Mandate of the Special Rapporteur on the independence of judges and lawyers

Ref.: AL TUR 3/2024
(Please use this reference in your reply)

21 June 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers, pursuant to Human Rights Council resolution 53/12.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received regarding concerns about systemic lack of due process guarantees in cases of alleged terrorism offenses; lawyers and human rights defenders in Diyarbakır are facing arrests and judicial harassment, with nine individuals currently on trial for their professional activities under the accusation of "membership of an armed/terrorist organization" and others remaining under pending investigations; in a context of reported actions taken by the Executive that interfere with the Judiciary and infringe on its independence.

According to the information received:

Context in the Turkish Judiciary after 2016

In the aftermath of 15 July 2016 in Türkiye, 4.362 judges and prosecutors were dismissed, including members of the Court of Cassation, the Council of State and the Constitutional Court. Criminal investigations were opened against approximately 4.370 judges and prosecutors, 1.311 of them were taken into custody and 2.431 were arrested for their alleged links with the Hizmet /Gülen Movement (see AL TUR 10/2019, AL TUR 2/2019, OL TUR 5/2017).

The Constitutional Court itself reportedly purged two of its judges for alleged links with the Hizmet /Gülen Movement on the grounds of "information from the social environment" and "common opinion emerging over time".[1] At that time as well, YARSAV, the Turkish Association of Judges and Prosecutors, which had more than 1.800 members, was closed by decree-law.

In five groups of judgments regarding more than 1100 arrested judges in Turkey, the European Court of Human Rights (ECtHR) underlined that their detentions, carried out on a mass scale, were not based on any evidence of having committed the crimes for which they were charged (see Turan and others v. Turkey, 75805/16).

The information further suggests that Türkiye's anti-terrorism legal framework grants the Government authority over the judiciary, thus undermining its independence. Law No. 7145 gives the Government the authority to dismiss any public official, judge, or prosecutor solely based on an assessment regarding

[1] The Venice Commission noted that "the judgment does not refer to any evidence against the two judges concerned", para. 136, CDL-AD(2016)037

their contact with terrorist organizations or structures, entities, or groups, rather than evidence. The National Security Council (MGK) as a security entity, is in a position to make such determinations without judicial oversight and review (OL TUR 13/2020).

To justify the dismissal of a judge, the law requires a mere "connection", "union", or "affiliation" with a "structure, formation or group" that Turkey's National Security Council has "determined to operate against the national security of the state." This vague and over-broad formulation creates a great potential for the arbitrary dismissal of judges in violation of guarantees of judicial independence. More than 1.000 applications filed by arrested judges are still pending before the ECtHR.

With more than a third of the judiciary reportedly dismissed and detained overnight, concerns have been raised over the fact that that, according to the Turkish High Council of Justice, 9,914 judges and prosecutors have been recruited by the government after July 2016. The information suggests that the situation has had a chilling effect on the judiciary, and that the scale of mass dismissals and new recruitment raises concerns about the independence of the new judges and prosecutors, who appear to have been recruited in haste. The remaining judges and prosecutors may all be practicing self-censorship in what has been described as a general climate of fear.

Between 2016 and 2022, more than 1.600 lawyers were reportedly prosecuted and 615 were placed in pretrial detention. A total of 474 lawyers have been sentenced to 2.966 years of imprisonment on the grounds of membership in a "terrorist organization," while in fact most have been prosecuted for exercising their profession and defending their clients (see AL TUR 18/2020). The situation described also has long-lasting adverse consequences on the rule of law and the right to fair trial in Türkiye (see AL TUR 5/2023).

Reports suggest that a further effort to silence lawyers came about with the 2020 Law on lawyers (No. 7249), introducing the possibility to create competing bar associations in large cities, resulting in politicization of the bar associations and in weakening the unified voices of lawyers defending human rights and criticizing the executive power.

High Council of Judges and Prosecutors

The mandate has already addressed its concerns about the reform of the former High Council of Judges and Prosecutors. Introduced with the 2017 Constitutional reform (Act No. 6771), the new Council of Judges and Prosecutors was reduced to 13 members (from 22 members previously). The new High Council on Judges and Prosecutors is charged with the general responsibilities concerning the organization and functioning of the judiciary, including appointments, transfers, promotions, sanctions, and dismissals. While no member of the Council is actually appointed by judges or prosecutors, the President of the Republic appoints 4 members from ordinary judges and prosecutors and the National Assembly elects 7 members, from the Court of Cassation (3), the Council of State (1) and legal academics or lawyers (3). The

Minister of Justice, appointed by the President of the Republic, and his/her Undersecretary constitute the 2 remaining members, with the Minister presiding the Council. Hence, with almost half of the Council appointed by the President of the Republic, and with the Ministry of Justice presiding over the Council, the careers of judges and prosecutors across the country is *de facto* under the control of the executive power (see OL TUR 15/2020), jeopardizing the judiciary's independent delivery of justice.

The European Network of Councils for Judiciary (ENCJ) suspended the observer status of the High Council for Judges and Prosecutors of Turkey in December 2016, as it no longer complied with ENCJ Statutes, which requires it to function as an institution independent of the executive and legislature.

Reprisals and limits to the work of the Constitutional Court in individual complaints

The 2010 reform of the Constitutional Court introduced the procedure of individual complaints, which can be lodged by any citizen claiming to suffer a violation by State authorities of fundamental rights and freedoms protected by the Constitution and the European Convention of Human Rights and its protocols.

Designed as a mechanism to provide remedy and redress for victims of human rights violations, the individual application system entered into force in September 2012 and was initially expected to result in a considerable decrease of Turkish cases before the European Court of Human Rights (as of November 2023, Türkiye has 23.750 pending cases before the European Court, constituting 33.2% of the total).

The information suggests that the greatest added value of the individual application process resides in the fact that the Constitutional Court has the power to ask for the reopening of proceedings with a view to putting an end to human rights violations, including arbitrary detentions.

For example, on 25 October 2023, the Constitutional Court ruled on a highly publicized case that the victim’s rights to “be elected” and to “personal liberty and security” had been violated and ordered the file to be sent to the Istanbul 13th High Criminal Court, the court of first instance, for necessary action to be taken (majority of 9 votes to 5).

When it received the decision of the Constitutional Court, the Istanbul 13th High Criminal Court forwarded the decision to the Court of Cassation for its consideration. On 8 November 2023, the Court of Cassation decided to not comply with the Constitutional Court's decision. It also filed a criminal complaint to the Chief Public Prosecutor's Office of the Court of Cassation against the 9 members of the Constitutional Court who voted in favor of a finding of violation on the grounds that they violated the Constitution.

On 21 December 2023, the Constitutional Court issued a second violation of rights verdict on the same case, finding that his “right to individual application”,

"right to be elected" and "right to personal liberty and security" had been violated. On 27 December 2023, Istanbul 13th High Criminal Court sent the file back to the Court of Cassation. On 3 January 2024, the Court of Cassation decided again not to comply with the Constitutional Court's decision.

Reports describe the refusal of the Court of Cassation to implement the Constitutional Court's decision, supported by a criminal complaint and endorsed by President Erdoğan, as a crisis without precedent that might lead to the eradication of the last judiciary mechanism that could serve as a check and balance on the power of the executive.

On 10 November 2023, President Erdoğan, commenting on this judicial crisis, qualified the Constitutional Court's decision as "erroneous" and lamented that it was not the first mistake of the Court.[2] He expressed his preference for a new constitution. The media reported the President's will to shrink the power of the Constitutional Court regarding individual applications by limiting it to awarding compensation.

Lack of fair trial guarantees in the ByLock prosecutions - terrorism related proceedings.

According to the Turkish Justice Ministry statistics, between 2016 and 2020, more than 265.000 individuals were sentenced with the accusation of membership in a terrorist organisation. As of June 2022, the total number of judicial proceedings launched by the Turkish judiciary for membership in a terrorist organisation exceeded 2 million. Considering the large number of people subjected to criminal prosecutions, estimates suggest that more than 4 million people in Turkish society have been directly affected.

In at least 24 opinions[3] issued between June 2017 and April 2024 on allegations of arbitrary detentions in Türkiye, the UN Working Group on Arbitrary Detention (WGAD) concluded that the detentions of the individuals in question had no legal basis and deplored the widespread practice of 'guilt-by-association'. In four recent Opinions, the WGAD noted the existence of a pattern of targeting those with alleged links to Gülen movement on the discriminatory basis of their political or other opinion, based on the significant increase in the number of cases brought to it concerning arbitrary detention in Turkey. The WGAD expressed concern over the pattern that all these cases follow and recalled "that under certain circumstances, widespread or systematic

2 See: https://www.dw.com/tr/erdoğan-aym-yanlışları-arka-arkaya-yapar-hale-geldi/a-67363419

3 Ali Ünal, A/HRC/WGAD/2023/3; Muhammet Şentürk, A/HRC/WGAD/2023/29; Alettin Duman, Tamer Tibik, A/HRC/WGAD/2022/8 ; Osman Karaca, A/HRC/WGAD/2020/84; Ahmet Dinçer Sakaoğlu, A/HRC/WGAD/2020/67; Levent Kart, A/HRC/WGAD/2020/66; Nermin Yasar, A/HRC/WGAD/2020/74; Arif Komiş, Ülkü Komiş and four minors, A/HRC/WGAD/2020/51; Kahraman Demirez, Mustafa Erdem, Hasan Hüseyin Günakan, Yusuf Karabina, Osman Karakaya and Cihan Özkan, A/HRC/WGAD/2020/47; Faruk Serdar Köse, A/HRC/WGAD/2020/30; Akif Oruc, A/HRC/WGAD/2020/29; Abdulmatip Kurt, A/HRC/WGAD/2020/2; Ercan Demir, A/HRC/WGAD/2019/79; Melike Göksan, Mehmet Fatih Göksan, A/HRC/WGAD/2019/53; Mustafa Ceyhan, A/HRC/WGAD/2019/10; Hamza Yaman, A/HRC/WGAD/2018/78; Muharrem Gençtürk, A/HRC/WGAD/2018/44; Ahmet Caliskan, A/HRC/WGAD/2018/43; Mestan Yayman, A/HRC/WGAD/2018/42; Mesut Kaçmaz, Meral Kaçmaz and two minors, A/HRC/WGAD/2018/11; 10 individuals associated with the newspaper *Cumhuriyet*, A/HRC/WGAD/2017/41; Kursat Çevik, A/HRC/WGAD/2017/38; Rebii Metin Görgeç, A/HRC/WGAD/2017/1.

imprisonment or other severe deprivation of liberty in violation of the rules of international law may constitute crimes against humanity."

Among the various criteria used to charge individuals under article 314 of the Turkish Penal Code (TPC), *"establishing or commanding an armed organization",* for alleged membership in the Hizmet/Gülen Movement (GM), use of the app ByLock has emerged as the most damning and often decisive evidence, particularly in the post-coup period.

For instance, a human rights investigation into 118 indictments found that ByLock data was "used as incriminating evidence against suspects in order to establish their alleged membership of an armed terrorist organization"[4] in 78 of the cases. Reports indicate that in none of these indictments were Turkish prosecutors able to present the content of communications allegedly made through the ByLock app. Instead, they appear to have grounded their allegations solely on the government's "exclusivity claim", through which the Turkish government asserts that ByLock was exclusively designed and developed to fulfil the communication needs of the GM.

Digital forensic reports allege that this "exclusivity claim" is erroneous. The information suggests that this claim is nonetheless routinely approved by the Turkish judiciary despite numerous expert reports refuting it.

ByLock data is electronic evidence and as such its collection, securing, processing and analysis requires special technologies. Use of such data in court raises distinct reliability issues as it is inherently more prone to destruction, damage, alteration or manipulation. The information received indicates many concerns related to the use of ByLock data, including:

- In relation to investigations and prosecutions concerning ByLock, Turkish police and judicial authorities exclusively rely on the findings of Turkey's National Intelligence Organisation (Millî İstihbarat Teşkilatı, MIT).

- There is no concrete information as to how the ByLock data was acquired. MIT has said that its services came across the ByLock app "through using the methods, tools and techniques of technical intelligence that are unique to the Agency [MIT]"which would normally diverge from standard legal safeguards. The information suggests that an MIT team had cracked the main ByLock servers, which were located in Lithuania.

- ByLock evidence appear to have been seized and used in breach of the requirements laid out in Turkish law, specifically article 6(2)-(4) of the MIT Law and articles 134-135 of the TCCP. Article 6(2) of the MIT Law stipulates that a prior court order is required for the MIT to interfere with communications performed via telecommunication.

[4] https://www.statewatch.org/publications/reports-and-books/bylock-prosecutions-and-the-right-to-fair-trial-in-turkey-the-ecthr-grand-chamber-s-ruling-in-yuksel-yalcinkaya-v-turkiye/ (citing a 2023 report by the Italian Federation for Human Rights published in July 2023).

Turkish courts reportedly do not themselves have possession of the ByLock data, so they can only ask the Turkish police for this data in relation to any specific defendant. The police share with the court a document called either "ByLock Inquiry Module Minute" or "ByLock Determination or Evaluation Minute", which includes some raw data (including phone numbers and activation data) as well as very limited and often self-contradictory log data. The information further suggests that many judicial and law enforcement officials might not have the expert knowledge required to understand the information provided in the data.

For example, the log data reportedly contains a number of anomalies that raise questions about the integrity and accuracy of the recorded data. These include illogical session events, significant message delivery delays, and issues with the message content records. Log data contains chronologically nonsensical log data in the form of logging in whilst already logged in, logging out whilst already logged out or having a user session expire, despite apparently not having logged in. The substantial number of inconsistencies in the log data, along with the fact that these have apparently neither been detected nor resolved is problematic from a forensic perspective.

The thousands of individuals whose detentions and convictions were based on the alleged use of ByLock in Turkey have been denied access to the electronic evidence allegedly incriminating them, which prevented them from challenging the lawfulness of their detentions and convictions. Reports describe a situation in which there are not enough safeguards in place to ensure that defendants in these cases have had a genuine opportunity to challenge the evidence against them and conduct their defence in an effective manner - on an equal footing with the prosecution. This would mean that the electronic evidence used in the conviction was obtained without judicial oversight, and even further, obtained from third parties, and not from the defendants themselves who were not allowed to examine it.

The Turkish Court of Cassation and the Turkish Constitutional Court (TCC) decided, contrary to previous rulings on digital evidence, that using or downloading ByLock is sufficient evidence to convict a person of membership of an armed terrorist organization, even in the absence of any other evidence. Following this precedent-setting decision by the Turkish Court of Cassation, the first instance courts have relied on the ByLock evidence to convict thousands of individuals.

Currently, there are approximately 8,500 pending applications before the European Court of Human Rights that involve similar complaints under articles 6 and/or 7 of the Convention. The information suggests that since that the authorities claim to have identified around 100,000 ByLock users, it is likely that many more such applications could be submitted. Recently, the Grand Chamber of the European Court of Human Rights underscored that the problems leading to these violations were of a "systemic nature".

Attacks against lawyers and Bar Associations

On 25 April 2023, 191 individuals, including lawyers, journalists, artists, civil society members, and professionals, were arrested during a coordinated police operation for allegedly committing the crime of "membership of an armed/terrorist organization" as provided by article 314 of the Turkish Criminal Code. According to the source, the police operation was carried out ahead of the general elections on 14 May 2023.

Reports indicate that 25 lawyers from Mardin, Batman, Malatya, Urfa, and Diyarbakır were taken into custody. In Diyarbakır, 4 lawyers were allegedly placed in pre-trial detention and 16 lawyers were released with judicial control measures. Civil society organizations denounced the operation as representing "another step in the systematic harassment and intimidation of Kurdish media and political opposition in the country".[5]

According to the received information, the police operation violated applicable laws and standards. For instance, contrary to article 58 of the Attorneyship Law, no permission was obtained from the Ministry of Justice to initiate investigations into offences committed by lawyers during their duties. Additionally, lawyers' offices and residences were searched without a court warrant and without the presence of a prosecutor or a representative from their bar association.Reports suggest that law enforcement officers seized case files, documents, and personal belongings of lawyers during the searches conducted in their residences and offices, without adopting appropriate measures to maintain attorney confidentiality.

Individuals taken into custody were allagedly not informed of the reasons for their arrest and were restricted by the authorities from accessing legal counsel for 24 hours.

The individuals arrested and their legal counsels reported having restricted access to the investigation file, and access requests were consistently denied, resulting in defense counsel of the arrestees having insufficient information on the scope of the investigation file or the nature of the allegations to defend their clients.

According to the source, the conditions of detention and interrogation did not meet established standards. Lawyers encountered delays of up to 8 hours while held in cells at the Diyarbakır courthouse. Reportedly, one lawyer was forced by the authorities to stand during his investigation of 1.5 hours despite objections from defense counsels, all of which were dismissed by the prosecutor.

On the same day the defense attorneys of those detained filed appeals against the orders of arrest and detention. The court allegedly dismissed them, providing no basis for their reasoning.

[5] For a joint statement by media freedom, freedom of expression, and human rights organisations, see "Turkey: PreElection Crackdown on Kurds", 25 April 2023, https://www.hrw.org/news/2023/04/25/turkey-pre-election-crackdownkurds.

On 27 April 2023, three additional lawyers (Burhan Arta, Serhat Hezer, Özüm Vurgun) were placed in pre-trial detention, facing charges of "membership of an armed/terrorist organization". The information suggests that the pre-trial detention decision was adopted without adequate reasoning or substantiated evidence.

On 4 May 2023, lawyer Şerzan Yelboğa appeared at the Diyarbakır Chief Public Prosecutor's Office to give his statement and was also placed in pre-trial detention.

On 25 May 2023, Burhan Arta, Serhat Hezer, Özüm Vurgun, and Şerzan Yelboğa were released.

Pending investigations and lawsuits against lawyers and human rights defenders

In April 2023, the prosecutorial services delivered non-prosecution decisions for 16 lawyers in Diyarbakır, 1 lawyer in Batman, and 1 lawyer in Mardin. In two instances, the Diyarbakır Prosecutor's Office issued a non-prosecution decision due to insufficient evidence, but expressed the 'opinion' that the individuals were "members of an armed/terrorist organization" and indicated that the investigation could be reopened upon the discovery of new evidence.

In February 2024, the Office of the General Prosecutor of the Republic issued indictments against lawyers Adile Salman, Burhan Arta, Fırat Taşkın, Gurbet Özbey Öner, Necat Çiçek, Özüm Vurgun, Pirozhan Karali Güler, Serhat Hezer, Süleyman Şahin, and Şerzan Yelboğa in Diyarbakır under charges of "membership of an armed/terrorist organization" under article 314/2 of the Criminal Code for "acting as a defense counsel for detained individuals who participated in illegal organizational actions and activities".

The indictments were based on statements made by one witness and the presence of the indicted lawyers during the interrogation of detainees "subject to judicial processes for crimes related to the illegal organization". The prosecutor deemed the lawyers' presence at the interrogations as evidence that the lawyers attended these interrogations as defense counsel "on an illegal organization's instructions."

In the indictments, the following was cited as evidence of affiliation with an llegal organization: belonging to the non-governmental organization Lawyers for Freedom (ÖHD) or participating in press releases, meetings, or demonstrations organized by entities such as the Human Rights Association (İnsan Hakları Derneği), the Human Rights Foundation of Turkey (Türkiye İnsan Hakları Vakfı), the Diyarbakır Medical Chamber, or the Peoples' Democratic Party (Halkların Demokratik Partisi). The indictment prepared against Özüm Vurgun also cited her attendance at the march commemorating the death of lawyer and rights defender Tahir Elçi in Diyarbakır as evidence of membership in an illegal organization.

According to the information, prosecutors have repeatedly requested the application of article 151 of the Criminal Procedure Law, which allows courts to bar lawyers for up to two years from representing clients in terrorism-related cases if they themselves face criminal investigations for terrorism offenses.

On 15 February 2024, the criminal lawsuits against the indicted lawyers began before the Diyarbakır 5th Assize Court, with the first hearing against lawyer Süleyman Şahin. According to her defense counsels, the prosecution's case relied solely on Şahin's conduct in the course of her legal duties.

While I do not want to prejudge the accuracy of these allegations, I would like to express my deepest concern about the current situation of judges, prosecutors, lawyers, and the judiciary itself, that appears to be subject to increasing interference in Türkiye.

Specifically, I am concerned about the series of actions undertaken that, separately and in combination, appear to be aimed at undermining the independent functioning of the judiciary in the country. If these reports are confirmed, this course of action would constitute a violation of international human rights standards regarding the right to a fair trial and the independence of the judiciary.

In this regard, I would like to recall that the right to a fair and public hearing by an independent and impartial court is provided for in international human rights standards, and that a competent and independent court is one of the guarantees of a fair trial. The requirement of independence concerns, in particular, the procedure and qualifications for the appointment of judges, the guarantees relating to their security in office and the guarantees of respect for their independent decisions.

International standards on the independence of the judiciary make clear that judges may be suspended or removed only for reasons of proven incapacity or behavior that renders them unfit to exercise their duties. Such suspensions may only be imposed by an independent body following appropriate procedures.

Constitutional Court

I note with concern as well the reports of an institutional crisis in the country's judiciary, in particular, the lack of compliance with some of the Constitutional Court's rulings in individual cases. I recall that it is the duty of all government and other institutions to respect and observe the independence of the judiciary.

I am also concerned about what may be reprisals against some of the judges through criminal accusations. I recall that a fundamental principle of judicial independence is that judges should not be subject to criminal or disciplinary action based on the content of their decisions.

Further, a crisis of the magnitude described in this communication limits everyone's access to justice. For example, it may impact the possibility of appeal in both civil and penal cases, as well as other key functions of the Judiciary, and it negatively affects the safeguards in place to ensure due process and human rights protection.

Concerns about due process guarantees, including the use of electronic evidence

I would also like to recall that the guarantees provided in article 10 of the Universal Human Rights Declaration, and 14 of ICCP require that in the determination of any charge against any individual, everyone is entitled to a number of minimum guarantees, including the right to have adequate time and facilities for the preparation of his or her defence, the right to communicate with counsel of his/her own choosing, and the right to defend himself/herself in person or through legal assistance of his/her own choosing.

The rights to equality before the courts and tribunals, to a fair trial, and to effective remedies are key elements of human rights protection and serve as a procedural means to safeguard the rule of law.

Taking into consideration the widespread use of messaging apps in the world, as well as the right of individuals to freedom of opinion and expression, I am concerned at allegations that simply downloading one of these applications (ByLock) has been used systematically by the Turkish judiciary as evidence to support an accusation of terrorism.

Considering the alleged number of cases that have used this data as evidence for conviction, I join others in expressing concerns over the process of acquisition and analysis of the ByLock data under the law governing data retention; the evidentiary value of the ByLock evidence; and the reliability, accuracy, authenticity and integrity of the ByLock data on which the allegations of ByLock use are predicated. The nature of the procedure and the technology used to collect digital evidence is complex. Without adequate training and expert assistance, national judges may lack the ability to establish its authenticity, accuracy and integrity. Where such evidence is the sole or exclusive basis for suspicion about a suspect, a national judge must seek further information before assessing its potential evidentiary value under domestic law.

In view of the systemic nature of the problem, the Turkish judiciary should order retrials in all cases in which ByLock evidence was relied upon, and should urgently implement safeguards to address the existing disparities in cases relying on digital evidence to ensure equality of arms.

I am also concerned about reported arrests of individuals without informing them of the charges against them and reports indicating that access to counsel was restricted. Further concerns arise in relation to the reported restricted access to the individuals' case files, raising serious concerns regarding the right to a fair trial and the principle of equality of arms.

I also wish to emphasize that it is of concern that despite issuing a non-prosecution decision due to insufficient evidence, the Prosecutor's Office expressed the 'opinion' that the individuals were "members of an armed/terrorist organization".

Restrictions on the free exercise of the legal profession

Further, I express my serious concerns about the information suggesting wide scale arbitrary arrests and prosecution of lawyers under anti-terrorism provisions. If confirmed, the events described above may amount to a serious breach of a number of international and regional standards relating to the free and independent exercise of the legal profession.

I would like to remind Your Excellency's government that the legal profession and its free exercise are an essential element of the rule of law, the protection of human rights and the functioning of an independent judicial system. The free exercise of the legal profession contributes to ensuring access to justice, oversight of state power, protection of due process and judicial guarantees.

I am particularly concerned that the criminalization of lawyers and human rights defenders under anti-terrorism provisions may adversely impact the effective realization of the right to fair trial in the country as a whole, and in particular the right of everyone to be assisted by a counsel of one's own choosing. In particular, it may deter legal workers from doing their work, as it creates a hostile environment for lawyers seeking to play their role in the country's legal system. These incidents may have a chilling effect on current and future lawyers who are or may consider taking up the cases of individuals facing terrorism-related charges.

International standards provide that lawyers are entitled to perform their professional functions without any threat, intimidation, harassment or interference, and without suffering, or being threatened with, prosecution or any administrative or sanctions for actions undertaken in accordance with professional duties and ethical standards.

I am extremely worried about reports indicating that the prosecution has equated acting as defence counsel for individuals "subject to judicial processes for crimes related to the illegal organization" amounts to acting as lawyers "under the instructions of an illegal organization". International and regional standards expressly prohibit the identification of lawyers with their clients or their clients' causes in the discharge of their professional duties.

I am also concerned about information received suggesting that law enforcement officers seized case files, documents, and personal belongings of lawyers during the searches conducted in their residences and offices, without taking appropriate measures to maintain attorney-client confidentiality. According to principle 22 of the UN Basic Principles on the Role of Lawyers, governments must recognize and respect the confidentiality of all communications and consultations between lawyers and their clients within their professional relationship.

Finally, the troubling actions taken against lawyers have cumulative impacts on the right to a fair trial in Türkiye. Only if lawyers can act without fear of reprisal can individuals charged with crimes have a fair trial. The extent and nature of the concerns set out above suggests a systematic impact on the right to a fair trial for anyone accused of alleged links with the Hizmet /Gülen Movement.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.

2. Please provide detailed information on the individuals affected by the latest wave of arrests, and indicate the crimes they are charged for and the evidence used to proceed to their arrest. Please also indicate whether these individuals continue to be in pre-trial detention or have been brought before a judge. Please also indicate if and when these individuals have been brought before a judicial authority, what charges have been levied against them and if they are held in pre-trial detention.

3. Please provide information on why charges related to membership to a terrorist organization have been levied against these individuals and indicate how this complies with a strict understanding of the definition of terrorism as elucidated by international law norms including but not limited to United Nations Security Council Resolution 1566 (2004).

4. Please provide information on whether the lawyers in question have had prompt access to a lawyer of their choice and have been provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with, their lawyers, without any interception by prison authorities and in full confidentiality.

5. Please indicate the measures taken to address the concerns expressed in the use of ByLock evidence.

6. Please indicate the measures taken to ensure the guarantees of a fair trial in these cases, and in particular access to an independent and impartial tribunal.

7. Please indicate what measures have been taken to ensure that human rights defenders and human rights lawyers can operate in an enabling environment and can carry out their legitimate activities without fear of harassment, stigmatization or criminalization of any kind.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting website. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please accept, Excellency, the assurances of my highest consideration.

Margaret Satterthwaite
Special Rapporteur on the independence of judges and lawyers

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to draw the attention of your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR) ratified by Türkiye on 23 September 2003, and the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), ratified on 18 May 1954.

According to article 9 of the Covenant, everyone has the right to liberty and security of person, and no one shall be subjected to arbitrary arrest or detention. Article 9(2) provides that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Pursuant to article 9(3), anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. Pretrial detention is an exceptional measure and must be assessed on an individual basis.

I also recall that article 14 (1) of the ICCPR requires that all persons are entitled to a "fair and public hearing" before a tribunal that is "competent, independent, and impartial". Article 14 (3) of the ICCPR lists, among the procedural guarantees available to persons charged with a criminal offence, the right to have adequate time and facilities to communicate freely with counsel of choice and to effectively prepare their defense (article 14 (3)(b) and (d)).

In its General Comment No. 32 (2007), the Human Rights Committee explained that the right to communicate with counsel enshrined in article 14 (3) (b) requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications. S/he should also be able "to advise and to represent persons charged with a criminal offence in accordance with generally recognised professional ethics without restrictions, influence, pressure or undue interference from any quarter" (CCPR/C/GC/32, para. 34). I would also like to refer your Excellency's Government to the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of their Liberty to Bring Proceedings Before a Court (A/HRC/30/37, principle 9 and guideline 8).

Article 14, paragraph 2 of the ICCPR and article 6, paragraph 2 of the European Convention on Human Rights both provide that individuals charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law. The Human Rights committee commented that it is a duty for all public authorities to refrain from prejudging the outcome of a trial, e.g. by abstaining from making public statements affirming the guilt of the accused. (CCPR/C/GC/32, para. 30).

I would further like to refer your Excellency's Government to the UN Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana (Cuba) from 27 August to 7 September 1990.

Principle 8 establishes that all arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Principle 16 requires Governments to take all appropriate measures to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference, and to prevent that lawyers be threatened with prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 18 provides that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions.

Principle 20 establishes that lawyers must enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

The independence of the judiciary is an essential requirement of the democratic principle of separation of powers, which stipulates that the executive, the legislature and the judiciary constitute three separate and independent branches of Government. The principle of the separation of powers is the cornerstone of an independent and impartial justice system. According to this principle, the Constitution, laws and policies of a country must ensure that the justice system is truly independent from other branches of the State. Within the justice system, judges, lawyers and prosecutors must be free to carry out their professional duties without political interference and must be protected, in law and in practice, from attack, harassment or persecution as they carry out their professional activities.

I would like to refer you to the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which establish that the independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary. (principle 1) The Basic Principles on the independence of the judiciary also establish that the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

Finally, I also refer to the relevant provisions of the United Nations Security Council resolutions 1373 (2001), 1456(2003), 1566 (2004), 1624 (2005), 2178 (2014), 2341 (2017), 2354 (2017), 2368 (2017), 2370 (2017), 2395 (2017) and 2396 (2017); as well as Human Rights Council resolution 35 34 and General Assembly resolutions 49/60, 51/210, 72/123 and 72/180, which require that States must ensure that any

measures taken to combat terrorism and violent extremism, including incitement of and support for terrorist acts, comply with all of their obligations under international law, in particular international human rights law, refugee law, and humanitarian law.

While there is no internationally agreed definition of terrorism, there are clear frameworks from which States national definitions should follow set by inter alia 33 Terrorism Treaties, and the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism stresses that Turkey should ensure that national counter-terrorism legislation is limited to the countering of terrorism as properly and precisely defined on the basis of the provisions of international counter-terrorism instruments and is strictly guided by the principles of legality, necessity and proportionality. The definition of terrorism in national legislation should be guided by t Security Council resolution 1566 (2004) and also by the Declaration on Measures to Eliminate International Terrorism and the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism. The seriousness of, and punishment for, a criminal conviction must be proportionate to the culpability of the perpetrator. No one should be convicted of participating in a terrorist act, or facilitating or funding terrorism, unless it can be shown that that person knew or intended to be involved in acts of terrorism as defined by international law. In line with human rights standards, non-violent criticism of the State or any of its institutions, including the judiciary, cannot be made a criminal offence in any society governed by the rule of law.