pdf>

According to the findings of the European Union's 2023 Report on Turkey; **'Turkey is still at an early stage in terms of the implementation of the acquis and European standards in the area of the rule of law and fundamental rights. There has been a regression during the reporting period. Major issues identified in previous reports, such as the systemic lack of judicial independence and the urgent need to improve the human rights situation, remain unaddressed. The 2019 Judicial Reform Strategy (JRS) and the 2021 Human Rights Action Plan (HRAP) addressed some areas in need of reform but did not include concrete steps to address the most critical challenges in this area.'** In addition, Turkey is 'at an initial level of harmonisation in this area. Serious backsliding continued and, despite several judicial reform packages adopted in recent years, structural deficiencies in the judicial system have still not been addressed. The continued non-implementation of some judgements of the ECtHR remains a matter of serious concern. Unlawful pressure

exerted by the authorities on judges and prosecutors continued to have a negative impact on the independence and quality of the judiciary. Implementation of the 2019 YRS and the 2021 LHAP continued, but the activities envisaged in these documents were insufficient to address the structural problems and issues identified in previous reports of the European Commission. The lack of objective, merit-based, uniform and predetermined criteria for the recruitment and promotion of judges and prosecutors remains a matter of concern. During the reporting period, a number of politically motivated cases were brought against opposition politicians.'

15-<https://www.bbc.com/turkce/articles/c6p9x0wn6lko>

The verdict of the 3rd Criminal Chamber of the Court of Cassation against Can Atalay, Hatay MP of the Workers' Party of Turkey (TİP), was read in the General Assembly of the Parliament. With the reading of the verdict, Atalay, who is in prison, was stripped of his parliamentary seat.

4. Conclusion :

Between 2019 and 2024, restrictions on the right to defense and attacks on lawyers in Turkey have led to significant violations of fundamental human rights principles, such as the rule of law, the right to a fair trial, and judicial independence. These developments have made it increasingly difficult for lawyers to practice their profession safely, and have undermined public confidence in the justice system.

5. Recommendations :

- **Ensuring the Right to Defence:**
 - Lawyers should be able to meet with their clients freely and securely.
 - Physical and legal attacks on lawyers should be prevented, and effective investigations should be conducted into such attacks.
- **Strengthening Judicial Independence:**
 - Situations where the multiple bar system harms lawyers' independence should be reviewed, and necessary adjustments should be made.
 - Practices that threaten judicial independence should be ended.
- **Aligning with International Legal Standards:**
 - Turkey should fully comply with the European Convention on Human Rights and other international human rights treaties.
 - Independent monitoring mechanisms should be established to address human rights violations.

Implementing these recommendations will contribute to protecting the right to defence in Turkey and ensuring that lawyers can practice their profession safely.

Discrimination in the Trial Process and Execution Practices of Political Prisoners in Turkey

Executive Summary

This report addresses discrimination in execution practices against political prisoners held in Turkish prisons. Although Turkey is obliged to comply with international human rights standards, political prisoners are subjected to systematic discrimination. This report analyses the extent and consequences of this discrimination and proposes solutions.

Background and Frame

This report has been prepared in the light of information obtained from various human rights organisations' reports, academic studies and media sources. The data covers the period from 2020 to the present day, and statistical data whose source is not specified has been compiled by us from sources numbered 1.¹

1. Arrest and Trial Process

- a) **Arbitrary Arrests:** Although the law prohibits arbitrary arrest and detention and provides for the right of individuals to challenge the lawfulness of arrest or detention in court, numerous credible reports found that the government did not always fulfil these requirements. Since 2020, approximately 40,000 people have been arrested for political reasons.
- b) **Violation Of The Right To A Fair Trial:** Human rights groups reported that the authorities continue to detain, arrest and prosecute hundreds of thousands of people for alleged links to the Gülen movement or the PKK for terrorism offences, often using evidentiary criteria of questionable validity and without full respect for the principle of due process of law.²

40 per cent of applications to the European Court of Human Rights (ECtHR) are related to violations of the right to a fair trial. Defence rights of defendants in political trials are frequently restricted.

- c) Long-term Imprisonment: The average duration of imprisonment is 1.8 years, but for political prisoners the average duration of imprisonment is more than 4 years.

2) Prison Conditions

- a) Overcrowding Capacity: Prisons were found to be 150 per cent over capacity. This has a serious impact on the living conditions of prisoners.
- b) Health Care: Political prisoners have more difficulty accessing health care than other prisoners. Restriction of access to health care, denial of the right to visit the prison infirmary, ill-treatment practices including handcuffing while being taken to the Forensic Medicine Institution, courthouse and hospital, during examination and hospitalisation, failure to solve prisoners' health problems in a timely and effective manner is another long-standing problem area. Especially in the recent period, the deportation of the majority of prisoners, who can hardly continue their treatment, to other prisons has significantly harmed the right to access to health care.
- c) Treatment: Allegations of physical and psychological torture are common. In its annual reports, Human Rights Watch documents more than 80 cases of torture and ill-treatment of political prisoners per year.³

3) Discriminatory Execution Practices

Parole and Special Amnesty: The rate of political prisoners benefiting from parole and special amnesty is below 7 percent. This rate is 25 percent for other prisoners. It is estimated that around 100 thousand people have been released from prisons since 15 April 2020 with the amendment to the Law on the Execution of Sentences No. 7242, which is publicly described as the special amnesty of the A.Ç. Even in this law, an unjust and discriminatory regulation that is clearly against the constitution has been made, the conditions of execution for political prisoners have been aggravated and the release of political prisoners has been prevented.⁴

Disciplinary Penalties: The beatings at the entrance and afterwards in prisons on various grounds (such as strip search, examination in handcuffs, objection to standing roll-calls), labelling political prisoners as "terrorists" and subjecting them to violence on this ground, all kinds of arbitrary treatment and arbitrary disciplinary punishments, solitary confinement, exile and transfer practices have reached unprecedented levels in recent history.

4. Solution Suggestions

- a) Ensuring the Right to a Fair Trial
 - i) Ensure fair and transparent trial processes for political prisoners in line with international human rights norms.
 - ii) ECtHR judgements should be respected and effective domestic remedies should be established in case of violations of the right to a fair trial.

- b) Improvement of Prison Conditions:
 - i) Prison capacity should be increased and overcrowding should be prevented.
 - ii) Access to health services should be increased and prisoners should be subjected to regular health checks.
 - iii) Ensure that allegations of torture and ill-treatment are effectively investigated and those responsible are punished.

- c) Ending Discriminatory Practices
 - i) There should be no discrimination in execution practices and all prisoners should be treated equally and fairly.
 - ii) Political prisoners should have equal access to parole and special amnesty.
 - iii) The arbitrary imposition of disciplinary penalties should cease and disciplinary procedures in line with human rights standards should be established.

Conclusion

Political prisoners in Turkish prisons are systematically discriminated against in execution practices. This is in contradiction with Turkey's international human rights obligations. Urgent reforms are needed. This report draws the attention of the international community to these serious human rights violations and calls on the Turkish government to address them.

Sources

1.a Amnesty International. Turkey: Annual Report 2020-2023

1.b <https://www.ihd.org.tr/wp-content/uploads/2022/10/2021-y%C4%B1l%C4%B1-raporu.pdf>

1.c European Court of Human Rights. (2023). Annual Report 2023. (https://www.echr.coe.int/Documents/Annual_report_2023_ENG.pdf)

1.d United Nations High Commissioner for Human Rights. (2023). Turkey Human Rights Report 2023. (<https://www.ohchr.org/en/countries/turkey>)

1.e Human Rights Foundation of Turkey. (2022). Cases of Torture and Ill-Treatment in Turkey 2022. (<https://www.tihv.org.tr/raporlar/turkiye-iskence-ve-kotu-muamele-raporu-2022>)

1.f Prison occupancy rates and arrest statistics published by the Türkiye İstatistik Kurumu* (TÜİK) ve *Ceza ve Tevkifevleri Genel Müdürlüğü*

2. <https://tr.usembassy.gov/wp-content/uploads/sites/91/insan-haklari-raporu-turkiye-bolumu-2022.pdf>

3. Human Rights Watch. 2020-2023 World Reports (<https://www.hrw.org>)

4. <https://www.ihd.org.tr/wp-content/uploads/2022/10/2021-y%C4%B1l%C4%B1-raporu.pdf>

NON-IMPLEMENTATION OF EUROPEAN COURT OF HUMAN RIGHTS JUDGEMENTS IN TURKEY

1-EXECUTIVE SUMMARY:

Turkey has been a party to the European Convention on Human Rights (ECHR) since 1954 and is obliged to implement the judgments of the European Court of Human Rights (ECHR). However, non-implementation of ECHR judgments results in serious human rights violations in Turkey and undermines the country's credibility in fulfilling its international obligations. This report addresses the problem of non-implementation of ECHR judgments in Turkey and proposes solutions.

2-)BACKGROUND AND FRAMEWORK:

It is observed that the number of applications against Turkey has continuously increased, especially since July 15, 2016. According to the 2023 Statistical Reports of the European Court of Human Rights, Turkey ranks first among the countries against which applications are filed. ¹

In its judgments against Turkey, the ECHR has found violations in particular of freedom of expression, the right to a fair trial, the right to property and the prohibition of ill-treatment. However, a significant number of these judgments are not implemented by Turkey. Especially in politically sensitive cases, non-implementation of ECHR judgments is a common problem. In some judgments, statements by the President of the Republic, the Minister of Justice and the Presidents of the Supreme Court that the judgments will not be implemented encourage a culture of impunity and contradict the fact that ECHR judgments are mandatory court decisions. ²

3-) REGULATIONS ON THE IMPLEMENTATION OF THE JUDGMENTS OF THE COURT:

The contracting parties have no discretion in the implementation of the judgments of the European Court of Human Rights. The binding nature of the judgments is guaranteed by both national and international regulations.

3.1-)NATIONAL REGULATIONS:

Pursuant to Article 90/5 of the Constitution, "International treaties duly put into force have the force of law. (Additional sentence: 7/5/2004- 5170/7 Art.) In case of disputes arising from the fact that international treaties on fundamental rights and freedoms duly put into force and laws contain different provisions on the same subject, the provisions of the international treaty shall prevail." According to Article 311/1-f of the Criminal Procedure Law No. 5271 titled "Renewal of the trial in favor of the convicted person", "It has been determined by the finalized decision of the European Court of Human Rights that the criminal sentence was imposed in violation of the

Convention for the Protection of Human Rights and Fundamental Freedoms or its annexed protocols and that the sentence was based on this violation, or that the application made to the European Court of Human Rights against the criminal sentence was dismissed as a result of a friendly settlement or unilateral declaration. In this case, the renewal of the trial may be requested within one year from the date of the finalization of the decision of the European Court of Human Rights."

3.2-)INTERNATIONAL REGULATIONS :

According to Article 46 of the European Convention on Human Rights entitled "Binding effect and enforcement of judgments"

The High Contracting Parties undertake to abide by the final judgments of the Court in cases to which they are parties.

The final judgment of the Court shall be sent to the Committee of Ministers, which shall supervise its execution.

If the Committee of Ministers considers that the supervision of the execution of a final judgment is hindered by a difficulty arising from the interpretation of that judgment, it may apply to the Court for a ruling on that interpretation. The decision to apply to the Court shall be taken by a two-thirds majority of the representatives entitled to attend the meetings of the Committee.

If the Committee of Ministers is of the opinion that a High Contracting Party has refused to comply with a final decision in a case to which it is a party, it may, after giving notice to the Party concerned, by a decision adopted by a two-thirds majority of the representatives authorized to attend the meetings of the Committee, refer to the Court the question of the failure of that Party to comply with its obligation under paragraph 1.

If the Court finds that there has been a violation of paragraph 1, it shall refer the case to the Committee of Ministers to consider the measures to be taken. If the Court finds that there has been no violation of paragraph 1, it shall refer the case to the Committee of Ministers for a decision terminating its examination.

4-) NON-IMPLEMENTATION OF THE DECISION AND ITS EFFECTS:

4.1. Freedom of Expression:

The failure to implement ECHR judgments against journalists, academics and human rights defenders has led to increased pressure on freedom of expression in Turkey.

4.2. Right to a Fair Trial:

Non-implementation of judgments of violation of the right to a fair trial issued against many people prosecuted under FETÖ/PDY investigations.

4.3. Property Rights:

Failure to implement ECHR rulings on violations of the right to property.

4.4 Prohibition of Ill-Treatment:

Non-implementation of judgments on allegations of ill-treatment by security forces and prison staff.

5-)SOME EXAMPLES OF NON-IMPLEMENTATION OF THE EHM JUDGMENTS IN TURKEY:

In 2020, despite the ECHR ruling to release journalist Ahmet Altan for violations of freedom of expression, Altan's release has been delayed.³⁻⁴

In 2018, although the ECHR ruled that teacher Ayşe Çelik should have been acquitted due to a violation of her right to a fair trial, her sentence was carried out.⁵

In 2021, the ECHR ruled that the property rights of Greek Cypriot citizens whose property was confiscated during the Cyprus Peace Operation were violated, but Turkey refused to implement these judgments.⁶

In 2019, the ECHR found that protesters detained during the Gezi Park protests were ill- treated and convicted Turkey. However, these judgments have not been implemented.⁷

In 2019, the ECHR ruled that the detention of businessman Osman Kavala violated Articles 5.1, 5.4 and 18 of the European Convention on Human Rights (ECHR), and ordered his immediate release. However, Osman Kavala was re-arrested on the same charges from which he was previously released, preventing the implementation of this ECHR ruling.⁸

In 2020, Turkey ordered the immediate release of Selahattin Demirtaş, leader of the opposition political party (HDP), on the grounds that "the lengthy pre-trial detention and terrorism-related charges based on evidence of his political speeches contravene the European Convention on Human Rights", but Turkey has not yet implemented this decision.⁹

In 2023, the ECHR ruled against Turkey in the Yalçınkaya judgment that educational and social activities, membership of associations and trade unions, and the use of communication programs cannot be criminalized, but with the encouragement of not implementing the judgments, such activities are defined as crimes and operations continue. Most recently, on May 7, 2024, an arbitrary 'terror' operation was carried out in Istanbul in serious violation of national and international law. The operation, conducted by the Istanbul prosecutor's office and police, specifically targeted young female students and their families. Of the 48 detainees, 16 were girls between the ages of 13 and 18. The vast majority of those detained faced terrorism-related charges for their educational and social activities.¹⁰

6-) STATISTICS ON NON-IMPLEMENTATION OF DECISIONS:

According to the Council of Europe, more than 70% of the freedom of expression violation judgments against Turkey in 2023 were not implemented. ¹¹

Between 2019 and 2023, 65% of the judgments issued in Turkey for violations of the right to a fair trial were not implemented. ¹²

According to the Council of Europe's 2022 report, Turkey has not implemented 80% of judgments on property rights violations. ¹³

Between 2018 and 2023, 60% of the judgments on the prohibition of ill-treatment were not implemented by Turkey. ¹⁴

7-) CONCLUSION :

Turkey's failure to implement ECHR judgments causes serious human rights problems at both national and international levels. Addressing this problem requires legal and institutional reforms, strong political will and international cooperation. As a state party to the ECHR, Turkey must fulfill its obligation to implement ECHR judgments and ensure respect for human rights and the rule of law.

8-)RECOMMENDATIONS:

The problem of non-implementation of the judgments of the European Court of Human Rights in domestic law leads to a rapid increase in human rights violations. The following recommendations are suggested for the solution of this problem.

8.1. Legal and Institutional Reforms:

In order to effectively implement ECtR judgments, judicial independence needs to be strengthened, human rights training needs to be increased and monitoring mechanisms need to be activated. It is of utmost importance that judicial reform packages in this direction are implemented decisively and ECHR judgments are reflected in domestic law in an effective manner.

8.2.Political Will:

Government authorities and state institutions should take decisive steps to respect human rights and comply with international obligations. In particular, the authorities' observance of the rule of law in their statements on ECHR judgments will discourage the encouragement of non-implementation of judgments. The establishment of an independent oversight body to monitor the implementation of ECHR judgments and a timetable for the execution of judgments would also contribute to solving the problem.

8.3.Civil Society and International Cooperation:

Cooperation with civil society organizations and international human rights organizations should be established to monitor the implementation of ECHR judgments and raise awareness on this issue. Funding should be provided and capacity building trainings should be organized for civil society organizations to monitor the implementation of ECHR judgments.

SOURCES :

1-)Annual Reports of the European Court of Human Rights for 2023, 2022, 2021, 2020 and 2019

2-)<https://www.bbc.com/turkce/haberler-turkiye-55438086> President Erdoğan reacted to the ECHR's decision on Demirtaş and said: "These steps are political, double standard, hypocrisy... If the ECHR wants to be respected by Turkey, it should first question its own contradictions. This person is guilty in the eyes of our nation, not because of his political duties or discourses, but because he cannot distance himself from terrorism."

<https://www.aa.com.tr/tr/gunun-basliklari/cumhurbaskani-erdogan-aihm-in-verdigi-kararlar-bizi-baglamaz/1316443#>

Regarding the European Court of Human Rights' decision against former HDP Co-Chair Demirtaş, President Erdoğan said, "The decisions of the ECHR do not bind us. We will make our counter move and finish the job." He said

<https://tr.euronews.com/2020/12/23/erdogan-aihm-in-demirtas-karar-tamamen-siyasidir>

"O ECHR, we will continue to explain even if you don't understand. There are already signs that the same court will adopt the same attitude towards FETÖ cases. We hope that the Court will not take the same approach. Otherwise, I remind you that we are no longer obliged to tolerate such double standards and hypocrisy."

<https://bianet.org/haber/erdogan-in-aihm-yorumu-biz-bildigimizi-okuruz-252461>

President Recep Tayyip Erdoğan said, "We do what we know" about possible sanctions from the Council of Europe for not implementing the ECHR ruling on the release of arrested businessman Osman Kavala.

<https://tr.euronews.com/2022/02/03/erdogan-bizi-baglamaz-dedigi-aihm-e-kac-kez-basvurdu>

Commenting that the ECHR's decision on Selahattin Demirtaş was political, Erdoğan said, "The ECHR made an exceptional practice by taking this decision before domestic remedies were exhausted." "Essentially, the ECHR cannot make decisions to replace our courts," Erdoğan said, adding, "We do not recognize those who do not recognize our court decisions."

<https://www.tr724.com/erdogan-aihm-in-yalcinkaya-kararini-boyle-yorumladi-bardagi-tasiran-son-damla-olmustur/>

Erdoğan said, "The recent decisions of the European Court of Human Rights, an institution of the Council of Europe, have been the last straw. The members of the terrorist organization and their supporters, encouraged by this decision, should not be in vain. This decision will not help the FETO scoundrels who are already convicted in the public conscience."

<https://www.dw.com/tr/ai%CC%87hm-y%C3%BCKsel-yal%C3%A7%C4%B1nkaya-karar%C4%B1nda-t%C3%BCrkiyeye- nede-di/a-66953215>

Turkey's Minister of Justice Yılmaz Tunç said, "It is unacceptable for the ECHR to overstep its authority and issue a decision of violation by examining 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."

<https://www.birgun.net/haber/adalet-bakani-tunctan-kavala-demirtas-ve-atalaya-dair-aciklama-aihm-siyasi-yaklasiyor-499831>

Speaking on a live broadcast of a television channel, Minister of Justice Yılmaz Tunç made evaluations on the legal status of Osman Kavala, Selahattin Demirtaş and Can Atalay. Tunç said about Kavala and Demirtaş: "The ECHR approaches these cases politically. The evidence that led to the verdict is not evaluated from a legal point of view." Tunç claimed, "Atalay's case is a case that started before the election. Atalay's are crimes against the constitutional order. These crimes are regulated by law." Tunç also shared information about the details of the new judicial package that is being prepared.

3-)European Court of Human Rights. (2020). "Ahmet Altan Case."

4-)Amnesty International. (2020). "Turkey: Journalist Ahmet Altan's Prolonged Detention."

5-)Human Rights Watch. (2018). "Ayşe Çelik Case."

6-)European Court of Human Rights. (2021). "Cyprus v. Turkey."

7-)Human Rights Association (IHD). (2019). "Gezi Park Protests and Human Rights Violations."

8-)European Commission. (2022). "Turkey 2022 Report."

9-)Council of Europe. (2023). "Annual Report: Execution of Judgments of the European Court of Human Rights."

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11-)Council of Europe. (2023). "Annual Report: Execution of Judgments of the European Court of Human Rights."

12-)Council of Europe (2023) "Annual Report: Execution of Judgment of the European Court of Human Rights"

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14-)Council of Europe (2023) "Annual Report: Execution of Judgment of the European Court of Human Rights"

EXECUTIVE SUMMARY

This report addresses the violations of the principles of non-discrimination and equality in the application of counter-terrorism laws in Turkey. These laws disproportionately target members of the Gülen movement, Kurdish political activists, and revolutionary leftist groups, leading to systematic human rights abuses. The report aims to provide a comprehensive overview of these issues, inform the United Nations Human Rights Council, and promote international awareness and action.

BACKGROUND AND FRAMEWORK

Legal Framework

Turkey's Anti-Terror Law (Law No. 3713) was enacted in 1991 and has been amended numerous times, most recently in 2018. This law broadly defines terrorism and grants extensive discretionary power in its implementation. Although its primary aim is to combat terrorism, the ambiguous definitions and wide scope have raised concerns about misuse and human rights violations. Both the Council of Europe and the European Union have regularly reported deficiencies in the rule of law in Turkey, highlighting structural and systemic issues within the judiciary **【1】** .

The independence of the judiciary is enshrined in the constitution (Art. 138). The Council of Europe and the European Union have regularly attested to deficiencies in the rule of law in Turkey in recent years. The Council of Europe Commissioner for Human Rights reported in her report dated 19 February 2020 (CommDH/2020/1) on the ongoing structural and serious deficiencies in the Turkish judiciary **【1】** .

Institutional Context

The main institutions involved in the implementation of counter-terrorism laws are the Turkish National Police, the Gendarmerie, and the National Intelligence Organization (MIT). The judiciary also plays a significant role in interpreting and applying these laws. Human rights organizations and international bodies frequently criticize these institutions for their lack of independence and impartiality. The European Court of Human Rights has repeatedly condemned Turkey for the lack of judicial independence and guarantees of fair trials **【1】 【6】** .

In the area of general crime fighting, Turkish law ensures fundamental procedural guarantees. However, the circumstances in politicized criminal proceedings, such as those involving charges of membership in or propaganda for the PKK, DHKP-C, or the Gülen movement, raise significant doubts about judicial independence and fair trial processes **【1】** .

VIOLATIONS IN THE IMPLEMENTATION OF COUNTER-TERRORISM LAWS

The Gülen Movement

The Gülen movement, inspired by Turkish cleric Fethullah Gülen, has been a primary target of Turkey's counter-terrorism laws, especially following the failed coup attempt in 2016. The Turkish government accused the movement of orchestrating the coup and designated it as a terrorist organization. Key points of this persecution include:

1. **Arrests and Detentions:** Over 130,000 public officials, including teachers, police officers, and judges, have been dismissed. Hundreds of thousands of people have been arrested or detained for alleged connections to the Gülen movement. These actions are part of a strategy to suppress dissent and silence political opposition **[4] [5] [6] [7]** . Turkey has been employing counter-terrorism and national security legislation to restrict rights and freedoms and silence the voices of human rights defenders **[2]** . Cases related to alleged membership in the Gülen movement, the PKK, or their civilian arm KCK are often classified as secret, resulting in lawyers being unable to access files until charges are brought. Nonetheless, parts of files or confidential information have repeatedly appeared in media close to the AKP **[1]** .
2. **International Pressure:** The Turkish government has made extensive efforts to capture and extradite individuals associated with the Gülen movement from abroad, often bypassing legal extradition procedures and cooperating with other governments to conduct abductions and forced returns. Over 100 individuals have been forcibly repatriated to Turkey **[3] [4] [6] [7]** . In the last three months of 2021 alone, no less than 1,220 human rights defenders suffered judicial harassment or reprisals **[2]** .
3. **Legal Irregularities:** Trials of Gülen movement members are marred by the retroactive criminalization of actions that were legal at the time they were committed. Evidence used in these trials is often questionable, and torture and ill-treatment are commonly employed to extract confessions. These practices undermine the credibility and fairness of the judicial process **[4] [5] [6] [7]** .
4. **Human Rights Violations:** Reports from various human rights organizations confirm allegations of torture and ill-treatment in detention centers. The vague and broad definition of terrorism in the law allows for the branding of peaceful human rights defenders as "terrorists," leading to increased investigations and prosecutions against them **[3] [5] [6] [7]** .

The Kurdish Movement

The Kurdish population in Turkey is disproportionately targeted under counter-terrorism laws. Key issues include:

1. **Arrests and Detentions:** Kurdish political activists, journalists, and ordinary citizens face arbitrary arrests and detentions. Charges often include terrorism propaganda and membership in armed organizations. The Turkish government uses counter-terrorism laws to suppress political expressions and activities related to Kurdish identity and right **[7] [5] [6]** .

The excessively vague and broad definition of terrorism in the law allows for the labeling of peaceful human rights defenders as "terrorist offenders" **[2]** .

2. **Suppression of Political Expression:** The Turkish government uses counter-terrorism laws to criminalize legitimate political activities and expressions related to the Kurdish movement. The broad interpretation of terrorism-related offenses leads to the punishment of individuals exercising their rights to peaceful expression and assembly **[6] [7] [2]** .

Turkey has been employing counter-terrorism and national security legislation to restrict rights and freedoms and silence the voices of human rights defenders 【2】 .

The extensive interpretation of the vaguely formulated Art. 220 of the Turkish Penal Code (criminal organization) by the Court of Cassation has further led to the criminalization of participants in demonstrations where PKK symbols were shown or which were called by the PKK - regardless of whether the person concerned was aware of this call or use 【1】 .

3. **Human Rights Violations:** Numerous cases of torture, ill-treatment, and unfair trials have been reported. The European Court of Human Rights has repeatedly condemned Turkey for these practices. The judiciary is often influenced by the executive branch, undermining the principles of independence and justice 【6】 【7】 【2】 .

The Turkish legal system restricts press and freedom of expression through numerous provisions of criminal and anti-terrorism laws. Since the coup attempt on 15 July 2016, the government has increased pressure on the media, opposition, and critical civil society through a series of measures. New laws, in particular, facilitate censorship, blockade, and prosecution of online reports and social media accounts" 【1】 .

Revolutionary Leftist Movements

Revolutionary leftist movements, particularly groups like the DHKP-C, face severe repression under Turkey's counter-terrorism laws:

1. **Arrests and Detentions:** Members and supporters of leftist movements are frequently arrested and detained on terrorism charges. These groups are banned both in Turkey and Germany, and their activities are closely monitored and suppressed. The broad application of counter-terrorism laws facilitates arbitrary arrests and detentions of individuals associated with these groups 【6】 【7】 【2】 .
2. **Suppression of Dissent:** Counter-terrorism laws are used to target leftist activists and suppress dissenting voices. This includes criminalizing participation in protests and political activities, and imposing severe restrictions on freedom of expression and assembly. The Turkish government has intensified its crackdown on media, opposition, and civil society since the failed coup attempt on 15 July 2016 【6】 【7】 【2】 .
3. Turkey has been employing counter-terrorism and national security legislation to restrict rights and freedoms and silence the voices of human rights defenders 【2】 .
4. **Human Rights Violations:** Leftist activists often face torture, ill-treatment, and unfair trials. Legal processes lack transparency and the principles of fair trial, leading to significant human rights violations. The use of secret witnesses and restrictions on legal representation further undermine the fairness of trials 【6】 【7】 【2】 .

CONCLUSION

The application of counter-terrorism laws in Turkey has led to significant human rights violations, particularly against ethnic minorities, political opponents, and groups such as the Gülen movement,

the Kurdish movement, and revolutionary leftist movements. The broad and ambiguous definitions in the law allow for misuse and arbitrary application, resulting in widespread discrimination and inequality. Urgent legal and institutional reforms are needed to ensure the protection of fundamental human rights.

RECOMMENDATIONS

1. **Legal Reforms:** Revise the Anti-Terror Law to clearly define terrorism and limit arbitrary interpretations. Ensure that counter-terrorism measures comply with international human rights standards.
2. **Judicial Independence:** Strengthen the independence and impartiality of the judiciary, free from political influence, to guarantee fair trials.
3. **Protection of Minority Rights:** Formally recognize and protect the religious and cultural rights of ethnic minorities. Ensure that Kurds are protected from discrimination under counter-terrorism laws.
4. **Freedom of Expression and Assembly:** Guarantee freedom of expression and assembly, and refrain from using counter-terrorism laws to suppress dissent. Ensure the release of individuals detained for exercising legitimate expression and protest rights.
5. **International Cooperation:** Collaborate with international human rights organizations to monitor and report on the situation in Turkey. Promote international cooperation and dialogue to address the root causes of terrorism and support human rights.
6. **Ending International Pressure:** Stop extrajudicial executions and forced returns, and comply with international legal standards in extradition processes.

NECESSARY STEPS

It is of utmost importance to implement the aforementioned recommendations to end the violations in the application of counter-terrorism laws in Turkey and to ensure fair judicial processes. The United Nations Human Rights Council should highlight these issues and collaborate with the Turkish government to ensure the implementation of these recommendations.

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2. OMCT, Report from 13.06.2022: „How Turkey weaponizes counter-terrorism legislation against human rights defenders“

Link: <https://www.omct.org/en/resources/reports/turkey-the-instrumentalization-of-the-counter-terrorism-legislation-and-policies-and-their-impact-on-hrds>

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1. EXECUTIVE SUMMARY

This report examines property rights violations related to the Gülen Movement in Turkey between 2019 and 2024. The report details the extent of these violations and the necessary legal framework for addressing them.

2. BACKGROUND AND FRAMEWORK

Legislation on Property Rights in Turkey: Property rights in Turkey are protected by various laws and international agreements, primarily the Constitution. Key legislative elements include:

1. The Constitution of the Republic of Turkey:

Article 35: Property rights are constitutionally guaranteed. Everyone has the right to property and inheritance. These rights can be restricted for public interest purposes, but such restrictions must comply with relevant constitutional provisions and laws.

2. Turkish Civil Code (TCC):

Article 683: The owner has the right to use, benefit from, and dispose of their property within legal limits.

Article 684: Property rights grant the owner absolute rights over the subject property.

3. Turkish Penal Code (TPC):

Article 54: Items used in the commission of a crime or obtained through the commission of a crime shall be confiscated. Confiscated items become state property.

4. European Convention on Human Rights (ECHR):

Protocol 1, Article 1: Every natural or legal person is entitled to the peaceful enjoyment of their possessions. No one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law.

5. Anti-Terrorism Law (Law No. 3713):

This law allows for the seizure of assets belonging to individuals involved in or supporting terrorist activities. However, such seizures must follow legal procedures.

6. Anti-Terror Financing Law (Law No. 6415):

Enacted to prevent the financing of terrorism, this law includes provisions for the freezing and seizure of assets allegedly linked to terrorism.

7. Decrees with the Force of Law (KHK):

KHK 667: Published in the Official Gazette on July 23, 2016, this decree regulates the seizure of assets of individuals and institutions allegedly linked to FETÖ/PDY.

KHK 668: Published in the Official Gazette on July 25, 2016, this decree regulates the seizure of assets belonging to terrorist organization members.

KHK 669: Published in the Official Gazette on July 31, 2016, this decree mandates the seizure of assets of closed institutions and their transfer to the Treasury.

The background and legal framework for property rights violations in Turkey have been shaped by various political and legal processes.

The Gülen Movement and the July 15, 2016 Coup Attempt

Following the coup attempt on July 15, 2016, the Turkish government declared the Gülen Movement responsible for the attempt and exerted intense pressure on individuals and institutions allegedly associated with the movement. This pressure led to the closure of many organizations and the seizure of their assets through Decrees with the Force of Law (KHK).

3. ASSAULTS ON PROPERTY RIGHTS

Property Rights Violations Related to the Gülen Movement

1. Institutions Associated with the Gülen Movement:

Post the July 15, 2016 coup attempt, the Turkish government applied extensive pressure on individuals and institutions allegedly affiliated with the Gülen Movement. Many properties were seized, and the owners faced significant legal and financial challenges. Legal processes regarding these seizures were often opaque. The first decree (KHK 667) was published in the Official Gazette on July 23, 2016¹. According to this decree, 35 health institutions, 1,043 private educational institutions, 1,229 foundations and associations, 19 unions, and 15 foundation higher education institutions were closed. Legal recourse against these closures was barred. Deputy Prime Minister Nurettin Canikli stated that the estimated value of the seized institutions was over 1 billion dollars.²

In 2017, the State of Emergency Commission was established to review objections from closed institutions.³ However, due to relevant legal regulations, this commission only accepted applications related to the closure of institutions, excluding additional measures (e.g., asset seizures). In 2019, the Constitutional Court found the closure of judicial recourse against additional measures unconstitutional and annulled the relevant decree, opening the way for affected institutions to seek legal remedy.⁴ Following the Constitutional Court's decision, the government enacted a new law (Law No. 7256) granting the authority to apply

¹ <https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm>

² <https://www.haberturk.com/ekonomi/is-yasam/haber/1271011-el-konulan-feto-varliklari-1-milyar-dolarin-uzerinde>

³ <https://www.resmigazete.gov.tr/eskiler/2017/07/20170712M1-1.htm>

⁴ <https://www.anayasa.gov.tr/tr/haberler/norm-denetimi-basin-duyurulari/dogrudan-ohal-khk-lari-ile-uygulanan-ilave-tedbirlere-karsi-dava-acma-hakkini-ortadan-kaldiran-kuralin-iptali/>

on behalf of closed institutions exclusively to the last authorized person before the closure, excluding company shareholders from this right.⁵

Denying application rights to company shareholders is considered a violation of property rights. Property rights entail the right of individuals to use and protect their assets. Shareholders have rights over the assets of the company due to their shares. However, granting application rights only to the last authorized person violated the shareholders' property rights, also infringing their right to access the courts. The right to access the courts includes the right to seek protection of one's rights through an independent and impartial judiciary. Denying shareholders this right also impeded their access to fair judicial proceedings, violating Article 6 of the European Convention on Human Rights, which guarantees the right to a fair trial.

Seized schools and universities were transferred to foundations and communities close to the government. Schools and dormitories associated with the Gülen Movement, closed by decrees post-July 15, were transferred to foundations like Ensar Foundation, İlim Yayma Cemiyeti, TÜGVA, and TÜRGEV. These transfers have led to significant public criticism and allegations of unfair handovers.⁶

2. Individuals and Companies Allegedly Associated with the Gülen Movement:

Reports by London Advocacy (London-based) and Platform for Peace & Justice (PPJ, Brussels-based) titled 'The Erosion of Property Rights in Turkey' provide a detailed analysis of the seized assets. According to these reports, within the first week following the coup attempt, 998 companies were seized, and 1,075 companies were closed. The total value of seized companies was approximately 32.24 billion dollars.⁷ Seized companies were sold to individuals close to the AKP regime at prices significantly below market value.

Naksan Holding: Seized by the Savings Deposit Insurance Fund (TMSF) in 2016 for alleged connections to FETÖ, Naksan Holding was sold to Ankara-based Yapıen İnşaat in 2022 for 92 million dollars. This sale price was reportedly far below Naksan Holding's real market value. For instance, Naksan Holding was said to have made a profit of TL 197 million (approximately 13.3 million dollars) even in 2019.⁸

⁵ <https://www.resmigazete.gov.tr/eskiler/2020/11/20201117-1.htm>

⁶ <https://boldmedya.com/2021/10/13/gulen-hareketinin-yurtlarina-coktuler-tugva-ensar-kadem-onder-ilim-yayma-cemiyeti-ganimet-gibi-paylasmis/>

⁷ <https://www.turkishminute.com/2021/07/13/billionsofdollar-changed-hands-after-the-2016-coup/>

⁸ <https://newsaboutturkey.com/2022/04/07/erdogan-forcing-tmsf-to-sell-hundreds-of-companies-seized-over-alleged-gulen-links-report/>

Boydak Holding: Its executives were prosecuted and convicted for alleged connections to FETÖ. The Supreme Court upheld the imprisonment sentences of the holding's executives and ordered the confiscation of the holding's shares.⁹

The Anti-Terror Financing Law of Turkey and the Freezing of Opposition Assets

After the 2016 coup attempt, the Turkish government, under the pretext of preventing the financing of terrorism, launched efforts to freeze the assets of opposition groups, particularly individuals and organizations alleged to be associated with the Gülen Movement. During this process, the scope of the Anti-Terror Financing Law (Law No. 6415)¹⁰ was expanded and used as a tool of repression against dissidents.

The Erdoğan regime systematically employed anti-terror legislation to seize the private property of businessmen allegedly linked to the Gülen Movement, leading to widespread violations of property rights and other human rights.¹¹

The Turkish government misused the 2019 FATF evaluation report to target opposition civil society organizations under anti-terror laws. As a result, numerous opposition members had their assets confiscated, and their activities were restricted within the framework of these laws.¹²

United Nations Special Rapporteurs have called on Turkey to align its anti-terror laws with international human rights standards, stating that these laws violate obligations related to fair trials and due legal processes.¹³

4. CONCLUSION

Between 2019 and 2024, property rights violations in Turkey, particularly against individuals and institutions associated with the Gülen Movement, represent a serious breach of both national and international legal standards. These actions have had severe financial, social, and personal impacts on affected individuals and institutions. The lack of transparency in legal proceedings and the obstruction of certain stakeholders from seeking judicial remedies have exacerbated these violations.

Key Points:

- **Widespread Seizures:** Large-scale confiscation of assets and closure of institutions without fair legal processes.

⁹ <https://www.cnnturk.com/turkiye/yargitaydan-boydak-holding-karari-35-sirkete-ait-hisselerin-musaderesi-onandi>

¹⁰ <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6415&MevzuatTur=1&MevzuatTertip=5>

¹¹ <https://www.hrw.org/world-report/2024/country-chapters/turkey#7ae00d>

¹² <https://www.amnesty.org/en/documents/eur44/4269/2021/en/>

¹³ <https://www.ohchr.org/en/press-releases/2021/06/turkey-stop-mis-using-law-detain-human-rights-defenders-urges-un-expert>

- **Limited Legal Recourse:** Restrictions on legal recourse, particularly for shareholders of companies.
- **Political Influence:** Transfer of seized companies and assets to institutions close to the government.
- **Human Rights Violations:** Systematic use of anti-terror laws to suppress dissidents and seize property, resulting in widespread violations of property and other human rights.

Comprehensive measures must be taken to address these issues, ensuring justice is served and restoring trust in the legal system.

5. RECOMMENDATIONS

To effectively address property rights violations and comply with international legal standards, the following recommendations are proposed:

1. Establishment of Fair Compensation Mechanisms:

- Develop a robust compensation framework providing fair and adequate compensation for unjustly seized properties.
- Compensation should be timely and reflect the actual market value of the seized assets.

2. Ensuring Transparent Legal Processes:

- Reform judicial processes to increase transparency and accountability in property rights cases.
- Establish independent oversight bodies to monitor and review legal procedures related to property seizures.

3. Improving Legal Access for All Stakeholders:

- Amend existing laws to ensure that all affected parties, especially company shareholders, have the right to seek judicial recourse.
- Legal avenues should not be arbitrarily restricted and should be accessible to everyone.

4. Strengthening International Cooperation and Monitoring:

- Collaborate with international human rights organizations for monitoring, technical, and advisory support.
- Encourage regular reporting and reviews by organizations such as the United Nations and the European Court of Human Rights.

5. Reviewing and Revising Anti-Terror Laws:

- Conduct a comprehensive review to prevent the misuse of anti-terror financing laws.
- Align these laws with international human rights standards to prevent their use as tools of repression.

6. Promoting Judicial Independence:

- Ensure that property rights cases are adjudicated impartially and fairly by protecting judicial independence.
- Implement measures to shield judges and legal professionals from political pressures and influences.

7. Raising Public Awareness and Education:

- Launch awareness campaigns to inform the public about property rights and existing legal protections.
- Educate affected individuals and communities on how to use the legal system and defend their rights.

8. Restitution of Properties:

- Return unjustly seized properties to their rightful owners as soon as possible or provide equivalent compensation.
- Ensure that restitution processes are conducted fairly and transparently.

9. Continuous Monitoring and Evaluation:

- Establish continuous monitoring and evaluation mechanisms to ensure the effectiveness of implemented measures.
- Collaborate with civil society organizations to make necessary adjustments to policies and practices.

Implementing these recommendations will help address the severe property rights violations in Turkey and contribute to the restoration of the rule of law.