



Joint Report on

Government Confiscations of Private Properties and Companies

for the United Nations' Universal Periodic Review of

TURKEY

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Universal Right Association (URA) is a South Africa based association founded in 2018 and operates to remove, repair and resolve injustice, inequity, ill-treatment and oppression. URA organizes activities in local and global scale to establish and maintain peace and universal unity. URA builds its philosophy on common denominator of being human and targets, service to humanity, as an ultimate goal. Address: 210 Amarand Ave, Waterkloof Glen, Pretoria, 0010, South Africa Tel: +27120032896 Web: www.uniras.org E-mail: info@uniras.org

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Social Justice Advocacy Campaign (SOJAC) is a South Africa based organization founded in 2017 and operates for creating awareness of the consequences of any discriminatory practices against men, women and children; To advance and protect the human rights of men, women and children; Conduct impact litigation to address inequalities and to take action on preventing and ending abuses of human rights nationally and internationally. Address: 7th Floor, Mandela Rhodes Building, Wale Street, Cape Town. P.O. Box 31116 Grassy Park, Cape Town Tel : +27 21 410 8925 Web: www.sojac.org.za Email: info@sojac.org.za

Turkey Universal Periodic Review Submission, July 2019

Key Words: Right to property; Right to an effective remedy and to a fair trial; Equality before the law; Freedom of thought, conscience and religion; Freedom of expression and information; Freedom to conduct a business.

Executive Summary

1. A coup attempt took place in Turkey on 15 July 2016. Turkey declared a state of emergency on 21 July 2016 and lodged a derogation as per Article 15 of the ECHR to the Council of Europe regarding its obligations with respect to basic rights and freedoms.
2. This report, submitted by Universal Rights Association (URA) / International Association for Human Rights Advocacy in Geneva (IAHRA GENEVA) / Social Justice Advocacy Campaign (SOJAC), focuses on the human rights violations in Turkey before and after the coup attempt, with a special focus on government confiscations of private properties and companies of “non-loyalist” businesspeople without due process on unsubstantiated charges of terrorist links.
3. The companies are alleged to be connected to the Gülen movement, an international civic initiative, with the government coining the term “FETÖ” to designate the movement a terrorist organization. The government accuses the movement of masterminding the coup attempt even though the latter denies involvement, demanding credible evidence.
4. In this regard special attention should be drawn to the fact that violations of rights stated in the key words of this report started in 2015, i.e. before the declaration of state of emergency.
5. In addition, no measure of derogation, including state of emergency, can go against obligations stemming from international law, and the measure of derogation must comply with the requirements of necessity and proportionality as stipulated by article 4.1 of the ICCPR and article 15.1 of the ECHR. Yet these rights violations reached considerable magnitude after the declaration of state of emergency, as is described in the Analyses section.
6. We respectfully present this Stakeholder Submission in advance of Turkey’s upcoming Universal Periodic Review (“UPR”).

Turkey Universal Periodic Review Submission, July 2019

Domestic Legal Framework

- a. Trustee appointment to a firm under Article 133 of the Turkish Criminal Procedure Code numbered 5271 and dated 4/12/2004.
- b. Measures regarding defunct institutions and organizations under Article 2 of Emergency Decree No. 667 – 22 July 2016¹
- c. Measures regarding defunct newspapers and periodicals and their means of publication and distribution under Article 2 of Decree No. 668 – 25 July 2016²
- d. Measures regarding transfer procedure under Article 5 of Decree No. 670 – 17 August 2016³
- e. Article 4-3 of the communiqué titled “Procedures and Principles regarding Implementation of Article 19 of Law no. 6758 dated 10/11/2016” published in the official gazette on 17.01.2017⁴
- f. Article 1 of Decree No. 687 – 02.01.2017 published in the official gazette on 09.02.2017⁵
- g. Article 4 of Decree No. 686 – 02.01.2017 published in the official gazette on 07.02.2017⁶

¹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

² [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

³ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)061-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)061-e)

⁴ <https://rm.coe.int/16806fab6d>

⁵ <https://rm.coe.int/16806fab6d>

⁶ <https://rm.coe.int/16806fab6d>

Turkey Universal Periodic Review Submission, July 2019

Analyses

7. Turkey exercised undue influence on the investigation and prosecution stages of the corruption cases revealed to public after 17/25 December 2013.⁷
8. Moreover, establishment of Criminal Judgeships of Peace (CJP) pursuant to Law numbered and dated 18/6/2014 caused considerable deterioration in the judicial proceedings during the same process.⁸
9. In an environment where unlawful intervention raged in corruption investigations and prosecutions, and CJP caused considerable deterioration in the judicial proceedings, decisions were issued for trustee appointments to companies by CJP with reference to a provision in Art. 133/1 of the Code of Criminal Procedure (abbreviated as CMK in Turkish), a first in Turkey.
10. Decisions of trustee appointment to companies started to be issued by CJP as of October 2015, and trustees have been appointed to management of 1,124 companies employing 50,192 people and having assets in Turkey worth 49.4 billion TL (7.5 billion Euros) as well as to 127 real persons.⁹
11. The first trustee appointment decision was made in October 2015 for 22 companies under KOZA IPEK Group, which includes gold mining operations, television channels and newspapers among others. Then in November 2015 trustees were appointed to 22 companies, 1 association and 1 foundation under KAYNAK Holding, which operated across Turkey as well as overseas with approximately 8,000 employees in 16 different industries such as publishing, retail book sale, logistics, tourism and IT.
12. Legislative regulation in Turkey regarding making trustee appointment decisions for companies under criminal investigation are tightly regulated in Turkish legislation to the extent that it is only possible to appoint a trustee to a company's management if all conditions stated under the law are exclusively met. In this regard, for trustee appointments, it is required that:

⁷ Turkey 2018 Report by the European Commission: "Turkey's track record of investigation, prosecution and conviction in corruption cases remained poor, particularly regarding high-level corruption cases. No progress was made in bolstering the accountability and the transparency in the work of public bodies.

⁸ Turkey 2018 Report by the European Commission: "[Criminal Judgeship of Peace's] rulings increasingly diverge from European Court of Human Rights case-law and rarely provide sufficiently individualized reasoning. The recommendations of the Venice Commission in its March 2017 opinion should be urgently implemented."

⁹ Data dated 5 March 2018 provided by the TMSF <https://www.tmsf.org.tr/tr/Tmsf/Kayyim/kayyim.veri>.

Turkey Universal Periodic Review Submission, July 2019

- The crime that is being committed should be one of the limited number of catalogue crimes listed in Article 133-4 of the Code of Criminal Procedure.
 - The crime must be underway as part of a company activity,
 - The crime must be committed continuously and uninterruptedly
 - There must be strong suspicion that a crime is being committed,
 - It must be necessary to reveal hard facts.
13. To prevent rights violations, it is stipulated that the CJP must clearly state and justify the legal conditions listed above. In this respect, our report evaluates the trustee appointment decision issued for the KAYNAK Holding group of companies.¹⁰ In this decision, the CJP made a wholesale ruling for appointing trustees to 19 companies at the same time without stating the companies' activities through which the crime was being committed, without specifying which catalogue crime has been committed, and what the incriminating evidence was for every one of the companies separately. In addition, the same decision included trustee appointments to a foundation and an association, which lacks any legal basis. In other words, none of the conditions stipulated in the abovementioned article was addressed and the trustee appointment decisions were made in complete violation of basic rights protected by the law and international agreements.
14. The objection filed against this decision was reviewed by another CJP, as required by the relevant regulation, and rejected in a single line.¹¹ Whereas, judicial decisions that constitute intervention in right to property must be justified and convincing. The decision of rejection was final, and although all the violations of the law were addressed distinctly, the objection was rejected without any justification, which is a violation of the right to justified decision. In this way, decisions are finalized in a self-contained system without effective review of lawfulness of decisions of trustee appointments to hundreds of companies.
15. This lead to a considerable increase in the number of applications to the Constitutional Court, which in turn dragged applications regarding rights violations for extended periods. Whereas, proceedings concerning individual applications to the Constitutional Court are under Article 6

¹⁰ Decision by Istanbul Anadolu 10th Criminal Judgeship of Peace numbered 2015-2903 D. Work and dated 17.11.2015

¹¹ Decision by Istanbul Anadolu 1st Criminal Judgeship of Peace numbered 2015-3791 D. Work and dated 02.12.2015

Turkey Universal Periodic Review Submission, July 2019

of the ECHR, according to which individual applications must be resolved in a reasonable period.

16. As an example, it took 3 years for the CJP decision on KAYNAK Holding to be resolved before the Constitutional Court. So, not only are serious rights violations caused during the process, but also the delays make it harder to retain rights.
17. In the report submitted to the UN during the second review process, Turkey states that it enacted 6 legislative reform packages to compensate for the gaps cited in decisions by the European Court of Human Rights and thus to prevent recurrence of human rights violations, strengthen and enhance judicial independence and impartiality, and facilitate access to justice. To this end, it is stated that amendments were made in the Turkish Penal Code, Code of Criminal Procedure and Anti-Terrorism Laws. However, instead of making up for the gaps in legislation, Turkey established Criminal Judgeships of Peace (CJP), which significantly undermined judicial independence, impartiality and effectiveness, in direct contradiction to its discourse in the National Report. A sui generis institution of trustee appointment that eroded basic human rights was formed through this newly established system. Turkey was expected to amend its laws to forestall recurrence of human rights violations, as stated in the National Report, yet it made amendments that facilitated human rights violations by establishing CJP which implemented trustee appointments for the first time. CJP turned into an institution guided by the political power, rather than an independent judicial authority, thanks to their sui generis decisions of trustee appointment.
18. In the National Report submitted to the UN during the second review process, Turkey states that the Constitutional Court, having started receiving individual applications, followed the case law of the ECHR and other constitutional courts rather than domestic law exclusively and diligently implemented the individual application mechanism which promoted human dignity and freedom. Whereas in practice, unlike the rhetoric in the National Report, the Constitutional Court did not handle the decisions by CJP that caused right violations diligently at all, but rather encouraged them instead of promoting human freedom, thus drifting away from an effective domestic remedy, as shall be shown below in the examples of the Court's decisions.

Turkey Universal Periodic Review Submission, July 2019

19. Disturbing developments took place concerning independence of the Constitutional Court after Turkey's second review process. The memberships of two members of the Constitutional Court were suspended on 4 August 2016. The remaining 15 members of the Court arbitrarily ended the terms of the two members with reference to Article 3 of Emergency Decree no. 667 dated 23 July 2016 without showing respect to the principle that "The irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence (Campbell and Fell v. The U.K., § 80). In addition, all judges including those in the Constitutional Court can be removed from the profession through an arbitrary decision as per Article 3 of Emergency Decree no. 667. As long as this legislation is in effect, the guarantees for judges stipulated by Article 139 of the Constitution are effectively suspended, causing the members of the Constitutional Court, among others, to work under the constant threat of being dismissed.
20. In the National Report submitted to the UN during the second review process, the Constitutional Court states that it identified rights violations in the applications regarding such rights as right to personal freedom and security, right to life, right to property, freedom of expression, right to respect for private and family life and right to fair trial. However, in contrast to this statement, the Constitutional Court did not rule for any rights violation in the decision by a CJP which based its trustee appointment to a foundation on Article 133 of the Code of Criminal Procedure, which in fact clearly stipulates that trustee appointment decisions can only be made for companies not for foundations.¹² In the application exemplified in article 15 of this report, Constitutional Court (CC) did not identify any rights violations in the decisions of trustee appointment which practically avoided discussing conditions for trustee appointment for 19 companies and openly ruled against basic rights protected by the law and international agreements.¹³ This decision per se proves that the CC is no longer an independent institution, nor is it an effective legal remedy for rights violations.
21. There are gaps in the law concerning complaints about trustee actions or a trustee in person. Regarding trustees appointed under a criminal investigation, Article 133/3 of the Code of Criminal Procedure stipulates that "*Interested parties can apply to the authorized court against*

¹² Constitutional Court application dated 13.01.2016 with file number 2016/888

¹³ Constitutional Court application dated 07.01.2016 with file number 2016/297

Turkey Universal Periodic Review Submission, July 2019

the actions of appointed trustees in accordance with the provisions of the Turkish Civil Code dated 22.11.2001 and numbered 4721 and e Turkish Commercial Code dated 29.6.1956 and numbered 6762.” It should first be remembered that there is not any legislation about the person of the trustee. The human rights violations resulting from this gap will be further evaluated below.

22. Provisions about the institution of trusteeship are fundamentally addressed by the Turkish Civil Code.¹⁴ Although it is apt that a reference is made in Article 133 of the Code of Criminal Procedure to the Anti-Terror Law (abbreviated as TMK in Turkish) and to the Turkish Commercial Code (abbreviated as TTK in Turkish) with regards to trustee actions, there is no clear reference to them in the text of the article as to the authorized court. In other words, it is uncertain in Turkish law whether it is Criminal Judgeships of Peace that are authorized as per the Anti-Terror Law or Commercial Courts as per the Turkish Commercial Code. There are views in the literature claiming that the authorized court might be the Criminal Judgeship of Peace.¹⁵
23. Since regulations do not explicitly refer to the authorized court for complaints about trustee actions and since literature on law refers varying views regarding the issue, our report evaluates below decisions about two separate applications regarding the issue, one directly to a Criminal Judgeship of Peace and the other directly to a Commercial Court of First Instance.
24. In a decision made by a Criminal Judgeship of Peace (CJP) regarding a complaint about trustee actions and persons of trustees,¹⁶ the CJP made a decision of non-jurisdiction and referred the

¹⁴ Trustees must follow the instructions of the authorized guardian (Art. 459 of the TMK). Trustees must obtain permission from the authorized guardian in many transactions such as purchasing, selling, or pledging a property and undertaking currency exchange (Art. 462 of the TMK). To transfer, liquidate, or partner in a company, permission must be obtained from the supervisory body as well as from the authorized guardian (Art. 463 of the TMK). Reports must be presented to the authorized guardian (Art. 464 of the TMK). Trustees are obliged to take necessary care in performing their duties as required by good management (Art. 466 of the TMK).

¹⁵ “Trustee appointment to company management as a protective measure (Art. 133 of the CMK).” Asst. Prof. Uğur ERSOY <http://dergiler.ankara.edu.tr/dergiler/38/2150/22325.pdf>

“These arguments reveal that there is discrepancy between the TMK and the TTK as to the competent court to apply to for transactions of trustees. While it is Criminal Judgeships of Peace or Civil Courts of First Instance that are authorities for complaints and objections are according to the TMK, it is Commercial Courts of First Instance according to the TTK. Because Art. 133/3 of the Code of Criminal Procedure refers to both codes at the same time, I wonder which code is applicable.”

¹⁶ I Istanbul Anadolu 2nd Criminal Judgeship of Peace’s decision numbered 2015/1369 Basis, 2015/1488 Decision and dated 17.12.2015: “The case pertains to trustees appointed to commercial companies and the provisions to be implemented. A decision of trustee appointment has been made by Istanbul Anadolu 10th Criminal Judgeship of Peace for the commercial companies in question. Article 126 of the TTK does not include any provisions as to implementation of TMK provisions in trustee appointment

Turkey Universal Periodic Review Submission, July 2019

file to a Commercial Court of First Instance (CCFI) on the grounds that Article 126 of the Anti-Terror Law did not include any provisions about whether Anti-Terror Law provisions should be implemented for actions of trustees appointed to a commercial company. The decision made no evaluation about the complaint filed against the person of the trustee. On the other hand, the CCFI to which the file was sent¹⁷ evaluated the complaint as one about the person of the trustee and made a decision of non-jurisdiction on the grounds that the identity and qualifications of the trustees appointed by the CJP should be evaluated by the CJP and then referred the file back to the CJP. First of all, neither the CJP nor the CCFI is able to make a distinction or evaluation about whether the complaint is about the person or actions of the trustee or both. In other words, the CJP took the complaint as a complaint about trustee actions and stated that the CCFI was the authorized court, whereas the CCFI took the complaint as a complaint about the person of the trustee and ruled that the CJP was the authorized court. In fact, the duties of CJP are clearly defined in Law no. 5235 regarding Establishment, Duty and Jurisdiction of Judicial Courts of First Instance and Regional Courts of Justice. CJP cannot be applied to for a trustee's person or action. Laws no. 5271 and 5235 do not grant any such authority to them.

25. Decisions made by the Court of Cassation regarding the authorized court for trustee actions also demonstrate that legal regulations about the issue are incomplete and insufficient. Upon appeal of the decision, the 11th Civil Chamber of the Court of Cassation did not once again make a distinction between whether the complaint is about the person or action of a trustee and ruled that the ruling for the reference of the file to the authorized CJP should be removed from the decision and the decision should be approved after amendment on the grounds that the Code of Criminal Procedure did not include any regulation about the fact that a case between a civil court and a criminal court is referred to a criminal court provided that the case is decided to be held by a criminal court and provided that the parties file an application.¹⁸
26. In addition, in another decision about a complaint to a Commercial Court of First Instance about actions of trustees, the complaint was rejected on the grounds that the trustee appointment

to a commercial company. Given Article 1 of the TTK, it is required that relevant provisions of the TMK should be implemented for a commercial company to the greatest extent. Therefore, the case must be addressed in a commercial court of first instance."

¹⁷ Istanbul Anadolu 9th Commercial Court of First Instance's decision numbered 2016/2 Basis, 2016/14 Decision and dated 11.01.2016.

¹⁸ Decision by 11th Civil Chamber of the Court of Cassation numbered 2016/2230 Basis, 2017/4794 Decision and dated 11.01.2016.

Turkey Universal Periodic Review Submission, July 2019

decision had been made by the Criminal Judgeship of Peace, which was thus responsible for the actions of the trustees.¹⁹ Commercial Court of First Instance decision regarded the complaint as one about the person of the trustee and issued non-jurisdiction, which was approved by the Court of Cassation. In another case, another Commercial Court of First Instance made a decision of non-jurisdiction, clearly stating that one cannot apply to civil courts about actions of trustees. The 11th Civil Chamber of the Court of Cassation approved the decision of rejection, delivering its opinion that the authority to inspect the trustees appointed by criminal judgeships of peace under a criminal investigation rested in criminal judgeships of peace and civil courts were not authorized to review objections to actions of trustees.²⁰

27. As can be seen in the two different decisions by the Court of Cassation appended to our report, civil courts are not authorized to address issues regarding the persons or actions of trustees. Contrary to the examples included in the National Report by Turkey, these decisions reveal the fact that the right to access to justice and the right to effective remedy are flagrantly violated.
28. Consequently, there is a trustee profile in Turkey that is unbounded by any supervisory mechanism, accountable to no one and free to manage companies the way they please. Lack of supervision for trustees has, in practice, led to a huge gap that is not likely to happen in a state of law.
29. To prevent rights violations, it is critical that laws should make it clear where to apply for the person or action of a trustee, i.e. the authority to deal with objections.
30. Another issue that exacerbates rights violations is the fact that there is not any legal regulation that specifies a term of appointment for trustees in criminal investigations. Unlike trusteeship in private law (Art. 477 of TMK), when trusteeship should end in criminal investigations is not specified in the Code of Criminal Procedure. Whereas, since trustee appointment is a protective measure, it is essential that trusteeship should be discontinued once it is no longer needed. In Turkey, however, since trustees are not supervised as seen in the examples above and their term of office is not specified, trusteeship causes rights violations to reach unprecedented levels.

¹⁹ Decision by Istanbul Anadolu 7th Commercial Court of First Instance numbered 2016/31 Basis, 2016/22 Decision and dated 20.01.2016.

²⁰ Decision by 11th Civil Chamber of the Court of Cassation numbered 2016/4551 Basis, 2017/6986 Decision and dated 06.12.2017.

Turkey Universal Periodic Review Submission, July 2019

31. It is essential that extreme care should be exercised in intervention through trustee appointment to companies due to their critical economic and social functions. In Turkey, on the other hand, trustee appointment turned into a means of expropriation.
32. Undoubtedly, a crime is likely to be committed under operations of a company, yet it is essential that great care should be taken when an intervention is planned. In such cases, the principles of criminal law must be followed closely and the principle of proportionality must be taken into consideration. Only in this way can public economy be protected from any damage. However, the sui generis institution of trusteeship in Turkey continues to produce practices and rights violations that may lead to significant public losses in the future.
33. People from all walks of life including party leaders, lawmakers, academics and writers forcefully argue that the trustee appointments effected by Criminal Judgeships of Peace in Turkey are done for political, not legal reasons.²¹
34. The National Report argues that freedom of expression and the media are protected in Turkey by the Constitution and other regulations, amendments have been enacted in the Turkish penal Code, the Code of Criminal Procedure and Anti-Terrorism Law regarding freedom of expression and the media in order to achieve international standards, the enforcement of court cases and sentences committed through the media have been stopped, and many detainees have been released. On the other hand, the trustee appointment decisions exemplified above were in fact issued against companies that included media organs. The target of the first decision about trustee appointment by a Criminal Judgeship of Peace was Ipek Holding, which owned a number of newspapers and TV stations. The first action of the trustees was to cut off the publications and broadcasts of the companies, which is clearly an intervention in media freedom.
35. The second institution to which a Criminal Judgeship of Peace appointed trustees was KAYNAK Holding. One of the initial actions of the trustees was to intervene in the works

²¹ CHP Chairman Kemal Kılıçdaroğlu, "The government adds yet another failing grade to the grade report of our country's democracy by illegally appointing trustees to holding companies that employ hundreds of people. People across the globe make much of their big companies for economic development. Turkey, on the other hand, appoints trustees to its big holdings with handsome salaries. Erdoğan proves that he's after some personal vendetta when he says 'They betrayed me.' But the judiciary is not about vengeance but about justice." <https://www.sozcu.com.tr/2015/gundem/kilicdaroglundan-kayyim-tepkisi-990426/>

Turkey Universal Periodic Review Submission, July 2019

published in these publishing houses, which is a clear violation of freedom of expression and media freedoms.

36. The appointed trustees banned the printing of Fethullah Gülen's books by IŞIK YAYINCILIK A.Ş. and their sale in the stores of N-T A.Ş., a retail bookstore, another trustee appointed company, which runs against all freedoms protected by the Constitution and international agreements including freedom of the media, freedom of thought, conscience and religion, freedom of expression and intellectual rights of the author.²² In this regard, an application has been made to the Commercial Court of First Instance against this action of the trustees.²³ The complaint was rejected due to non-jurisdiction and the rejection decision was approved by the Court of Cassation. This situation also indicates that victims of human rights violations lack effective access to legal remedy.
37. Turkey states in the National Report that several decisions made by numerous courts regarding confiscation of works published on different dates have been revoked with the addition of a temporary law to the Media Law as per ECHR provisions and ECHR decisions. However, contrary to these statements, publication and delivery of 672 books, CDs, DVDs and other electronic material affiliated with Fethullah Gülen that were legally published and sold were prohibited by a Criminal Judgeship of Peace and a sales ban was imposed on them.
38. Whereas, since publication bans restrict many basic rights and freedoms protected by the Constitution, such restrictions should be enforced in accordance with Article 13 of the 1982 Constitution as well as conditions for restriction listed in the provision that regulates basic rights and freedoms. In this respect, restrictions can only be enacted by following the principle of proportionality, without harming the essence of basic rights and freedoms, and only through "law." Indeed, many ECHR decisions rule that restrictions can be imposed under certain conditions and only in situations stipulated by law (Art. 10/2 of ECHR).
39. Moreover, most of the books in question are not about politics but are composed of religious sermons. None of the books include discourse that promotes violence, discrimination, xenophobia, racism or hatred, and all of them are within the scope and protection of freedom of

²² <https://www.aksam.com.tr/guncel/o-magazalarda-gulenin-kitabi-yasaklandi/haber-491851>

²³ Decision by Istanbul Anadolu 7th Commercial Court of First Instance numbered 2016/31 Basis, 2016/22 Decision and dated 20.01.2016.

Turkey Universal Periodic Review Submission, July 2019

expression. Still, claiming that they underpin a criminal activity violates the right to access to information and news as well as freedom of expression.

40. Besides human rights violations caused by book bans and withdrawals, persons who purchased these books from bookstores when there was no prohibition are viewed as potential criminals, which violates their basic human rights. The books in question were published and sold legally with official labels on them. Although these books were purchased under freedom of access to information, which had been guaranteed long ago by the Constitution and international agreements, people who had Fethullah Gülen books in their homes or offices were officially charged with terrorism and given sentences after this decision of prohibition.²⁴
41. Contrary to the information in the National Report about freedom of expression and freedom of the press, there have been violations of press freedoms, freedoms of thought, conscience and religion, freedom of expression and right to property in contradiction to the fundamental provisions of Constitution, international agreements and the ECHR.
42. ECHR case law states that freedom of expression is one of the pillars of a democratic society, and adds that this freedom applies not only to declaration of information or opinions regarded as ordinary, harmless or insignificant but also to opinions that might be found offensive, shocking or disturbing by the state or part of the population.
43. Although the freedom to express and disseminate information (Art. 25, 26) and the freedom of religious belief and conscience (Art. 24) are included in the Turkish Constitution as fundamental rights, there are not tangible legal regulations regarding especially prohibition of published works in accordance with the case law of the ECHR. There is not any domestic remedy against rights violations in this framework, which increases the number of files and applications before the ECHR.
44. Article 4.1 of the ICCPR and Article 15.1 of the ECHR stipulate that no derogation of obligations can be against obligations resulting from international law even in case of state of emergency as in Turkey and derogation must conform to the requirement of necessity and proportionality. However, the incidences described below demonstrate that legal regulations have diverged considerably from the criteria of necessity and proportionality

²⁴ <http://ilerihaber.org/icerik/evinde-fetullah-gulenin-kitaplari-olan-azeri-siyasetci-tutuklandi-58777.html>

Turkey Universal Periodic Review Submission, July 2019

Recommendations

45. Regarding protection of property, freedom of expression, assembly, and association, the right to information and the right to effective review the Turkish government should be urged to conduct a review of all articles of the Turkish Criminal Procedure Code, Turkish Penal Code, the Anti-Terror Law, the Law on the National Intelligence Agency and other laws that are used to restrict the rights to property, freedom to conduct a business, freedom of expression and the right to access information, and amend or repeal restrictive provisions.
46. To this end, Article 133 of Turkish Criminal Procedure Code, Article 19 of Law no. 6758 and Emergency Decree Laws No. 667, 668, 670, 686, 687 which restrict freedom of expression, Derogation in time of emergency, Limitation on use of restrictions on rights, Individual applications, protection of property must be amended immediately on the basis of Articles 10, 15, 18, 34 of the Convention for the Protection of Human and Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and case law of European Court of Human Rights. Provisions in the Law on preventing freedom of expression and right to property must also be amended.
47. More specifically, the practice of appointing trustees to the companies against the legislative regulation stated at Article 133 of Turkish Criminal Procedure Code should be ended. The gaps in the law concerning complaints about trustee actions or a trustee in person should be addressed. Regulations should be introduced for effective review of lawfulness decisions regarding appointing trustees to the companies by changing the framework of the Criminal Judgeships of Peace.
48. Regarding reform of the criminal justice system and moves to uphold the right to a fair trial, the Turkish government should be urged to end the misuse of terrorism charges against individuals for whom there is no evidence of violent activities, plotting or logistic help to armed groups and further limit prolonged and arbitrary pretrial detention and speed up trial proceedings.

Turkey Universal Periodic Review Submission, July 2019

49. The Turkish government should also be urged to strengthen the independence of judges and prosecutors from the executive. The government's interference in the criminal justice system and in criminal investigations relating to government-linked corruption allegations should end and all public officials can be held accountable for human rights abuses and corruption.
50. According to Article 15 of the Constitution, presumption of innocence cannot be violated even during state of emergency. However, fundamental rights have been considerably curtailed under the state of emergency and pursuant to the decrees issued under it. Therefore, all the decrees and laws associated with the now-lifted state of emergency should be revoked and state of law should be reestablished.

Universal Rights Association (URA) & International Association for Human Rights Advocacy in Geneva (IAHRA GENEVA) & Social Justice Advocacy Campaign (SOJAC)

