



Human Rights Now

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Human Rights Now urges the government of Turkey to respect international human rights laws and give all detained and suspended lawyers, judges and prosecutors the full right to exercise their duties

1. Background

The aftermath of the July 15 coup d'état attempt in Turkey has affected the lives of tens of thousands of people. Those who were accused of being “coup plotters” or “rebels” have been detained, arrested, tortured, raped or killed in the name of “a state of emergency” declared by Turkey’s President Recep Tayyip Erdoğan on July 20, 2016.¹ According to media reports, the government of Turkey began a purge against members of its own civil and military service in the wake of the incident. There have been more than 10,000 persons detained since the coup and credible reports that detainees in official and unofficial detention centers have been subjected to beatings, sexual assault, torture, prolonged stress positions, and denials of food, water, medical treatment, and contact with family and lawyers.²

Human Rights Now, as an international human rights NGO, is extremely concerned about the current situation of human rights in Turkey and believes that urgent actions need to be taken in order to stop the ongoing human rights violations. Above all, our greatest concern is mass detentions and suspensions of lawyers, judges and prosecutors whose right to exercise their legitimate duties has been taken away during this time of human rights crisis.

2. Government Crackdown and a “State of Emergency”

On 16 July 2016, only a day after the failed coup attempt, the Supreme Board of Judges and Prosecutors of Turkey (the Turkish High Council of Judges and Prosecutors) suspended 2,745 Turkish judges

¹ Turkey suspends European Convention on Human Rights in wake of attempted coup. Independent. 21 Jul. 2016.

<http://www.independent.co.uk/news/world/europe/turkey-coup-attempt-human-rights-president-erdogan-purge-turkish-military-a7148166.html>

² Turkey: Independent monitors must be allowed to access detainees amid torture allegations. Amnesty International. 24 Jul. 2016. <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/> (referencing witness statements made directly to AI).

including Supreme Court judges from duty and ordered their detention.³ Of these judges, 541 were in the administrative judiciary and 2,204 were in the criminal judiciary. This amounted to approximately 36% of all judges in Turkey at the time. In addition, approximately 755 judges and prosecutors, including two judges of the Constitutional Court, have been detained without evidence to support the allegations that they were linked to the attempted coup.⁴ Along with the government crackdown, Turkey has enacted a series of laws which resemble those often seen in a totalitarian government. On July 20, Turkish President Recep Tayyip Erdoğan declared a state of emergency for at least three months, effectively giving the Prime Minister and his cabinet the power to rule by decree and bypass Parliament.⁵ On the following day, a government spokesperson announced that Turkey would formally suspend its compliance with the European Convention on Human Rights (ECHR) and during a temporary state of emergency. In addition, President Erdogan has stated that detentions will rise if people are guilty and that he is prepared to bring back the death penalty if necessary.⁶ On July 23, the pre-charge detention limit was increased from 4 to 30 days in the first decree issued under the state of emergency.⁷ Suspects can now be detained for as long as 30 days without charge, and the government can listen in on all conversations which they have with their attorneys.⁸

3. Turkey's Human Rights Duties

Human rights in Turkey are protected by international law treaties that take precedence over Turkish legislation according to Article 90 of the 1982 Constitution.⁹ Article 15 of the Turkish Constitution provides that the authorities cannot suspend the entire ECHR even during a state of emergency; they may only derogate certain rights to the extent strictly necessary.¹⁰ Moreover, Turkey ratified the International Covenant on Civil and Political Rights (ICCPR) in 2003 and the Second Optional Protocol to the ICCPR in 2006, which prohibits use of the death penalty among member states.¹¹ Article 4 of the ICCPR also does not permit blanket suspension of the entire treaty or a protocol, only the derogation of certain rights in a state of emergency to the extent strictly necessary. Even accounting for the allowance of specific derogations in emergencies, both the ECHR and ICCPR do not permit the derogation of the rights to life,

³ *UN human rights chief urges Turkey to uphold rule of law in response to attempted coup*. UN News Centre. 19 Jul. 2016. <http://www.un.org/apps/news/story.asp?NewsID=54492#.V6J0qeRTHv9>

⁴ *Human Rights Monitoring Group Update-July 21, 2016*. Gazette. The Law Society of Upper Canada. 21 Jul. 2016. <http://www.lawsocietygazette.ca/news/human-rights-monitoring-group-update-july-21-2016/>

⁵ *Turkey crackdown by the numbers: Statistics on brutal backlash after failed coup*. Amnesty International. 26 Jul. 2016. <https://www.amnesty.org/en/latest/news/2016/07/turkey-crackdown-by-the-numbers-statistics-on-brutal-backlash-after-failed-coup/>

⁶ *Turkey coup attempt: Erdogan signals death penalty return*. BBC News. 19 Jul. 2016. <http://www.bbc.com/news/world-europe-36832071>

⁷ Amnesty International, *supra*, n. 2.

⁸ *Turkey detainees tortured, raped after failed coup, rights group says*. CNN World. 27 Jul. 2016. <http://www.cnn.com/2016/07/26/europe/turkey-coup-attempt-aftermath/>

⁹ *Constitution of the Republic of Turkey*. Retrieved. 3 Aug. 2016. https://global.tbmm.gov.tr/docs/constitution_en.pdf

¹⁰ Amnesty International, *supra*, n. 5.

¹¹ *International Covenant on Civil and Political Rights (ICCPR)*. United Nations Human Rights. Retrieved. 3 Aug. 2016. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>; *Second Optional Protocol to the ICCPR, 15 Dec. 1989*; <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>, Art. 1.

prohibition of torture, non-discrimination, and the prohibition of ex post facto crimes, and in the ICCPR the freedom of religion, even in emergencies..¹²

Furthermore, we believe that cruel and inhuman treatment of the detainees as well as suspensions and removals of professionals in the fields of the judiciary, education and media also violate the human rights protected under other treaties which Turkey has signed. This includes the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Convention for the Prevention of Torture and inhuman or Degrading Treatment or Punishment.¹³

Recommendations

HRN calls on the Turkish government to:

- Abide by the rule of law and respect Turkey's duties under its international human rights conventions to protect the human rights of its citizens, including the non-derogable rights to life, no torture, no ex post facto crimes, non-discrimination, and freedom of religion.
- Return to detained and suspended lawyers, judges and prosecutors the full right to exercise their duties and serve people in need of legal assistance and justice.
- End all abuses against detained persons, including beatings, torture, sexual assault, and deprivations of food, water, medical care, and visits with family and lawyers, and provide an effective remedy to detainees so abused.

¹² The non-derogable clauses are provided in ECHR Art 15 and ICCPR Art 4. Right to life (ECHR: Art 2, ICCPR Art 6) torture (ECHR Art 3, ICCPR Art 7), freedom of religion (ICCPR 18), No ex post facto crimes (ECHR Art 7, ICCPR Art 15), non-discrimination (ICCPR Art 4, ECHR Art 14).

¹³ *Ratification of International Human Rights Treaties-Turkey*. Human Rights Library. University of Minnesota. Retrieved. 3 Aug. 2016. <http://hrlibrary.umn.edu/research/ratification-turkey.html>; *European Convention for the Protection of Human Rights and Fundamental Freedoms*. European Court of Human Rights. Council of Europe. Retrieved. 3 Aug. 2016. http://www.echr.coe.int/Documents/Convention_ENG.pdf; *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment-Text of the Convention and Explanatory Report*. Council of Europe. Retrieved. 3 Aug. 2016. <http://www.cpt.coe.int/en/documents/eng-convention.pdf>.