

Prof. Dr. Zühtü Arslan
President of the Constitutional Court of Turkey
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Dear Prof. Arslan,

I am writing as the Chairperson of the Bar Human Rights Committee of England and Wales (BHRC) to express our concern at the lack of determination by the Turkish Constitutional Court of cases involving fundamental human rights during the current period of a state of emergency in Turkey.

BHRC is the international human rights arm of the Bar of England and Wales. It is an independent body of legal practitioners concerned with the protection of rights, defending the rule of law, and ensuring the fair administration of justice. BHRC regularly appears in cases where there are matters of human rights concern, and has experience in legal systems throughout the world.

It is our understanding that thousands of cases have been filed with the Turkish Constitutional Court (TCC) since the announcement of the state of emergency in Turkey, but that no cases have been heard or resolved. The Human Rights Commissioner has also been informed that as at the end of September 2016 there were around 31,844 people in detention and 1,477 still in police custody.

In an Opinion dated 12 December, the Venice Commission observed that by early November 2016 45,000 individual complaints had been received by the Constitutional Court. We understand that you, as the President of the TCC, made a statement on 19 December 2016 at

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the Istanbul Centre of Arbitration that there were, at that date, around 80,000 individual applications waiting to be considered, and that 60,000 of these applications were received after 15 July 2016.

Many of these applications will concern issues of vital importance to individuals, and will impact on their fundamental human rights. Some will concern the deprivation of liberty by the State, where an individual will be entitled to a speedy determination of the lawfulness of their detention to satisfy the requirements of Art 5 (4) of the European Convention on Human Rights. Thus, for there to be an effective remedy for the purposes of Article 5(4), the TCC is required to deal with the application expeditiously.

The situation needs to be viewed in the context of the extreme concern about the treatment of certain groups in Turkey. BHRC is especially concerned that, on the available information, at least 81 journalists are imprisoned in Turkey without trial, all of them facing anti-state charges. Figures suggest that Turkey currently has the highest number of journalists in prison of any country in the world (see <https://cpj.org/imprisoned/2016.php>). Those affected, we understand, include Ahmet and Mehmet Altan along with newspaper editors such as Murat Sabancu (of Cumhuriyet), and İnan Kızılkaya (of Özgür Gündem), and veteran journalists Şahin Alpay and Nazlı Ilıcak.

We are concerned that by not making any determinations to date in respect of applications which relate to deprivation of liberty, the Constitutional Court has not complied with the speediness requirement under Article 5(4). We are further concerned that thousands of other cases involving fundamental rights of individuals have also not been dealt with. Although the Council of Europe's Commissioner on Human Rights has stated that it will be a "*significant challenge*" for Turkey to demonstrate that the Turkish courts can still provide an effective remedy in this context, it is noted that other than a ruling from the TCC that it is unable to rule on the legality of emergency Decree Laws, it has not made a final ruling on a single one of the tens of thousands of applications made to it since the Failed Coup.

As matters currently stand, it appears that that there has been a systemic failure of the court system in Turkey, which is (and continues to be) a severe impairment on access to justice for

fundamental human rights abuses. To ensure that the Court's responsibilities to provide effective access to justice are met, it is essential that cases filed with the court are considered and heard as soon as possible, in particular in relation to those who are held in custody awaiting charge or trial. Although we appreciate the level of administrative burden that has been placed upon the court, this should not be an excuse for failing to facilitate access to justice in cases where fundamental rights are at issue.

We call on the TCC to begin to hear the thousands of cases that have been lodged with it over the last few months. We also call on the TCC to ensure that it prioritises for urgent consideration and determination those cases where individuals have claimed that their continued detention is unlawful, unjustified and disproportionate.

It is important for Turkey to demonstrate that Turkish courts can still provide an effective remedy for potential human rights breaches. We look forward to a response.

Yours sincerely,



Kirsty Brimelow QC

Chairperson, Bar Human Rights Committee of England and Wales (BHRC)

The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. The BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council.