**16 August 2017**

## TO UNITED NATIONS

## WORKING GROUP ON ARBITRARY DETENTION

**VIA FAX : +41 (0) 22 917.90.06 and**

**VIA EMAIL: wgad@ohchr.**

**:urgent-action@ohchr.org.**

**VIA MAIL : Working Group on Arbitrary Detention**

**c/o. Office of the UN High Commissioner for Human Rights**

**United Nations Office at Geneva**

**CH-1211, Geneva 10**

**Switzerland**

## “URGENT ACTION” REQUESTED

## [Acil başvuru talepli]

**APPLICANT : Ahmet Aydın** [Başvuran]

On his behalf

**İsmail Aydın**-Son [başvuruyu yapan yakınının ismi -yakınlığı]

**SUBJECT :** A submission to the Working Group on Arbitrary Detention (“Working Group”) for the purpose of its opinions procedure regarding the arbitrary detention of Mr. **Ahmet Aydın.**

[Bu bölümde başvurunun acil incelenmesini gerektiren sebeplerin yazılması gerekmektedir. Bu kapsamda ilk gündeme gelebilecek sebep ciddi hastalıklardır. Başvuranın hastalığı, hapishane koşullarında tedavi imkânı olmadığı veya hastalığının hapishane koşulları nedeniyle kötüleştiği gibi gerekçelerle gündeme getirilmelidir. Diğer bir acil sebep ise başvuranın gözaltı ve tutukluluk sırasında işkence ve kötü muameleye maruz kalması ve yeniden bu koşulların tekrar etme ihtimalidir. Acil sebepler yukarıdaki sebeplerle sınırlı değildir. Bu kapsamda akla gelebilecek diğer sebepler ve birden çok sebebin birleştiği durumlar acil başvuru kapsaminda olayın özelliğine göre yazılmalıdır. Örneğin hastalık, yaşlılık, sakatlık hapishane koşulları ile birlikte ve ayrı ayrı yazılabilecektir.

**Not:** Kutu içindeki bu tür uzun açıklamalar formda hangi alana hangi tür bilgilerin girileceğini açıklamaya yöneliktir. Bilgiler metne işlendikten sonra bu açıklamalar silinmelidir.

Basvuru formu örnek olarak hazırlanmış olup somut olayın özelliğine gore metin içeriğinde gereken değişikliklerin yapılması gerekmektedir. Bu bakımdan metin ingilizce bilen bir kişi tarafindan somut olayin özelliğine gore değiştirilerek yazilmasi gerekmektedir.

Gri vurgulu alanlar açıklama içindir formu doldurduktan sonra bu açıklama ile birlikte silinmelidir.

Sarı vurgulu alanlar başvuran bilgilerinin girilmesi gerekli alanlardır. Bilgi girildikten sonra sarı vurgu kaldırılmadır

**Summary :**

Bu bölümde varsa başvuranın gözaltı süresi dahil maruz kaldığı işkence kötü muamele iddialarına yer verilmelidir.

There are compelling reasons why the Working Group should consider Mr. …..’s case pursuant to the “**Urgent Action**” procedure. Firstly, Mr. ….. has been subjected to torture, ill treatment and other physical abuse while in custody. He has been physically threatened and abused, held in solitary confinement since his arrest, and deprived of food, water, medicine and proper medical attention. He was forced to confess to fabricated charges and threatened with harm to his family if he did not cooperate. Second, it is likely that Mr. …… will continue to be physically abused and tortured. Since Mr. ….. has been subjected to physical abuse and torture in the past, this reasonably leads to the conclusion that he will be physically abused and tortured again.

**WIDESPREAD AND SYSTEMATIC TORTURE AGAINST ALLEGED SYMPATHIZERS OF GULEN MOVEMENT**

Bu bölümde genel olarak FETÖ soruşturması kapsamında gözaltına alınan kişilerin sistemli olarak işkence ve kötü muameleye maruz kaldıklarına dair genel bilgiler verilmektedir.

In General;

It has been very well documented by International Human Rights Organizations that there are widespread and systematic torture and ill-treatment against alleged sympathizers of the Gulen Movement. Turkish government officials, top to down, continuously declaring that those who are close to the Gulen Movement will be facing harshest punishment. For example, Minister of the Economy Nihat Zeybekci said in a speech: **“*they will beg us to kill them’*”[[1]](#footnote-1)** The head of the Parliamentary Prison Committee Mehmet Metiner declared that ***“Torture claims will not be investigated if victims are Gulenists”*** and thus signaling that the government will ignore severe violations of human rights. The Minister of Interior Süleyman Soylu stated in an interview that ***“Arrests will continue down to the last Gulenist”.***

According to Human Rights Watch (HRW)[[2]](#footnote-2) the government’s decrees under the state of emergency facilitated torture by removing safeguards that protected detainees from mis­treatment.  Torture is used routinely to extract confessions from suspects and witnesses. Forms of torture and ill-treatment include: severe beatings, rape, verbal and psychological abuse, as well as denial of food, water, regular detention conditions and medical treatment.

The Government dissolved the prison monitoring boards, evidently with the intention of avoiding any allegation of torture and ill-treatment making it beyond prison walls. No national mechanism for the independent monitoring of places of detention existed following the abolition of the Human Rights Institution in April (2016) and the non-functioning of its successor body. The Council of Europe Committee for the Prevention of Torture visited detention facilities in August 2016 and reported to the Turkish authorities in November 2016. However, the government did not publish the report until the date of this petition. In addition, the government postponed a visit by the United Nations Special Rapporteur on Torture to the country, scheduled to take place from October 10 to 14, 2016.

The climate of impunity in the country was legally “reinforced” with the promulgation of the Decree Law No. 6679, which states that **“Legal, administrative, financial and criminal liabilities shall not arise in respect of the persons who have adopted decisions and fulfil their duties within the scope of this Decree Law.”**

An official document that was leaked to the press revealed how the government was concerned about a fact-finding visit by the Committee for the Prevention of Torture (CPT) of the Council of Europe (CoE) between Aug. 28 and Sept. 6, 2016 and ordered police to stop using unofficial detention centers such as sports halls. Since the attempted coup, an atmosphere of fear has been created by Turkish government where investigating, gathering information, reporting or speaking out against human rights violations  carries with it, almost certainly, the risk of being labelled “terrorist”, “traitor” or a “pro-coup” individual or organization.

Human rights groups documented that 53-people died as a result of physical and psychological torture but described by authorities as “suicides” in what appears to be a cover-up.[[3]](#footnote-3) The decrees deny detainees access to a lawyer for up to five days, leaving detainees in defacto incommunicado detention since family members were not granted accesseither.**[[4]](#footnote-4)** Medical examinations take place in detention facilities and in the presence of police officers. In addition, the authorities have repeatedly denied detainees and their lawyers’ access to detainees’ medical reports that could substantiate allegations of ill-treatment during arrest or detention, citing secrecy of the investigation. A pervasive climate of fear prevents lawyers, detainees, human rights activists, medical personnel and forensic specialists to report the torture as they fear that they will be next victim of government.

The maximum period of police detention for terrorism and organized crime was extended from 4 to 30 days. A lawyer told Human Rights Watch that her client had told her that a police officer, while threatening to rape him with a baton, had said that he would never leave the police station alive saying him that: ***“We now have 30 days”. [[5]](#footnote-5)***

According to Human Rights Watch Report[[6]](#footnote-6) one young legal aid lawyer told Human Rights Watch that she had felt so intimidated at the Ankara Police Headquarters that even when the police beat her client in front of her during the interrogation, she did not make an official note of this when she signed her client’s statement to the police. One Ankara-based lawyer trying to represent a university employee who was detained following the coup attempt told Human Rights Watch that he had been trying to see his client for more than 20 days, without success. The lawyer believed that the university employee had not seen a legal aid lawyer yet either. His wife had also not had any contact with him, he said. ***“Maybe he was tortured for 10 days and now they are just waiting for the bruises to heal,”*** the lawyer said: ***“We just don’t know.”***

As there was no link between the accusations and the people arrested after the coup, the authorities concentrated their efforts on extracting confessions through torture, the only means at their disposal. Since for the government each passing moment meant the return of the normal process of law and that the unlawful acts they committed would come to light, they are extending the state of emergency on the one hand and on the other they are ramping up the degree of torture in order to get confessions.

Sağlık koşulları ile ilgili sorunlar bu bölümde anlatılmalıdır. Başvuranın hastalığı, hapishane koşulları, tedavi yetersizlikleri, başvuranın durumuna göre yazılmalıdır. Aşağıdaki bölümde yazılan hastalıklar örnek olarak verilmiştir. Başvuranın hastalığına göre uyarlanmalıdır.

Secondly, Mr.\Ms…..’s case should be considered under “Urgent Action” procedures due to his ailing health. He is …… years old. He is suffering “chronic cardiac illness, chronic high blood pressure and kidney failure. ….. Recent information taken from his relatives indicate that Mr. ……s health has deteriorated. Mr. …… is being kept in a single cell [in an unsanitary and over-crowded room] with no access to medical care in ….. High-security prison. He is not given his normal medication and food. So far he has lost …..Kg weight. His current health condition is life-threatening. His health condition is deteriorating as he cannot get his urgent treatment.

Consequently, the Petitioner respectfully urges the Working Group to take the urgent nature of Mr. …….s situation into account. Accordingly, it is hereby requested that the Working Group consider this petition pursuant to its “Urgent Action” procedure. In addition, it is requested that the attached Petition be considered a formal request for an opinion of the Working Group.

**As detailed below, his continued detention violates fundamental guarantees of human rights enshrined in international human rights treaties and customary law and constitutes Category I, II, and III and V Arbitrary Detentions as defined by the Working Group on Arbitrary Detention (“Working Group”):**

**Questionnaire to Be Completed by Persons Alleging Arbitrary Arrest or Detention**

1. **IDENTITY OF THE PERSON ARRESTED OR DETAINED:**

Kimlik bilgileri ile ilgili doldurulması gereken bölüm

**1. Family name:** Soyad ….

**2. First name:** Ad …

**3. Sex:** Female –Male … cinsiyet

**4. Birth date or age:**  Born in December 17,1994. Dogum tarihi

**5. Nationality:** Turkish. Tabiiyeti

**6. (a) Identity document:** Turkish National Identity Card, (Kimlik Kartı veya eşdeğer belge)

**(b) Issued by:** ………… Veren Makam

**(c) On (date):** …………Verildiği Tarih

**(d) No. and Personal ID No.** : ………Numarası ve: …… TC Kimlik Numarası

**7. Profession and/or activity:** Mesleği ve mevcut işi ,….

**8. Address of usual residence:** ikametgâhı veya mukim olduğu yer …..

1. **ARREST :**

Gözaltı bilgileri ile ilgili doldurulması gereken bölüm:

**1. Date of arrest:** gözaltına alındığı tarih …..

**2. Place of arrest:** gözaltına alındığı yer (mümkün olduğunca detaylı anlatılacak) …..

**3. Forces who carried out the arrest or are believed to have carried it out:** Gözaltına alan birim: Turkish Police

**4. Did they show a warrant or other decision by a public authority?** Kolluk Kuvvetleri Gözaltı kararı gösterdi mi?

**(Yes)** Evet ........ **(No)** Hayır .........

**5. Authority who issued the warrant or decision:** …… (Evetse Kararı veren Birim)

**6. Reasons for the arrest imputed by the authorities:** …….. Karar varsa karardaki gözaltı gerekçeleri

**7. Legal basis for the arrest including relevant legislation applied (if known):**

Article 314 of the Turkish Penal Code), for membership in an armed organization… [biliniyorsa suçlandığı ceza kanunu maddeleri, silahlı örgüt üyeliği- başkaca suçlama varsa ayrıca ekleyiniz]

1. **DETENTION :**

Tutuklama bilgileri ile ilgili doldurulması gereken bölüm:

**1. Date of detention:** Tutuklanma tarihi ….

**2. Duration of detention:** Tutuklama tarihinden bu güne kadar gecen süre: From … to present.

**3. Forces holding the detainee under custody:** Turkish Police and Prison officials …Gözaltında tutan birim

**4. Places of detention:** Gözaltından itibaren başvuranın kaldığı gözaltı yeri dahil cezaevlerinin ismini yazınız. Mr. was preliminarily held at the Police Station, and was then transferred to .... He is now being held at the....Prison .

**5. Authorities that ordered the detention:** ………… Tutuklama kararını veren makamlar

**6. Reasons for the detention imputed by the authorities:** ………………………………………………………………………………………………………………………….…………………………………………………………………... Tutuklama kararına esas alınan gerekçeler (detaylı yazınız, tutuklama kararında kullanılan ifadeleri aynın kullanmanızda sakınca yok, bu suçlamaların saçmalığı bizzat bu karar gerekçelerinden okunuyor)

**7. Legal basis for the detention including relevant legislation applied (if known):** Article 314 of the Turkish Penal Code for membership in an armed organization. Atılı Suçların Ceza Kanunundaki Karşılığını yazınız

1. **DESCRIBE THE CIRCUMSTANCES OF THE ARREST and DETENTION:**

Bu kısımda Gözaltına alınma anı ve Tutuklanma anı ile ilgili gözlemlerinizi/şikayetlerinizi belirtiniz. Bu bölümde yer alan bilgiler yaşanan olaya göre değiştirilmelidir.

**A. ARREST: Gözaltı**

1. Mr...... was arrested on **16 August 2016** at his home in ...... by Turkish police.
2. **The police had no arrest warrant or search warrant** and that **the he was not informed about the reasons for their arrest**. When asked, the police told him that ***“this is a secret investigation”*** and they could not tell them anything other than a brief mention that the case was ***“related to”*** the so-called terrorist organization [**FETÖ** (***Fethullahçı Terör Örgütü-Fethullahist Terrorist Organisation)* / PDY *(Paralel Devlet Yapılanması – Parallel Government Formation).***
3. Mr. was handcuffed and immediately taken to ….. Police Station. At ……Police Station in ….. Mr. ……. questioned by the police. There was no lawyer present during the questioning. During the entirety of the time he was detained at the police station, has was not allowed contact with any family members. Mr. ….was reportedly detained in an underground cell at the police station without any information about why he had been arrested. As Mr...... did not know why he had been arrested, neither he nor his lawyer could prepare for the interrogation. Additionally, his lawyer was not permitted to speak in his defence, to correct baseless accusations or to object to any questions in any meaningful way.
4. He was held in a small and unsanitary cell. He was subjected to severe sleep deprivation; prior to official the interrogation, he was permitted to meet with his lawyer for the first time, but only for one minute and their conversation was recorded and filmed. During the detention meetings with his lawyer, their conservations were similarly restricted, monitored and recorded. As such, it was nearly impossible for them to discuss mistreatment in the prison or any details about his legal case. Lawyers were subject to full body searches when they visited, and they could not bring any legal documents with them. Furthermore, they could not leave any reading materials or notes with him
5. He remained at custody until **24 August 2016**. On that day, he was brought before a judge and he was placed in detention, without any evidence being presented against him or any grounds for keeping him detained.

**B. DETENTION: Tutuklama**

1. On **24 August 2016**, Mr was brought before a judge but he was not permitted to present any information in his defence.
2. He **was not permitted to choose his own lawyer. The Turkish government provided him with a state appointed attorney, but this attorney avoided of meeting him and tried to convince him to concede the charges/. Meanwhile, Mr. .....’s** chosen private attorney, who was deprived of basic information related to his client**.**
3. **He could barely meet with his lawyer for five minutes before the start of questioning**, **but once again, during the questioning, his lawyer’s ability to speak in his defence or to object to any questions or answers scripted by the police was limited.**
4. He was presented with a bunch of allegations and questions, but was presented with no evidence directly against him. All of the evidence referenced by the authorities was circumstantial, factually incorrect.He reportedly had to sign the quoted phrase as ***“I was given enough time and the proper environment to meet with my attorney and according to the accusations given to me, I gave my testimony with my free will”*** even though he was not given enough time to read the document.
5. **He was accused of** “having a bank account at Bank Asya, downloading ByLock app, being a student at a Gulen affiliated college. Being member of any Gulen affiliated Associations-Being member of Trade union, by making donations to charity organizations, organizing fundraising for students in need, sharing or retweeting any Gulen related social media account, -subscribing to any Gulen affiliated newspaper, journal or magazine, -sending his-or her children to Gulen inspired schools, -work for closed Gulen Movement affiliated institutions.

**(Suçlamalar Başvurana yöneltilen somut suçlamalara göre uyarlanmalıdır)**

1. Mr. ….. is still held detention and for 11 months 20 days without any official indictment. [Sulh Ceza Hakimi tarafından tutuklanmadan sonra geçen süreyi yazınız].

**V. INDICATE REASONS WHY YOU CONSIDER THE ARREST AND/OR DETENTION TO BE ARBITRARY. SPECIFICALLY PROVIDE DETAILS ON WHETHER:**

1. **CATEGORY I – The basis for the deprivation of liberty is authorized by the Constitution or the domestic law?**

**The Petitioner Has Been Arrested and Detained Without Any Legitimate Legal Basis, In Violation of the Turkish Constitution, Turkish Penal Law, and ICCPR Article 9, and UDHR Article 9**

1.Bölüm: Bu bölümde gözaltı ve tutuklamanın özellikle iç hukuka uygun olmadığı ortaya konulmalıdır. Ic hukuka aykırılık haksız tutukluluk açısından en ağır ihlal türüdür. Bu bölümde Çalışma Grubu esas olarak Medeni ve Siyasi Haklar Sözleşmesinin haksız tutukluğu düzenleyen 9.maddesi kapsamında konuyu değerlendirmektedir. Bu madde, Avrupa İnsan Hakları Sözleşmesi 5.maddesi ile aynıdır. Bu kapsamda, özellikle tutukluluğu gerektiren makul şüphenin olmadığı, terör suçlamasına konu olan eylemlerin yasal faaliyetler olduğu, tutuklamaların suçların geriye yürümezliği, kanunsuz suç ve ceza olmaz ilkeleri gibi temel hukuk ilkelerine aykırı olduğu hususlarının altı çizilmekte ayrıca tutuklanma, tutuklamanın devamına itiraz kararlarının gerekçeden uzak basmakalıp olarak verildiği konuları üzerinde durulmaktadır.

ICCPR Article 9(1) explicitly requires that no one “be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” Therefore, any deprivation of liberty must be compatible with the **substantive and procedural domestic** **laws**. Failure to comply with domestic law entails a breach of ICCPR Article 9(1). In connection to this, applicant’s arrest and detention is not compatible with substantive domestic law and against basic principles of law.

**In General:**

There has been a coup attempt in Turkey on the night of July 15, 2016. Even though the attempt was perpetrated by soldiers and military officers, starting the next day, judges, prosecutors, journalist, businessmen, academics, civil servants, teachers etc. were detained accused of being member of an organization that perpetrated the coup attempt. Most of the arrested individuals did not have any connection with the coup attempt.

There is a growing consensus that the rule of law has been effectively suspended under the renewed emergency rule and that the courts are practically controlled by the authoritarian regime of President Erdoğan, who does not hesitate to abuse the criminal justice system to persecute alleged Gulen Movement supporters as political opponents.  Most in pre-trial detention, on trumped-up charges of terror and coup plotting while some 150.000-people arrested and interrogated and soma 55.000 of them have been detained by Judges of Penal Peace with the accusation of the member of terrorist organization in the last ten months alone. There is an emerging pattern involving the arbitrary deprivation of liberty of Gulen Followers in Turkey.  The arrest and detention of more than 150.000 individuals had been motivated solely by their social background

Chronologically speaking first, on December 17-25, a corruption investigation was launched against the top names of the government by Istanbul prosecutors. Later, the government members declared that they are innocent and began to depict the investigation as a civilian coup perpetrated by the Gulen Movement. Despite the fact many recordings of corruption incidents and images of boxes of money published in the social media, the government succeeded to get the support of the people. They depicted the Gulen Movement as a clandestine parallel organization aiming to obstruct Turkey’s progress while they themselves were innocent. In the meantime, the four ministers involved in the corruption scandal were ousted and the key name of the investigation, a businessman “Reza Zarrab” was arrested in the United States due to his illegal international monetary transaction. His bail request of $50 million was rejected by the New York court due to the preponderance of the evidence of crime.

After the corruption investigation, without any legal basis, with a political decision a civil society Movement has been framed as armed terrorist organization. As stated above, main reason for that is Movements’ political position against Erdogan Regime.

After National Security Council (MGK) meeting of 26 May 2016, President Erdogan gave a public speech in Kirsehir province on 27 May 2016 and said: “Yesterday, we had a new decision (in MGK). We said, illegal organization under legal outlook. We will register them as a terrorist organization because they’ve made this nation to suffer a lot. They have broken this nation, this ummah into pieces. We cannot allow them to break the ummah into pieces.” From these remarks, it can be clearly understood that it has nothing to do with legal process or courts. As a politically opposing Movement was framed and labelled as an armed terrorist organization without any single evidence **regarding violence.**

Despite relentless effort of Erdogan Regime making a connection between the Movement and violence till 15 July 2016 there was no single evidence about it. As far as coup attempt is concerned, even after one full year, the Turkish government has failed to present convincing and solid evidence that proves the Gulen Movement was behind the coup attempt, either as mastermind or participant.[[7]](#footnote-7) The fabricated and forced testimonials apparently taken under heavy torture in custody were later refuted by defendants when they appeared in court for trial hearings. As the research published or reported by international institutions has revealed, the officers who are charged with attempting the coup have various ideologies and backgrounds. In most cases, the troops were mobilized over impending terror threats or as part of a military drill, defendants’ statements in the court have shown.[[8]](#footnote-8)

A report published by the German Focus magazine in August claimed that Turkish government members decided to put the blame for the coup attempt on Gulen half an hour after the uprising and agreed to begin a purge of Gulen followers the next day. According to the article that was sourced on the British intelligence and security organization Government Communications Headquarters (GCHQ) that provides signals intelligence (SIGINT) to the UK Armed forces and the government, communications among Turkish government officials pointed out at the plot to present Gulen as the brain behind uprising and plan to launch mass purges. [[9]](#footnote-9)The report by INTCEN states that “The European intelligence contradicts the Turkish government’s claim that Fethullah Gulen, an exiled cleric, was behind the plot to overthrow the Turkish government.” It added, “It is unlikely Gulen really had the abilities and capacities to take such steps.”[[10]](#footnote-10)

A report by the Foreign Affairs Committee of the British Parliament on U.K.-Turkish relations stated that the “U.K. government does not have any evidence that U.S.-based cleric Fethullah Gulen organized Turkey's July coup attempt.”[[11]](#footnote-11)

When asked by Der Spiegel, whether Gulen was behind the coup as claimed by Erdogan, Bruno Kahl, Head of Germany’s BDN Foreign Intelligence Agency responded, "Turkey has tried to convince us of that at every level but so far it has not succeeded"[[12]](#footnote-12)

Adding to the suspicions about the government narrative was the Erdogan government’s apparent unwillingness to fully investigate the incident. The parliamentary investigatory commission was delayed because the ruling AKP party was slow to appoint members to the commission. Once formed, the commission, dominated by AKP members, refused to call key witnesses for testimony, such as the chief of national intelligence and the military’s chief of general staff. Mithat Sancar, an opposition member of the commission said the following: The ruling AKP did not form this commission to illuminate the coup attempt. They constructed a coup narrative. The ruling AKP has a narrative about the coup attempt. They were expecting (this commission to produce) a work that would support this narrative.

There are many instances in world political history of authoritarian and totalitarian leaders who have orchestrated fake coups, staged false assassinations, set up uprisings, and plotted “false flags” to consolidate their power, mobilize public support behind them, by-pass checks and balances, sideline parliamentary and judicial scrutiny, and silence civil society, dissidents, and the media. Indeed, before the coup Erdoğan tried to cause public unrest but failed in such scandalous fabrications as the “Assassination on Erdogan’s daughter,” in which he implicated the opposition CHP, and the “Mass attack on a veiled pro-AKP woman by half-naked men” which supposedly occurred in the Kabataş district of İstanbul during Gezi Park protests.

It seems that to make a connection with Movement and violence, Erdogan Regime have orchestrated a fake coup and blamed the Movement as armed terrorist organization. Therefore, it is not surprising to see Erdogan’s statement that “**It has become evident that this group is an armed terrorist organization**,” which he made on 16 July 2016 at 03:21.

Even if it is accepted that Gulen Movement organized coup attempt and with this attempt it became Armed Terrorist Organization, the principle of non-retroactivity envisages that a criminal law cannot be applied to the past to prosecute crimes committed before the law was enacted. As stated by Human Rights Commissioner, Nils Muiznieks on 7 October 2016, Gulen Movement was considered to be an entirely legal entity before 15 July 2016 and people can only be held accountable for connections made after this date. A similar opinion was expressed by the report by the Venice Commission on the emergency decrees dated 12.12.2016. As the Gulen Movement was considered a completely legal entity until this date, people believed that they helped or became a member of a legal entity and acted accordingly. They did not act thinking that they were members of an illegal terrorist organization. If the activities before 15 July 2016 are claimed to be a basis for the alleged crime, then the situation proves that there is no intent to be a member of a terrorist group because no one considered the Gulen Movement a terrorist organization before 15 July 2016. Membership to an entity that is not considered a terrorist organization makes the alleged crime void. Without intent (i.e. knowing that an entity is a terrorist organization and becoming a member willingly), it is impossible for an element to constitute a crime. The element of “intent” is fundamental in a crime, without which a crime cannot be committed. So only solid evidence belonging after this date can provide a basis for allegations.

In the present application, the applicant was arrested and detained without being shown any evidence about the aftermath of 15 July 2016, and the detention was carried out when there was no reasonable doubt with respect to the alleged crime.

As will be seen below reasons for arrest and detention of applicant not only totally legal activities but also the fundamental human rights protected by the Articles 18-19, 21-22 and 25-26-27 of the International Covenant on Civil and Political Rights.

**Examples of fabricated charges in Turkey**

The following acts have been primarily used by the Turkish government as pretexts for the arrest and detention of alleged members of the Movement although **they are not defined as crimes in the law**. The list is not exhaustive but is indicative of a larger problem in the abuse of the criminal justice system by the Turkish government and represents a clear breach of Turkey’s obligations under international conventions. The Turkish government remains deliberately ambiguous when repeatedly asked about what criteria and evidence it has used to round up tens of thousands of people based on their alleged affiliation with the Gulen Movement. But, based on arrest and detention warrants, indictments and court trials, the criteria below, which have no basis in the law and do constitute criminal activity at all, appear to be driving the mass dismissals, arrests and escalating persecution in Turkey.

1. **Subscriptions to the Gulen affiliated Zaman newspaper, journal or magazine**

With nearly 1 million sales and subscriptions[[13]](#footnote-13), the Zaman daily was Turkey’s highest circulated newspaper. It was one of the leading critical newspapers that dared to publish articles about corruption investigations that rattled the Turkish government and incriminated Erdoğan and others. On March 4, 2016, the Turkish government confiscated Zaman and appointed partisans to run the newspaper despite the fact that the Turkish Constitution explicitly bans seizure or confiscation of publication/broadcasting organs. The editorial line of the newspaper became pro-Erdoğan overnight after the seizure.

The Zaman daily, right after the failed coup on July 15, 2016, was shut down with the emergency decree-law no. 668, dated July 27, 2016.Many examples from arrest warrant and indictments indicate that a subscription to the Zaman daily is used as evidence of membership in a terrorist organization. Furthermore, the accusation is not confined to subscribers; their spouses and children, too, have been facing the same accusations. Considering that Zaman was at one point in time selling 1,2 million copies a day, the Turkish government considers such a large number of subscribers to be suspects. The number multiplies when one factors the spouses and children in the tally.

Today, thousands of people have been put under arrest simply for being a reader of a newspaper that was sold at almost all newsstands, was subscribed to and paid for by credit card and was published under guarantee of the law, the constitution and international agreements.

Not only Zaman but other critical publications such as the Bugün daily, the Aksiyon weekly news magazine and the Sızıntı monthly periodical were also listed as criminal evidence by prosecutors who investigated their subscribers. If there is any record of a subscription, it is included as evidence in indictments.[[14]](#footnote-14)

1. **Being a client of Movement Affiliated Institution like Bank Asya**

Bank Asya was one of the biggest private banks in Turkey until it was unlawfully seized by the government in May 2015. The bank, which had 210 branches, 5,000 employees and around 1.5 million clients, was founded on October 24, 1996 upon formal approval from the regulators. It has operated under the supervision of the independent regulatory bodies in Turkey that were responsible for overseeing the banking sector.[[15]](#footnote-15) It was a popular bank and among the top sponsors of sporting events, charitable work and community events. It was the official sponsor of the Turkish Football League at the secondary level between 2008 and 2012.[[16]](#footnote-16)

The bank was one of three banks with the highest liquidity in Turkey, yet it was targeted by Erdoğan because its shareholders included investors who were seen as close to Gulen. At least 700,000 people were reportedly put under investigation for their connections to the bank.[[17]](#footnote-17) In some cases, the court documents say “the defendant and his/her partner/ husband/wife were investigated to find out whether they had any account in Bank Asya or any transaction record withit. All kinds of banking transactions they made such as deposits, withdrawals, money orders and electronic fund transfers (EFT) were examined.” If any transaction record with Bank Asya is discovered, it is accepted as evidence of membership in a terrorist organization in the indictment, is treated as such in the trial, and the conviction is rendered accordingly.[[18]](#footnote-18)

According to current banking rules in Turkey, deposits of less than TL 100,000 are under state guarantee. Even if the bank faces bankruptcy, the Savings Deposit Insurance Fund (TMSF) has to pay this amount of money to depositors. The TMSF has repeatedly announced that it would pay those who have less than TL 100,000 in their accounts if Bank Asya were to go bankrupt.Indeed, this statement is a kind of admission that depositing money in Bank Asya was not a crime. The number of clients who have less than TL 100,000 in deposits -- the state guaranteed amount -- in Bank Asya is around 1,2 million. It is understood that together with clients who have higher amounts of deposits or those who have other kinds of transaction records with Bank Asya, such as loans, money orders and EFTs, the number of people who have made any kind of transaction with the bank exceeds 1,5 million. All those people are considered potential criminals.

1. **Union membershi**p

Unions are among those civil society organizations that people close to the Gulen Movement had founded according to the rules and regulations in effect at the time.[[19]](#footnote-19) The Aksiyon-İş Union was established in education but soon expanded to include other industries and became a confederation of unions representing labor in various sectors. Facing new competition that became popular in a very short period of time, Memur-Sen, a pro-government union, was furious to see a new player in the union field. This issue has become one of the major areas of conflict between the Gulen Movement and Erdoğan. After the corruption and bribery investigations of December 17/25, 2013, unions close to the Movement came under increased pressure from the government. the Erdoğan Regime shut down all 19 unions, federations and confederations with decree-law no. 667. Administrators and members of the unions also faced detention and arrest in large numbers.[[20]](#footnote-20)

Overnight, the Turkish government declared legally operating unions that it had allowed to be established and for whose members it had paid union membership fees to be criminal organizations and their members terrorists. Being a member of one of the unions has become grounds for conviction. if you have taken December 17/25 as a milestone and called participation in institutions close to the Hizmet Movement support for terrorist activities, including some organizations that are legitimately operating under statesupervision, that is a contradiction in itself. For example, Aktif Eğitim-Sen.continued its legitimate activities after December 17/25, Moreover, the government paid the membership fee onbehalf of the members that is required to join this union. Would it be reasonable to present a relation with an organization that is seen ‘legitimate’ by state as evidence of a relationship with a terrorist organization?[[21]](#footnote-21)

The Cihan-Sen confederation, consisting of unions that were established by public employees, had 22,104 members in July 2016 according to government data. 50 A total of 18,015 of these members were under the roof of Aktif-Sen, which was established in the education sector. Today, all of these members are at risk of being charged with membership in a terrorist organization. Thousands of teachers have already been arrested and face prosecution just because they were members of these unions.[[22]](#footnote-22)

1. **Membership in business association like TUSKO**N

The Turkish Confederation of Businessmen and Industrialists, best known by its acronym TUSKON, was the umbrella organization for 211 businessmen’s associations in Turkey and 150 others in several countries. It was organizing investment and business and trade fairs under the auspicesof the Turkish government. However, TUSKON was shut down on July 23, 2016 with decree-law no. 667. The government has seized almost 1,000 companies in the last year alone, and $11 billion in corporate assets have been confiscated.[[23]](#footnote-23) The personal assets of TUSKON members were also frozen or seized.

Today regarded as a terrorist organization, TUSKON, with its more than 40,000 members, was the most popular and effective businessmen’s organization in Turkey just three years ago.[[24]](#footnote-24)**Then-Prime Minister Erdoğan, accompanied by several Cabinet ministers in charge of economy and trade, used to participate in the general assembly meetings of TUSKON**.[[25]](#footnote-25) Even the wildest imagination could not have suggested that such a respectable organization would be labeled as and declared a terrorist organization. In what kind of justice system could one accept such arbitrary and unreasonable accusations as legitimate and regard the members of a perfectly legitimate organization as criminals by disregarding the legal principle of retrospectivity. This is unfortunately what has been happening for quite a while in Turkey.

1. **Volunteering for the [Kimse Yok Mu Charity]**

Kimse Yok Mu, a charity organization that was set up in 2004 in Istanbul[[26]](#footnote-26) and had quickly developed internationally recognized relief programs in partnership with the UN High Commissioner for Refugees (UNHCR)The group was the only aid agency that held UN Economic and Social Council (ECOSOC) special consultative status. Having been active in 113 countries for years, Kimse Yok Mu developed the capacity to deliver emergency relief in disaster zones as well as to rebuild infrastructure in communities, thereby providing long-term assistance, which includes the construction of homes, hospitals, schools and health facilities.

However, it came under fire by the Turkish government when Erdoğan started attacking the Gulen Movement. First, Kimse Yok Mu’s licenses to raise, hold and use funds in charitable work were suspended on September 22, 2014, and the charity was later shut down completely after the failed coup on July 15, 2016. Volunteers, staff members and executives of Kimse Yok Mu faced legal action by the government. Many employees were jailed or faced arrest and prosecution on dubious charges. Ironically, **it was Erdoğan himself who participated in Kimse Yok Mu’s fundraising drives and asked businesspeople to contribute to the charitable cause**. Hüseyin Avni Mutlu, former governor of Istanbul and currently in pretrial detention, was arrested on terrorism charges because he donated TL 20 ($6) to Kimse Yok Mu at one time. [[27]](#footnote-27)

1. **Possession of the books or other published materials of Fethullah Gulen.**

Following the July 15, 2016 coup attempt, one of the charges used for substantiating arrest warrants and indictments is possession of books or other published materials by Fethullah Gulen. With government decree-law no. 668, dated July 27, 2016, publishing houses that printed and distributed Gulen’s books were shut down.[[28]](#footnote-28) Following that, upon a petition by the Bakırköy Chief Public Prosecutor’s Office, a penal court of peace ruled to ban the sale, distribution and publication of 672 books and digital media products authored by Gulen. The judgment also stipulated t**he collection of all published works by Gulen as criminal evidence and ordered a halt to their further publication.** Considering that Gulen has authored 64 books so far, with some selling as many as 1 million copies in Turkey and many translated into dozens of other languages, the classification of these books as criminal evidence implicates millions in Turkey as suspects.

Even before the decree-law and the Bakırköy court decision, the government treated possession of books and magazines of the publishing houses listed as shuttered in decree-law no. 668 as a crime. Fearing prosecution for owning such books and magazines that were perfectly legal before, people started burning or destroying them and even throwing them in the garbage. There were reports that the police collected some of these banned books from dumpsters and that people were arrested if their fingerprints were found on them.

People were in a panic and tried to find ways to get rid of these books and magazines, which had been sold with the permission of the Ministry of Culture and could be found on the shelves of public libraries. Unfortunately, arrests for this reason had already started before decree-law no. 668. These written materials, which in no way promote terror or violence, were banned not by a judicial decision but by an administrative one. Following the said decree, the Gulen-affiliated NT bookstores, the largest bookstore chain in Turkey before it was seized by the government and later shut down, were raided by AKP followers.

In a country where the rule of law is respected, books that do not promote terrorism or violence cannot be banned and people in possession of these books cannot be accused of membership interror organizations. However, more interestingly, biology, chemistry, mathematics and physics textbooks and test books as well as other relevant publications by publishing houses that were linked to the Gulen Movement, which was operating in the fields of education and culture, with many training centers and the nation’s best performing private schools, were banned, and accordingly hundreds of thousands of these textbooks were burned.

1. **Cancellation of Digiturk subscription**s

One of the most arbitrary and absurd reasons for arrest in the wake of the July 15, 2016 coup attempt is the cancellation of Digiturk subscriptions. Digiturk,which had previously been a subsidiary of the Çukurova Media Group, was seized along with the Akşam daily and Show TV and brought under the control of the government. Other media organs of the group were handed over to businessmen affiliated with the AKP. The Akşam and Güneş dailies were transferred to Ethem Sancak, a member of the AKP’s executive board. Sancak recently turned these media outlets over to an associate of Erdoğan. Digiturk remained under the control of the Savings Deposit Insurance Fund (TMSF) for quite a long time. Then it was sold without a competitive bidding process, under dubious and questionable circumstances, to a Qatari business group having close relations with President Erdoğan.Digiturk was one of the leading actors in silencing the free media opposing Erdoğan. Firstly, TV networks close to the Gulen Movement and then Kurdish TV stations were portrayed as targets. On the one hand Erdoğan ordered public monopoly Türksat, which controls the satellite broadcasting sector, not to provide service to dissenting TV stations, and on the other, he requested that the Digiturk broadcasting platform exclude them from its channel list. Erdoğan’s request, which was incompatible with freedom of the press and freedom of expression as well as commercial law, was immediately enforced. The civilian and political opposition protested this arbitrariness.

Advocacy groups and press associations made statements underlining the unlawfulness and arbitrariness of the government actions.A campaign to boycott Digiturk was initiated. This was supported by many including people who oppose the Gulen Movement. The main opposition CHP’s present and former leaders, Kemal Kılıçdaroğlu and Deniz Baykal, respectively, too, supported the boycott. Although the MHP, the junior opposition party in Parliament, was not institutionally supportive of this initiative, some MHP deputiesjoined the boycott.

Even such a purely civil, democratic and lawful boycott was considered evidence allegedly underpinning the terrorist organization accusations levelled against the Gulen Movement after July 15. Cancelling Digiturk subscriptions has been among the issues put under investigation.

Information provided by the Digiturk company on the status of subscriptions was considered enough to put one under arrest, as happened in the case of M.K., who was prosecuted at the Antalya 8th High Criminal Court. This arbitrary practice led to grave injustices as well as enormous risks.

Cancelling a Digiturk subscription is considered evidence of membership in a terrorist organization in some indictments. Likewise, making public statements in support of the boycott against Digiturk or instructing party bureaus across the country to broaden the said campaign as the main opposition Republican Peoples’ Party (CHP) had done in protest of removal of critical TV networks from the Digiturk lineup were regarded as an aggravating circumstance, too. In a country where ordinary people are arrested for merely cancelling their cable television subscriptions in response to these boycott calls, it is difficult to imagine how the rule of law still applies.

1. **Possession of one-dollar bills**

Another absurd “indication” that a person is linked to the Gulen Movement is the possession of one-dollar bills, claimed by the Turkish government to have a secret code contained in the serial numbers used among Movement members. It is not clear how the government came up with this conspiracy or based on what evidence, but many believe it was concocted by the Erdoğan regime to provide the appearance of mysterious plot to justify the persecution of members of the Gulen Movement.

The simple explanation for the serial numbers was provided by the Bureau of Engraving and Printing of the US Department of the Treasury, which stated that the first letter of such a serial number identifies the Federal Reserve Bank (FRB) that issued the note; since there are 12 FRBs,97 this letter is always between A and L for one-dollar notes. Many people were arrested just because they carried dollar bills in their wallets or kept them in their homes, and the arrest warrants pointed to the discovery of these bills during the execution of searches of residential or commercial locations.

A striking example of this absurdity is the arrest of NASA physicist Serkan Gölge, a 36-year-old US citizen of Turkish origin. He was vacationing in his hometown in the Turkish border province Hatay and was arrested after the failed coup when he was at the airport to return to Houston He was accused of being a CIA agent, and the evidence was a dollar bill.98 The Committee of Concerned Scientists and Endangered Scholars Worldwide issued a plea for his release. Nineteen-year-old student Yavuz Selim Yayla was arrested for having US dollar bills in his backpack on July 22, 2016 as he was on his way to spend time with his father, who lives in the US.

The indictments filed against defendants by prosecutors claimed the Movement distributed F-series dollar bills to top administrators in the network, while C-series to managers and J-series to all members were handed out.

There is no evidence that this was the case, and the Movement denied any such conspiracy or secret communication. Perhaps the only and very simple explanation is provided by the Bureau of Engraving and Printing, which states that F-series one-dollar notes were printed by the FRB in Atlanta, the C series in Philadelphia and the J series in Kansas City.The US Federal Reserve reported $11.7 billion in one-dollar bills in all letter series in circulation as of 2016103 and plans to issue $2.4 billion in 2017 and $2.2 billion in one-dollar bills for the year 2018.104 Considering the billions of onedollar bills in circulation, it is far-fetched

1. **Criminalization of encrypted softwar**e **[By-Lock]**

The Turkish government is also moving forward with a campaign to criminalize encryption software that was a publicly available smartphone application that allowed users to communicate between each other privately and using encryption. It was available to download via the Google Play store onto handsets running the Android operating system and via the Apple iTunes Store onto handsets running the Apple iOS operating system.[[29]](#footnote-29)

According to the expert[[30]](#footnote-30) Bylock App was used exclusively by those who were members or supporters of the Gulen Movement utterly unconvincing and unsupported by any evidence. Indeed App was widely available and used in many different countries. the App was available to everyone, it had features that could be attractive to many and was used in many countries. The App had been downloaded throughout the world and was in the top 500 Apps in 41 separate countries. It is ridiculous to suggest that all those users were members of the Gulen Movement.It follows that if the Bylock App cannot sensibly be claimed to be the exclusive province of those members and supporters of the Gulen Movement then there can be no justification for the arrest and/or detention in Turkey of those who had used the App without other compelling evidence.

It is confirmed by the Bylock Application Technical Report produced by representatives of Turkey’s national intelligence agency or MIT that the Bylock App was taken down in mid March 2016. After that time, no-one could use the App. The Turkish government added the Gulen Movement to a list of terrorist organisations in Turkey in May 2016 (this is not the same as proscription which must be decided by a Court of Law); as a result, only ongoing membership or support, after May 2016, was capable of being construed as support for a Movement that had been registered as a terrorist organisation. Since the Bylock App could no longer be used after this date anyway, its alleged use at any point in time cannot be used as evidence to convict anyone of being a member of a terrorist organisation. Put differently, the use of the Bylock App was lawful in Turkey for as long as it was capable of being used.

Critics say, however, that the use of a technological application is not a criminal activity nor is it evidence of membership in a terrorist organization. Judicial experts suggest that a person cannot be accused for using a certain means of communication, adding that they can be accused only if there is an element of crime in their messages.**[[31]](#footnote-31)**

For instance, the Telegram Messenger application, which allows users to send messages between each other in an encrypted form and with the option to configure such messages to self-destruct after a specified period. This application is publicly available in a similar manner to Bylock, albeit on a larger scale, and is financed privately. There is compelling evidence to show that Telegram has been used by ISIS as a secure communication tool and yet there is no move by law enforcement authorities to detain every user of the service. It is generally recognized and accepted that, with such services, there is a clear distinction between the functionality provided by an application and those who seek to use it for a variety of purposes.[[32]](#footnote-32)

An appraisal of the MIT report used as a basis for conviction

The MIT report contains glaring inconsistencies, speculation masquerading as technical evidence, and assertions that are either factually unsustainable or put forward without any evidential source or justification. Furthermore, the report draws a number of conclusions without eliminating more plausible and straightforward explanations. Reasons and examples are given for each of these appraisals in the body of the report. As such it is impossible to say whether the assertions are correct or not. In consequence of this, no Court receiving the MIT report would be in a position properly to assess the credibility or accuracy of the assertions, and so it would be quite unfair and improper for any Court to rely upon those assertions to found a conviction.

There are a number of assertions contained in the MIT Report which are fundamentally contradictory. For example, the MIT report contends that the Bylock operators used IP blocking to force its users to access the Bylock App via a VPN (virtual proxy network) while simultaneously claiming that IP addresses were used to identify Bylock users. These two assertions are mutually incompatible, since the IP addresses of VPN-users cannot be identified.

The MIT Report asserts that access to Bylock was being limited and tightly controlled to ensure that access was limited to members of the Gulen Movement, yet the report acknowledges that the Bylock App was available for download from the Google Play Store and the Apple Store. Not only did this mean that there was no means of controlling access to the App, but it was downloaded over 600,000 times between April 2014 and April 2016 by users all over the world. The fact that the App was openly available to anyone in the world to download is simply incompatible with the assertion that access to the App was limited, tightly controlled and available only to a limited group of users.

The observations in relation to SSL certification of the MIT Report are factually unsustainable and reflect either a lack of understanding on the part of the author of the MIT report or an intention to mislead a non-technical reader.

It is a fundamental principle of a fair trial that a suspect has the right “to examine or have examined witnesses against him” this is enshrined in ICCPR Article14. The use of the MIT report (or other variations) on Bylock at trial as evidence is a clear breach of this convention right. The authors of the report were not identified, they did not give evidence, no-one knows who they are, their qualifications and experience are unknown and the mechanism by which they arrived at the crucial conclusion upon which any verdict will turn is not revealed. No questions can be asked of the authors of the report; how what evidence they relied upon to come to the belief that only supporters of the Gulen Movement downloaded the Bylock App.

They also say that a court order is required to conduct technical surveillance and to be able to present the findings in court as evidence. The case law in Turkish courts stipulates that technical surveillance data collected without a court order is not considered admissible evidence. Yet, prosecutors and courts under pressure from the Erdoğan government continue to treat as suspects the hundreds of thousands of people whose names purportedly appeared on a list that was prepared by Turkey’s National Intelligence Organization (MİT) as alleged to have downloaded the ByLock software. Many believe the list is based on unlawful profiling of unsuspecting citizens based on their critical views of the government. A letter sent by Turkey’s Security Directorate General to all police units in the country in October 2016 told police officers to secure confessions from individuals who have been detained due to their use of ByLock because mere use of the application is not considered a crime. Yet tens of thousands of people continue to languish behind bars in Turkey for simply downloading the application.

For example, Aydın Sefa Akay, a judge for the United Nations Mechanism for International Criminal Tribunals (MICT), was arrested on terrorism and coup charges on September 21, 2016 based on, among other things, his use of ByLock software. During a hearing at the Ankara 16th High Criminal Court, Akay said he used ByLock along with other instant messaging programs. Akay said he downloaded the application from the Google Play Store upon the recommendation of a friend from Burkina Faso. In its resolution dated February 8, 2017, the UN held that Akay enjoyed privileges and immunities accorded to diplomatic envoys under international law when engaged in the business of the mechanism, even while carrying out their functions in their home country. The case was referred to the UN Security Council, which was asked to oblige Turkey to comply with his release. In June 2017 Akay was handed down a sentence of seven years, six months on charges of membership in a terrorist organization; yet, the court decided to release him subject to the imposition of a travel ban. If Akay’s sentence is upheld by the Supreme Court of Appeals, he will be sent to prison to serve his time in prison.

The criminalization of encrypted software drew the ire of David Kaye, United Nations special rapporteur on the promotion and protection of the right to freedom of opinion and expression, who said in his report in June 2017 that “[t]he authorities have linked ByLock to the Gulen Movement, claiming that it is a secret communication tool for Gulenists.

The arrests take place sometimes merely on the basis of the existence of ByLock on a person’s computer, and the evidence presented is often ambiguous. Reportedly, the MIT obtained a list of global ByLock users that has been used to track and detain persons. Tens of thousands of civil servants reportedly have been dismissed or arrested for using the application.”

Turkey’s government-controlled judicial council, the Board of Judges andProsecutors (HSK), downgraded the status of Antalya Regional Court of Justice head judge Şenol Demir and appointed him as a judge in another province after he refused to accept the use of ByLock as evidence of a crime. Demir recently reversed a judgment by a Denizli court that had ruled for the imprisonment of Hacer Aydın, a Gulen Movement follower in Denizli, for six years, three months over the use of ByLock. In his judgment Demir said “ByLock alone, as suggested by MİT [National Intelligence Organization],cannot be enough for evidence of a crime.

The arrest and detention reasons explained above and indictments against the Gulen Movement in the last couple of years show that the Turkish government has blatantly violated the universally accepted principles of the rule of law, invented crimes that have no basis in the criminal code and pursued a witch-hunt against one of the largest social groups in Turkey on fabricated charges of terrorism, coup plotting and other criminal offenses.

As a conclusion, the principle of legality assures that nothing is a crime unless it is clearly defined and prohibited in the law. As a general rule, a criminal offense and its punishment must be described in the law. It can be seen from above mentioned arrest and detention reasons, these fundamental principles are ignored in Turkey in ongoing prosecutions against the Gulen Movement.

**Remarks on Arrest and Detention :**

In interpreting Article 9, the Human Rights Committee (“HRC”) has found that “an essential safeguard against arbitrary arrest and detention is the ‘reasonableness’ of the suspicion on which an arrest must be based.” A reasonable suspicion requires “the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.”

1. First of all, when the articles CMK (Turkish Criminal Procedural Code) 91/2 and ICCPR /9 are taken together, the fundamental premise is that for the arrest (gozalti) of a person, concrete evidence must be strong enough to refer to reasonable suspicion of a crime and to convince an objective observer.
2. Secondly, the 19th article of the Turkish Constitution states that a detention (tutuklama) can be administered only when there is strong criminal suspicion. According to Article 100/1 of the CMK, a detention decision can be issued for the suspect if there is solid evidence that shows the existence of strong suspicion of a crime and there is cause for detention. Strong criminal suspicion requires that there must be a 90 percent possibility of conviction that the suspect has committed the alleged crime. In other words, if there is a 90 percent chance that the alleged crime was committed by the suspect, then there is strong criminal suspicion; otherwise, there is no strong suspicion.
3. Thirdly, according to Article 100 of the CMK, for a person to be detained, solid evidence suggesting strong criminal suspicion must be shown at the time of the detention and concrete facts must suggest that judicial control would not be a strong enough measure. According to Article 101 of the CMK, all the evidence, facts and findings about these issues must be clearly expressed in the justification. The CMK amendment dated 02.07.2012 stipulates that an arrest warrant cannot be issued unless solid evidence is shown that judicial control will be insufficient.
4. In the present case, the applicant was arrested contrary to domestic law (CMK art. 91/2) without reasonable suspicion of a crime and to convince an objective observer.
5. The applicant was detained without solid evidence in the court file to suggest strong criminal suspicion. In brief, the detention of the applicant was contrary to domestic law (CMK art. 100 and 101) because no solid evidence was provided that showed strong criminal suspicion and the justification for the detention was not given. As stated above, all allegations against applicant were legal activities and rights protected under the ICCPR.
6. The arrest and the detention warrant did not include any concrete facts or findings to show justification for the detention (suspicion of intention to escape and risk of tampering with evidence) or show why judicial control would be insufficient. No evidence was shown that suggested there was strong suspicion that the crime had been committed by the applicant, nor was there any information about the other two issues. The decision included abstractions although there are mandatory provisions in the CMK that a person cannot be detained unless hard facts suggest that judicial control would be insufficient. The applicant was thus detained in a direct violation of Articles 100 and 101 of the CMK. ICCPR Article 9/1 was also breached, for the arrest and detention clearly violated the domestic law. It should be remembered that unlike the provision of ICCPR Article 9 the minimal requirements for detention in the domestic law are that there must be solid evidence showing strong criminal suspicion and the evidence must be clearly expressed in the justification for the decision. The evidence must be about the alleged crime and its connection with the suspect must be established.
7. An examination of the all decisions for detention and continuation of detention show that they lack the basic necessities stated in the domestic law, largely consist of formulaic expressions, requires solid evidence, facts and findings, is unsatisfying and irrelevant, and thus fail to justify the detention and continuation of detention.
8. Moreover, the authorities must speedily complete their investigations into the suspects, most of whom are detained, and prepare indictments, yet they did not act as responsibly as they should have in the cases of the suspects who were arrested after 15.07.2016 and then detained. The detention periods thus became unreasonably long. The authorities did not prepare the indictment speedily. Mr. ……has been held in detention for 10 months 20 days without official indictment.
9. As can be understood from the opinions the government presented to the UN Working Group on Arbitrary Detention about the ten detained columnists from the Cumhuriyet daily, the suspects were kept waiting without investigative procedures, i.e. taking their statements, during the period when there is a five-day ban on seeing a lawyer (as per Article 3/1 of decree law no. 668). It is arbitrary practice to keep people in detention in inhumane conditions for five or more days without taking their statements and starting any procedures, and the applicant was subjected to the same practice. It is entirely arbitrary to hold people in such conditions, and the applicant had to live through this arbitrariness, which was a breach of ICCPR Article 9.
10. The applicant was arrested within this scope and kept in inhumane conditions for the first five days without any procedures. ICCPR Article 9 was breached because he was kept in detention for prolonged periods. The applicant had nothing to do with the coup attempt. Considering the allegations and the nature of the produced evidence, nothing required such an extension of the detention period. This measure is impossible to justify with the events that led to the state of emergency, as the coup attempt on which it was based had been crushed and the government had announced before the end of July that any potential danger was over. The long detention period that is not compatible with the ICCPR and detention without starting any procedures, are definitely not measures required for crushing the coup attempt which led to the state of emergency. ICCPR Article 9 was breached by the extended periods of detention.
11. **CATEGORY II – The reason the individual has been deprived of liberty is a result of the exercise of his or her rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights?**

**As It Will Be Explained With Details Below Accusations Against Mr. …….. Are Fundamental Human Rights That Are Protected under the Articles of 18-19, 21-22 and 25-27 of the International Covenant on Civil and Political Rights Thus the Arrest of the Petitioner is a Clear Violations of These Fundamental Human Rights.**

2. Bölüm: Tutuklama sebebi olan faaliyetlerin Medeni ve Siyasi Haklar Sözleşmesi ile İnsan Hakları Evrensel Beyannamesinde koruma altına alınan haklar ver özgürlükler çerçevesinde olması halinde bu bölümün de doldurulması gerekmektedir. İnsan Hakları Evrensel Beyannamesi 7,13,14,19,20,21 maddeleri ile Medeni ve Siyasi Haklar Sözleşmesinin 12, 18, 19, 21, 22, 25, 26 ve 27. Maddelerinde sayılan hak ve özgürlükler bu kapsamdadır. Her iki Sözleşme kapsamında sayılan haklar: 12.madde Seyahat Özgürlüğü, 18. Madde, düşünce, vicdan ve din özgürlüğü, 19.madde ifade özgürlüğü, her çeşit bilgi ve fikri sözlü yazılı, yada basılı biçimde iletme ve haber alma özgürlüğü, 21.madde, barışçıl toplanma hakkı, 22.madde: sendika ve dernek kurma hakki, 25.madde, ayrılma ve makul olmayan sınırlamaya maruz kalmaksızın kamu yönetimine katılma hakkını, kamu hizmetlerine girme ve yararlanma hakkını, 26.madde her türlü ayrımcılığa maruz kalmama hakkını düzenlemektedir. Bilindiği üzere tutuklama gerekçelerinin hemen hemen tamamı suç teşkil etmeyen eylemler olduğu gibi aynı zamanda anılan sözleşmeler kapsamında korunan temel hak ve özgürlüklerdir.Bu kapsamda, Tutuklama gerekçeleri aşağıda sayılan sebeplerden biri veya birkaçı olması halinde bu bölüm başvuranın durumuna uyduğu ölçüde aşağıdaki gibi doldurulacaktır.

1-**Applicant was accused of subscribing to Gulen affiliated newspapers, journals, magazines or possession of Gulen’s books or other written and visual materials** [gazete, dergi **aboneliği**, kitap kaset **bulundurma** vs.]

First of all, it should be underlined that before the coup attempt Gulen affiliated newspapers, journals or magazines, books and other written and visual materials were totaly legal and had been sold with the permission of the Ministry of Culture and could be found on the shelves of public libraries. Secondly, in a country where the rule of law is respected, newspapers, journals, magazines that do not promote terrorism or violence cannot be banned and people in possession of these items cannot be accused of membership in terror organizations. Therefore, these activities are protected under the article 18, 19 of ICCPR.

**2-Applicant was accused of being member of Gulen affiliated Associations, Unions, Foundations and other Institutions** [sendika, dernek, vakıf üyeliği ve diger kurumlara **uyelik**]

After coup attempt all alleged Movement related associations, unions, foundations and institutions were shut down on July 23, 2016 with decree-law no. 667. Accordingly, before that day they were officially registered, duly authorized and totaly legitimate. Therefore, activities like being a member of associations, unions, foundations and other institutions were legal and are protected under the article 18, 19, 21, 22, 26 of ICCPR.

**3-Applicant was accused of working for, getting services from Gulen affiliated institutions** [Hareketle iliskili kurumlarda calismak, hizmet almak, dershanelere gitmek, okulda okumak, cocugunu okullara gondermek, hastanelerinden yararlanmak gibi suclamalar]

After coup attempt all Movement related institutions like hospitals, schools, universities dormitories, were shut down on July 23, 2016 with decree-law no. 667. Accordingly, before that day they were officially registered, duly authorized and totaly legitimate. Therefore, activities like working for them, getting services from them, having transactions with them were totaly legal and are protected under the article 18, 19, 21, 22, 25, 26 of ICCPR.

**4-Applicant was accused of participating fund raising activities and making donations to Movement related charity organisations or instutitions**[kurban ve burs vermek, himmet toplamak,kermes yapmak vs]

After coup attempt all Movement related charity organisations, foundations, schools, instutions were shut down on July 23, 2016 with decree-law no. 667. Accordingly, before that day they were officially registered, duly authorized and totaly legitimate. Therefore, activities like volunteering fund raising and making donations were totaly legal and are protected under the article 18, 21, 22, 26 of ICCPR.

5-**Applicant was accused of participating to social gathering and other social activities**.[sohbete, toplantilara katilmak vs]

Mere participation of social gatherings or social activities without promoting terrorism or violence cannot be banned. Therefore, activities like participating social gathering was totaly legal and are protected under the article 18, 19, 21, 26 of ICCPR

6-**Applicant was accused for downloading and using Bylock** [ ByLock kullanmak]

As explained section I downloading an application from App store and Google Play store, called Bylock was totally a legal activity and protected under the Articles 19-26 of ICCPR.

7-**Applicant was accused of having a bank account at Bank Asya** [ Banka Asya’ya para yatirma]

Bank Asya was a legal cooperation that started business on October 24, 1996 in İstanbul, Turkey and confiscated by government on May 29, 2015, defunct on July 22, 2016. Therefore, having a Bank Asya account was totally a legal activity and it protected under the Articles 21-25-26 and 27 of ICCPR.

**As a conclusion, reasons for arrest and detention of applicant not only totally legal activities but also the fundamental rights protected by the Articles 18-19, 21-22 and 25-26-27 of the International Covenant on Civil and Political Rights.**

1. **CATEGORY III – The international norms relating the right to a fair trial have been totally or partially observed, specifically, articles 9 and 10 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 9 and 14 of the International Covenant on Civil and Political Rights?**

**Ms. ……Suffered Serious Violations of His Right Under Article 14 of the Covenant to a Fair Trial.**

3. Bölüm: Bu kısımda gözaltı, tutuklama ve yargılama aşamalarında maruz kalınan adil yargılanma hakkı ihlalleri yazılmalıdır. Çalışma Grubu başvuruyu Medeni ve Siyasi Haklar Sözleşmesi ve İnsan Hakları Evrensel Beyannamesi ilgili hükümleri çerçevesinde değerlendirmektedir. Bu bölümde İnsan Hakları Evrensel Bildirgesinin 10,11, adil yargılanma hakkını düzenleyen 14.maddesindeki unsurlara göre konu anlatılmalıdır. Yine benzer bir düzenleme de AİHS’nin 6. maddesidir.

The Government of Turkey committed grave violations of numerous procedural requirements under both international and domestic law in the procedures against the applicant.

**First, the Government failed to provide him with an independent and impartial tribunal.**

Main motivation for the creation of the Special Courts was fight against Gulen Movement: Prime Minister and now President Erdoğan said, on June 22, 2014, that ***“the steps taken by the executive were hampered by the parallel judiciary. Some legislative proposals we have made are now about to be approved by the president. When he approves them, swift steps will be taken…We are developing a project. We are laying the groundwork for this.”*** This remark was the harbinger of the creation of special courts.

Erdoğan expanded on what he called his ***“project”*** during a visit to the office of the Grand Unity Party (BBP), whose deputy chair Remzi Çayır reported Erdoğan as having said: “***We have drafted legislation on penal judges of peace. It is now before Mr. Abdullah Gül; I will destroy them [the Gulen Movement] within the course of one week, 10 days when it comes about.”.***  Çayır later repeated the statement on TV.

The ***“project”*** was realized with Law No. 6545, which was approved by the votes of Erdogan’s party in Parliament on June 18, 2014 and entered into force on June 28, 2014. In a speech, he delivered in Ordu province on July 20, 2014 Erdoğan announced that ***“the judicial process is starting; [this process] is to be carried out by the penal judges of peace”.*** These judges are exclusively authorized to carry out all investigatory processes including detention, arrests, property seizures and search warrants, penal judges of peace have been introduced to persecute members of the Gulen Movement who is treated as enemies by the government. As appeals against decisions by a penal judge of peace can be filed only with another penal judge of peace, this creates a “closed circuit” system. So far including Mr……. arrest and detention, all detentions have been carried out by these courts and judges.

When the profile of judges at these courts is examined, it is clear that the courts were staffed by partisans and loyalists of Erdoğan. Virtually all of 112 people who were assigned as judges of Penal Judges of Peace by the High Council of Judges and Prosecutors [HCJP] are members of the Platform of Unity in the Judiciary (YBP), which was established by the government and won the HCJP elections. For instance, Bekir Altun, Hulusi Pur, İslam Çiçek, Recep Uyanık, Cevdet Özcan, and Fevzi Keleş were appointed as Penal Peace Judges for Istanbul. Why these six judges were hand-picked for this assignment can be seen by looking at their previous decisions. İslam Çiçek had released graft suspects including former Interior Minister Muammer Güler’s son, Iranian sanction-buster Reza Zarrab (who was later arrested in the US), former Minister Zafer Çağlayan’s son Salih Kaan Çağlayan, Özgür Özdemir and Hikmet Tuner. It turned out from looking at his profile and posts on his Facebook page that Judge Çiçek was a fan of Erdoğan. Another figure is Hulusi Pur. Pur first came to the agenda with a prison sentence he handed down to leftist and dissident pianist Fazıl Say. He released six people including former General Manager of Halkbank Süleyman Aslan, favored by Erdoğan, who had been arrested during the graft probe. After being appointed as a penal judge of peace, Recep Uyanık canceled an injunction on the property of suspects in the corruption probe, including that of Aslan.

The ECtHR assesses the independence of the judiciary on the basis of three criteria: the manner and period of appointment of the members of the court, the availability of guarantees against external influences and the appearance of the independence of the court *(Findlay v. UK, para. 73).* One of the most important determinations of a court’s independence is the guarantee that the judges cannot discharged from their existing duty without their request before the expiry of their terms, saved for appointment to a higher court (*Campbell and Fell v. UK, para. 80; Lauko v. Slovakia, para. 63).* When a judge issued a decision not to the liking of the government, he or she was immediately reassigned.

Those judges and prosecutors who have failed to perform satisfactorily in the fight against the Gulen Movement have been removed from office or reassigned to other positions. Hülya Tıraş, Seyhan Aksar, Hasan Çavaç, Bahadır Coşlu, Yavuz Kökten, Orhan Yalmancı, Deniz Gül, and Faruk Kırmacı were appointed as penal peace judges in Ankara by HCJP decree numbered 1644 and dated July 16, 2014. In one year, seven of these eight judges (except the 7th penal judge of peace) were removed from office. Penal Judges of Peace Kökten and Süleyman Köksaldı, who released some police officers despite the ruling party’s intention to have them arrested, were removed from office and assigned to other courts.

Penal Judge of Peace Yalmancı, who failed to arrest 24 police officers despite the prosecutor’s demand for their arrest on March 1, 2015, Penal Judge of Peace Hasan Çavaç, who rejected certain objections, and Penal Judge of Peace Seyhan Aksar, who released the suspects in a previous operation against police officers, were all removed from office on March 9, 2015. On July 14, 2015, Ankara 7th Penal Judge of Peace Hülya Tıraş released a suspect who had been detained for 110 days, and she was removed from office two weeks later. Penal Judges of Peace Yaşar Sezikli and Ramazan Kanmaz, who released other suspects who were part of the same file, were removed from office by HSYK decree numbered 1157 and dated July 23, 2015.

Ankara Penal Judge of Peace Osman Doğan was removed from office after he released 18 police officers from the intelligence branch of the police department who were accused of unlawful wiretapping. 4th Penal Judge of Peace Ramazan Kanmaz, who released 25 defendants in the investigation into allegations of cheating in the Public Personnel Selection Examination (KPSS) -- which are frequently raised by the government against the Gulen Movement -- was reassigned to another court even before his first year at this court expired. These judges were removed from office mainly because of release decisions they rendered or because they refused to arrest certain defendants in February, March and July 2015. 57.

Special courts became an **instrument** in the hands of Erdoğan and the government by means of the detention and arrest warrants for 2,745 judges and prosecutors issued on a single day, July 16, 2016, following the attempted coup. It is simply beyond the capacity of any court or judge to review all these cases individually in a day, suggesting the whole game was planned way in advance and that penal judges of peace simply functioned as rubber stampers to approve what the government asked them to do.

The practice of widespread dismissals and the arrest of judges and prosecutors as well as the ensuing **atmosphere of pressure** is another important development that has undermined the right to a fair trial in Turkey. Over 4,300 judges and prosecutors were dismissed from office permanently. There are currently 2,575 judges and prosecutors are jailed pending trial as part of alleged links to Gulen Movement. A strong message has given to judiciary that ***“if you don’t arrest them, you will be arrested”***. As a matter of fact, arrest warrants were issued for another group of 673 judges and prosecutors on 1 September 2016.   This was followed by discharge from profession of 66 judges on 4 October 2016. On 12-13 October 2016, 189 judges and prosecutors have been laid off. At the same time, around 300 judges and prosecutors from the military judiciary have been discharged or arrested. Judges are detaining their colleagues according to lists sent by government. If they don’t detain them they will be detained. **Giving a decision in favor of defendant is enough to be detained and dismissed**. Many judges feel obligated to arrest or refuse to release their colleagues in order not to suffer from the same fate. A couple of sad examples are given below. These are important examples showing what kind of coercion judges and prosecutors have been under and what could happen to them as a result of the decisions they have made or might make.

**1-**In Denizli province following the coup, Criminal Peace Judge S.U decided not to arrest certain judge as there was no evidence other than a list that High Council sent. Upon this, same day the High Council appointed another Judge H.A for that case he arrested all 23 colleagues.

**2-** In Düzce province. Judge K.O., did not arrest two female judges as they had babies. In response to the release decision, the head prosecutor made a verbal complaint to the Ministry of Justice and to the High Council of Judges and the same judge was immediately taken off the duty. After this complaint the he was laid off and detained.

**3-** In Diyarbakir Province Prosecutor T.K., did not call for the arrest of female Judge K.K., as he knew that the judge had a child with Down syndrome. He stated with tears in his eyes that this decision put himself at a great risk and that he heard that Government was drafting a new purge list for judge and prosecutor.

The dismissed judges and prosecutors represent more than 30 percent of all members of judiciary. Those who were arrested represented 17.6 percent of all judges and prosecutors employed in Turkey. In their place 3,940 judges and prosecutors were freshly appointed in a fast-tracked training program according to partisan criteria (which allowed the lawyers siding with Erdogan’s party, the AKP, to be appointed as judges or prosecutors without necessitating any serious training or education) set up by the government to subordinate the judiciary to itself.

As a Conclusion, when we look holistically both at the process which started with the 17-25 December 2013 corruption probe against some government members and their relatives and continued until the coup attempt and what is experienced after the coup attempt, we observe these evident facts. All the judges and prosecutors who have been assigned to investigations and lawsuits against the Gulen Movement and have provided judgments in favor of the defendants as per the requirement of the law, have been, without any exception, laid off, displaced, subject to investigation, dismissed and finally arrested with allegations of being members of an armed terror organization. It was the same fate for all levels of the duty, from first level judges and public prosecutors, to military judges, to members of State Council and Supreme Court of Appeal and finally to the members of the Supreme Constitutional Court. Up to now, there is no single judge or prosecutor left unpunished after having decided against government claims. Given above mentioned conditions **it is not possible to have an independent judge and courts** for the Gulen Movement.

As ECtHR points out that a court whose lack of independence and impartiality has been established **cannot**, in any circumstances, **guarantee a fair trial** to the persons subject to its jurisdiction and that, accordingly, it is unnecessary to examine the complaints regarding the fairness of the proceedings before that court (*see, among other authorities, Çıraklar, cited above, p. 3074, §§ 44-45).* But for the sake of argument, we will mention below the basic rule of law violations happened during Mr. ….arrest and detention processes:

1. **Failing to provide applicant with a timely explanation of the reason for his or her arrest and holding him or her without charge: t**he applicant was not informed about his arrest until the interrogation by police custody in following days of his or her arrest.

2. **Violations of the right to have time and opportunity to prepare and defence and to call and examine witnesses:** the applicant never been given time to prepare himself to interrogations, instead he or she was physically and psychologically oppressed to accept drafted statements by police or he was induced by prosecutor or Judge of Penal Peace to accept those statements collected by police.

3. **Violations of the right to access to counsel**: Item (a) in the first provision of Article 3 of decree law no. 668 dated 25 July 2016 stipulated that the period of detention would be 30 days at most, and item (m) stipulated that detainees would be denied access to lawyers for the first five days, when statements would not be taken. The lawyer ban was lifted with decree law no. 684 dated 23 January 2017. For about six months the right legal assistance was violated as of the first moments of detention. Secondly, meeting that applicant could made with his lawyer was recorded and monitored by the prison officers.

4. **Violations of the principles of the equality of arms:** which requires that all parties to the proceedings in question be ensured the right to equal access to present their full case and the right to have access to all material related to the detention or presented to the court by State authorities. In the last few years, almost every case file that has had a political or public dimension has been automatically denied access on the grounds of Article 153 of the CMK (Turkish Code of Penal Procedure). Accordingly, the applicant was denied access too and he failed to object to the decisions effectively, unable to prepare his or her defence adequately or to challenge the charges against him or her.

5-**Breach for rejection of objection before a hearing is held**: During the state of emergency, since objections to arrests are decided by reading case files, not by holding a hearing, and the applicant was jailed for extended periods of time before appearing in court hearing.

6- **Breach for reasoned decision:** Applicant’s objection against arrest and detention was denied by the court without studying the arguments stated in petitions and with insufficient and irrelevant decisions.

**As far as right to defence is concerned:**

There has been a relentless campaign of arrests which has targeted lawyers across the country. In 77 of Turkey’s 81 provinces, lawyers have been detained and arrested on trumped-up charges as part of criminal investigations orchestrated by the political authorities and conducted by provincial public prosecutors. As of today, 523 lawyers have been arrested and 1318 lawyers are under prosecution.[[33]](#footnote-33)

The Turkish government has also targeted Turkish lawyers’ right to association. 34 different lawyers’ societies or associations have been shut down since the declaration of the state of emergency. Following their closing down by a government decree, all their assets have also been confiscated without compensation.

Defense lawyers have been increasingly stripped of valuable tools to defend their clients under the pretext of counterterrorism efforts. The accusations raised against these lawyers range from membership in certain social groups and associations to alleged complicity in the crimes with which their clients are charged. In some cases, they are even being questioned why they vigorously defended their clients in the courtrooms.

The arrested lawyers reportedly face tortuous pressures as they are forced to testify against their clients, violating attorney-client privilege. Given the fact that hundreds of lawyers have gone abroad to escape a similar fate, the right to a defense is currently being violated on a mass scale in Turkey.

Many suspects and defendants are waiting helplessly, deprived of their right to a defense for failing to find lawyers to defend them. A Parliamentary Assembly of the Council of Europe (PACE) report titled “**Securing access of detainees to lawyers**” took note of the worrisome situation in Turkey in the aftermath of the coup attempt. In the report, rapporteur Marietta Karamanlı of France said, “**Against the background of extremely serious allegations of torture and the inhuman or degrading treatment of detainees, the lack of access to a lawyer is all the more worrying**.”[[34]](#footnote-34)

Furthermore, lawyers who were not being target of the governments’ oppression generally ask for attorney fees that are up to 10 times more than usual if they want to take on the cases of people who were targeted by the government’s witch-hunt. This makes the situation all the more bleak as all possessions and properties of many suspects and defendants have been seized or confiscated without bothering to wait for a conviction.

It has been routine practice for lawyers to be beaten in prisons when they go to visit their clients and forced to wait for hours before they can see their clients even for a brief period of time.

Most worrisome of all is the existence of lawyers who work against their own clients. Many victims who believe their lawyers have filed an individual application with the Constitutional Court on their behalf get a rude awakening after learning that their lawyers haven’t even made the application within the legally allotted time. The victims who ask their lawyers to present their petitions and associated receipts are put off and made to lose time. **In many cases where victims of human rights violations are unable to find lawyers to represent them.**

One of the factors undermining the ability of defendants to exercise their right to a defense is that many lawyers and bar associations have a certain ideological bias that can hardly be reconciled with their profession. Most rather want to toe the line of the government as opposed to providing legal counsel to victims who are accused of serious charges by the government.

For instance, Mehmet Sarı, president of the Jurists Association (Hukukçular Derneği), a pro-government group, publicly said tens of thousands of people who were accused of coup plotting by the government do not have the right to a defense. He said: ***“Many people are trying to find private lawyers for their relatives who were arrested on coup charges. What we call the right to a defense stems from the fact that people are beings who can think. In the Western literature, this is called human dignity. However, for coup perpetrators to benefit from human dignity, they have to be human beings. And as we don’t regard them as human beings, we don’t accept the demands and reject them.”***

Sarı even went further by rejecting the law that requires courts to appoint lawyers in the event the suspect is unable to find one, according to the CMK (Code on Criminal Procedure). The bar associations are obligated to provide a lawyer when a court requests a defense lawyer before proceedings in the courtroom. “***We believe that they should not be defended in the context of the CMK as well****,”* Sarı remarked.

Delivering a speech during a ceremony at which he handed over his chairmanship of the Istanbul Bar Association, Ümit Kocasakal exhibited a similar attitude. *“****They asked us to send lawyers, but we didn’t send them. ‘Do you think we are fools?’ we told them,”*** he said. These remarks by an outgoing head of the world’s largest bar association with 26,000 lawyers came as a shock to many.

**These developments should be registered as concrete evidence for the elimination of the right to a defense to a great extent**. A significant proportion of the lawyers who the bar associations are legally required to appoint **are withdrawn**, leaving defendants without representation in trials. This move is attributable partly to ideological barriers and partly to pressure.

According to the new changes, there is no longer privacy during meetings between lawyers and their clients. **The authorities are allowed to record the meetings and ensure that an official attends them.** **Limitations on meeting times and periods have been introduced**. **The authorities have been permitted to block any exchange of documents and seize them**. **The authorities may prohibit prisoners from meeting with the lawyers they choose**. Lawyers who are being investigated or prosecuted may be banned from defending their clients.

Not only has it become easier to launch investigations into lawyers, but the legal provisions that equip lawyers with immunity are also not being implemented. Thus, a lawyer is deprived of his/her right to offer legal counsel by launching a contrived investigation into him/her. Legal provisions have been introduced to facilitate the way the police can raid the offices of lawyers and take them into custody.

Defense counsels are no longer allowed to examine case files and retrieve copies of them. A person in custody can be prevented from seeing his/her lawyer for five days. When arrested, a person can be prohibited from seeing his/her lawyer for six months. Moreover, he or she can also banned from hiring their lawyer of choice by the authorities. Thus, the freedom of suspects/inmates to choose their lawyers is restricted.

The pressure on and intimidation campaign against lawyers have been also on the agenda of international professional organizations that are mobilized to issue statements of concern and Letters calling on the Turkish government to halt the crackdown on lawyers and release jailed lawyers. In a memorandum published in October 2016, Council of Europe Commissioner for Human Rights Nils Muiznieks condemned the drastic restrictions on access to lawyers as well as limitations on the confidentiality of the client-attorney relationship.

4.Bölüm: sığınma hakkı sırasında yaşanılan ihlallerle ilgili olduğu için konumuz dışındadır

1. **CATEGORY V – The individual has been deprived of his or her liberty for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status which aims towards or can result in ignoring the equality of human rights?**

**Ms. …….’s continued detention, which is enforced on him due to his social background, is discriminatory in nature and therefore arbitrary.**

5.Bölüm: Tutuklamanın ayrımcılık temelinde olması halinde bununla ilgili bilgilerin yazılması gerekmektedir. Bu kapsamda genel olarak ister Gulen Hareketi ile bağlantılı olsun isterse bağlantılı olmayıp bir sekilde bu kapsamda soruşturmaya maruz kalmış herkesin genel olarak ayrımcılığa maruz kaldığı anlatılmaktadır Burada sizin harekete mensup olup olmamaniz bir önem taşımamakta FETÖ soruşturması kapsamında suçlanmanız nedeniyle ayrımcılığa maruz kaldığınız hususu anlatılmaktadır.

People who are charged with being a member of FETÖ are faced with widespread discrimination. There is an emerging pattern involving the arbitrary deprivation of liberty of people who are accused of being a Gulen Followers in Turkey; it is not important whether they accept or reject the connection with Gulen Movement. The applicant has been arbitrarily deprived of his liberty according to category V because of discrimination against him as a Gulen Movement Sympathizer.  The arrest and detention of more than 150.000 individuals have been motivated solely by their social background and political stance.

They have been subject to a well-documented government policy of discrimination after the corruption case in 2013. Following examples are the widespread and systematic Human Rights Violations against Gulen Movement.

**Mass Arbitrary Arrest and Detention:**  Most in pre-trial detention, on trumped-up charges of terror and coup plotting about 55,000 people have been detained with the accusation of the member of FETÖ in the last ten months alone. The government is abusing pre-trial detention and uses it as a sort of punishment without conviction. 31,482 convicted prisoners have been released so far to free up jail space for Gulenists.

**Extra-Judicial Killings:** Human rights groups documented that 53 people died as a result of physical and psychological torture but described by authorities as “suicides” in what appears to be a cover-up.

**Enforced Disappearances:** It has been acknowledged by the media and government officials that the intelligence agency has been tasked to eliminate individuals associated with the Movement. In connection with this, a persistent pattern of politically-motivated murder and "disappearances" have emerged. So far there have been 20 political disappearance cases in Turkey and abroad.

**Persecution and Collective Punishment:** The government has purged approximately 140,000 public employees without any effective administrative investigation or judicial probe. The purge has affected up to 500,000 people, counting in the families of the dismissed.  Government employees are fired without any investigation and they are denied positions in any other government agency. Private companies offering employment to such individuals are monitored and threatened. Professional licenses of teachers and other professionals such as doctors and academicians are canceled. School diplomas of professionals are invalidated. The dismissed are being socially stigmatized because their names are being published in the Official Gazette labelled as “terrorist” without any trials and convictions. With the publicizing of their names, those people are being declared putschists or terrorists before the public. In other words, they are being blacklisted and left to die a “civil death”. The government restricted foreign travel for more than 130,000 citizens accused of links to the Gulen Movement after the failed coup attempt. In total, including family members of dismissed people about 500.000 people have been affected.

2099 schools and universities, 1125 associations, 560 foundations, 19 trade unions, 54 hospitals, shut down. All movable and immovable properties of closed institutions, foundations, hospital, and universities were transferred to the Treasury without compensation. 195 media outlets, including 45 newspapers, 16 TV channels, 3 news agencies, 23 radio stations, 15 magazines and 29 publishing houses were closed with alleged ties to Gulen Movement

**VI. INDICATE INTERNAL STEPS, INCLUDING DOMESTIC REMEDIES, TAKEN ESPECIALLY WITH THE LEGAL AND ADMINISTRATIVE AUTHORITIES, PARTICULARLY FOR THE PURPOSE OF ESTABLISHING THE DETENTION AND, AS APPROPRIATE, THEIR RESULTS OR THE REASONS WHY SUCH STEPS OR REMEDIES WERE INEFFECTIVE OR WHY THEY WERE NOT TAKEN:**

Başvuru konusunda iç hukuk yollarının tüketilmesi koşulu aranmamakla birlikte, başvuru formunda bu konuda bir bilgi sorulmaktadır. Bu bölümde tutukluluğa karşı yapılan itirazlara rağmen sonuç alınamadığı, mahkemelerin bağımsız olmaması nedeniyle itirazların reddedildiği, pratikte iç hukukun etkili olmadığı kısaca yazılmalıdır.

The Petitioner’s ability to pursue domestic remedies with legal and administrative authorities, has been limited by significant restrictions on his or her access to justice. Mr. ... has taken numerous actions before domestic Courts since his or her arrest and detention, but they have all proved unfruitful.

**VII. FULL NAME, POSTAL AND ELECTRONIC ADDRESSES OF THE PERSON(S) SUBMITTING THE INFORMATION (TELEPHONE AND FAX NUMBER, IF POSSIBLE):**

**………………………………………………………………………………………………………………………………………………………………………………………………**

Başvuran adına başvuruyu yapan kişinin ismi, soy ismi

Ve imzası

Adresi: ………………………………………………………….

İletişim bilgileri,………………………………………………

1. **Acil Basvurunun iletilme usulu ile ilgili aciklamalar**

Acil basvurularin e-mail veya faks yoluyla yapilmasi tercih edilmektedir.

E-mail ile basvuru yapilmasi halinde, haksiz tutuklu olan kisi icin başvuru yapan yakınının başvurunun her sayfasını imzalayıp tarayıcıdan geçirdikten sonra taranmış halini mail ekinde **wgad@ohchr** ve **urgent-action@ohchr.org** e-mail adreslerine göndermesi gerekmektedir.

Gonderilecek **e-maile** asagidaki ingilizce ifade yazilip e-mail ekine taranmis basvuru eklenmelidir.

“Dear Chair-Rapporteur Working Group on Arbitrary Detention.

Attached please find a submission to the Working Group on Arbitrary Detention (“Working Group”) for the purpose of its opinions procedure regarding the arbitrary detention of Mr/Ms ..... Haksiz tutuklu olan kisini adi soyadi [“URGENT ACTION” REQUESTED]

I kindly submit this case to your consideration and request you to take the necessary actions.

Best regards,

Basvuranin adi soyadi”

Acil basvurular fax ile de gonderilebilir. Switzerland, **fax** No (41) (0) 22 917.90.06

Başvurunun mail veya faks ile iletildikten sonra bilahare ayrica : Working Group on Arbitrary Detention c/o. Office of the UN High Commissioner for Human Rights United Nations Office at Geneva CH-1211, Geneva 10 Switzerland adresine **normal posta** yoluyla gonderilmeside ihtiyaten tercih edilmelidir.

Ayrıca sadece haksız tutukluluk başvurularına münhasır olmayan BM tarafindan genel olarak tüm ihlallerde kullanılabilecek **online başvuru** usulü de söz konusudur. Bu yöntemde, başvuru online olarak İngilizce doldurulmakta, sisteme bilgi ve belge yüklemenizede izin verilmektedir. Bu usulde yapılan başvuruların BM genel şikâyet sistemi üzerinden Haksız Tutuklama Komisyonuna iletildiğini düşünüyoruz. Bu şekilde basvuru yapmak için aşağıdaki linkten yararlanınız. https://spsubmission.ohchr.org/

E mail ile yapilan basvuru uzerine calisma grubu tarafindan mailin alindigina dair bir yazi gonderilmemektedir.Ancak, urgent-action@ohchr.org mailine gonderilen basvurunun alindigini teyit eden ve online basvuruyu https://spsubmission.ohchr.org tesvik eden bir otomatik mail gonderilmektedir.

1. **Müracaatı kimler yapabilir?**

Çalışma Grubuna başvuru, haksız tutuklanan ya da gözaltına alınanlar, aileleri veya temsilcileri tarafından yapılabilir. Calisma Grubunun Internet Sitesinde (Family) ifadesi gectiginden mumkunse ilk derece yakinlarinin basvuruyu yapmasi tavsiye edilmektedir.Tutuklunun ailesi tutuklu adina dogrudan basvuru yapabilmektedir. Ancak bu konuda net bir sinirlama yoktur, yakin akrabalari ikinci derece akrabalarin veya daha uzak akrabalarininda durumu izah ederek basvuru yapabileceklerini dusunuyoruz. Basvuruyu ileten kisi ve kurumlarin ismi Birlesmis Miletlerce gizli tutulmakta ve devlet ile paylasilmamaktadir.

1. (https://www.youtube.com/watch?v=0SysmcIFWB4 ). [↑](#footnote-ref-1)
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