



BETWEEN REGIME OPPRESSION AND A SEDENTARY EUROPEAN UNION:

Insights into Artists and Human Rights Violations in Turkey

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INTRODUCTION:

Arbitrary arrest, prolonged and pretrial detention, unfair trials in an unjust legal system, jail time, the potential of being released and then the fear of being rearrested. This is the story for hundreds of journalists, artists and activists in Turkey. These activists comprise a group of individuals from diverse backgrounds, yet find commonalities in their active denunciation of past and present political regimes. While the state of human rights has deteriorated significantly, these violations have existed in past regimes as well, noting a systemic problem regarding human rights in Turkey.

Jurisprudence in Turkey has disintegrated, resulting in the arbitrary persecution of thousands, without being held accountable by the international institutions they are a party to, such as the European Court of Human Rights. The European Union has had an active presence in trying to promote human rights in Turkey for several decades, but so far little progress has been made and Turkey's failure to adopt effective human rights instruments has been met with few consequences.

KEY TAKEAWAYS:

- Ongoing human rights violations in Turkey disproportionately impact artists, academics, lawyers and activists who express opposition against the regime.
- The current legal structure within Turkey has enabled human rights violations to continue in nearly all levels of society and is representative of the influence that the executive powers have exerted over the judiciary for decades.
- The European Court of Human Rights' judgements on Turkey have proven to be ineffective in supporting international institutions' ability to improve the human rights situation for artists and activists in Turkey.

Based on interviews conducted with artists who have faced prosecution in Turkey, this policy brief investigates specific human rights violations that artists and activists living in Turkey face, when exercising their freedom of expression, and the subsequent failure of the legal system to protect citizens facing persecution for acts that have been labeled as crimes.

AN EVOLUTION OF HUMAN RIGHTS VIOLATIONS IN TURKEY:

The current state of affairs in Turkey, characterized by continuous human rights violations and a harsh onslaught against artists, academics, lawyers and activists can be traced back to the coups of 1971 and 1980, as well as the constitutional reform of 1982, which created a systematic fear of the state, ultimately imbedded into Turkish society today.¹ In interviews conducted with musicians and film-makers from Turkey, who faced prosecution and imprisonment under Erdoğan and previous regimes, the history of intrinsic human rights violations was uncovered, as artists and activists who expressed discontent with the regimes following the 1971 and 1980 military coups faced repression and persecution, similar to those facing oppression today. Ihsan Cibelik, a member of the musical group Grup Yorum, was arrested in Turkey on multiple occasions, in the 1980s and 2000s, noting that the repression extends beyond individual regimes, but is rather engrained into the systematic repression of artists.² While repression has been ongoing for decades, there have been levels of increased arrests, detention and overall human rights violations in past years, significantly since the Gezi Park protests in 2013, in which

over three million people participated.³

Since July 2016, after the attempted coup and the subsequent two-year state of emergency, close to 100,000 arrests have been made, with a particular focus on those opposing the government through demonstrating their freedom of expression, as per the chart below.⁴ Those who speak out against the government risk losing their jobs, arbitrary detention, prosecution, an unjust legal system and disproportionate prison sentences. In Turkey today, there are thousands of people in jail, including over 160 journalists and dozens of artists, musicians and filmmakers.⁵ The Turkish government has cited the charges of aiding and belonging to terrorist organizations as the justification of thousands of arrests, many of those who are tried on these charges have zero or fictionalized evidence to support these claims.⁶



(Image from Turkey Purge, 2020)

¹ Marc Pierini, "Individual Freedoms in Turkey," September 2013, 36.

² Interviews conducted with Turkish activists who have escaped persecution and are living in Europe.

³ Interviews conducted with Turkish activists who have escaped persecution and are living in Europe.

⁴ Kumi Naidoo, "Campaigning for Justice in Turkey for More than Five Decades," Amnesty International, August 29, 2018, <https://www.amnesty.org/en/latest/news/2018/08/campaigning-for-justice-in-turkey-for-more-than-five-decades/>; "Turkey Purge | Monitoring Human Rights Abuses in Turkey's Post-Coup Crackdown," accessed March 4, 2020, <https://turkeypurge.com/>. Interviews conducted with Turkish activists who have escaped persecution and are living in Europe.

⁵ Naomi Rea, "Despite Government Crackdowns on Freedom of Expression in Turkey, Billions of Dollars Are Being Invested in New Museums," artnet News, September 16, 2019, <https://news.artnet.com/art-world/turkey-art-scene-1649563>; "Imprisoned Artist Database | The Voice Project," *Voice Project* (blog), accessed February 28, 2020, <http://voiceproject.org/campaign/imprisoned-artists/>.

⁶ OHCHR, "Report on the Impact of the State of Emergency on Human Rights in Turkey, Including an Update on the South-East" (United Nations Human Rights Office of the High Commissioner, March 2018), https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf; Interviews conducted with Turkish activists who have escaped persecution and are living in Europe.

Dozens, if not hundreds of these activists have been on trial for years, some held in pretrial detention, such as the group of 13 academics and artists who were arrested in 2018 on the grounds of conspiring against the government, or aiding a terrorist organization.⁷ Philanthropist Osman Kavala represents one of the most publicized cases, showcasing the blatant disregard to human rights in Turkey. His case has been ongoing since October 2017, when he was arrested and jailed without a trial for over a year.⁸ Kavala was acquitted on the 18th of February, from the charges put against him from the Gezi protests in 2013.⁹ Following his acquittal, Kavala was arrested again, less than 48 hours after he was released, causing an uproar around the county.

Kavala's case is just one of many, all which reiterate the severity of human rights abuses in Turkey coupled with the deterioration of an impartial judicial system. Violations of human rights in Turkey extend beyond the scope of suppressing activists, artists and lawyers; rather, they are representative of a much larger issue of systemic repression at all political and social levels in Turkey, for those who oppose or threaten the regime in power.

AN END OF THE JUDICIARY AND A RIGHT TO A FAIR TRIAL:

An impartial judiciary is paramount in fostering a system which upholds human rights. In the past, Turkey has taken measures to improve human rights in the country. By becoming a member of both European and international human rights conventions and institutions, Turkey worked to improve its human rights record, noting significant improvements between 2002

⁷ "Turkey: Detentions Target Academics and Arts Group," Human Rights Watch, November 16, 2018, <https://www.hrw.org/news/2018/11/16/turkey-detentions-target-academics-and-arts-group>.

⁸ Beril Eski, "Jailed Turkish Human Rights Activist Osman Kavala: Accusations Are 'nonsensical' | DW | 16.12.2019," DW.COM, December 16, 2019, <https://www.dw.com/en/jailed-turkish-human-rights-activist-osman-kavala-accusations-are-nonsensical/a-51699299>.

⁹ Serkan Demirtas, "The Future of Turkey-EU Ties after the Kavala Case," Hürriyet Daily News, February 26, 2020, <http://www.hurriyetdailynews.com/opinion/serkan-demirtas/the-future-of-turkey-eu-ties-after-the-kavala-case-152439>.

and 2013.¹⁰ Nevertheless, the volatile political system in Turkey makes consistency in adhering to human rights more difficult, particularly in times of national emergencies, when the political order is threatened. Since the country has experienced several coups and attempted coups over the last several decades, Turkish leaders often responded to threats in ways which undermine human rights. In an effort to improve their international human rights record as well as for other political reasons, Turkey applied for membership to the European Court of Human Rights (ECHR). In 1990, Turkey accepted the compulsory jurisdiction of the ECHR, which has since ruled over thousands of complaints and judgements for the country.¹¹

Despite these actions, human rights violations in Turkey have re-emerged in recent years, and although the ECHR has condemned such actions, no further consequences have been seen. While continuing to promote human rights in Turkey by calling for the release of detained activists, observing trials, and making statements condemning the actions of the Turkish government, there is little incentive for Turkish officials to uphold the rulings of the ECHR. Europe continues to support Turkey in promoting human rights reforms in the country, yet there have been few changes that demonstrate an improved state of human rights.¹²

TURKEY AND THE EUROPEAN COURT OF HUMAN RIGHTS:

Although the Court encourages a complete distinction between legal rights and political affairs, Turkey continues to enable the executive powers of the country to infiltrate sectors beyond the intended powers of the

¹⁰ "Mechanisms of Human Rights Protection: Human Rights Regime in Turkey" (The European Liberal Forum, 2016), <https://www.liberalforum.eu/wp-content/uploads/2018/09/rapor-ing.pdf>.

¹¹ Parliamentary Assembly, "Resolution 985 (1992) - Situation of Human Rights in Turkey," 985 (1992), 985, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16396&lang=en>.

¹² "Turkey: Protect Human Rights, Democracy and the Rule of Law – Even When Fighting Terrorism," Council of Europe, December 9, 2019, https://www.coe.int/en/web/portals/news-2019/-/asset_publisher/gaVFYRTI7hqZ/content/turkey-protect-human-rights-democracy-and-the-rule-of-law-even-when-fighting-terrorism.

branch.¹³ The current legal system in Turkey has relinquished near complete control to the executive, in part by dismissing thousands of lawyers and empowering those loyal to the executive. ‘Everything comes from the top (executive) and the repression is blind.’¹⁴ For artists and activists facing trial in Turkey, many are prosecuted by the same judges, who essentially pre-determine the fate of the artists and accused activists, regardless of the evidence held against them.

There are thousands of cases that have been filed with the ECHR, yet many of them are likely to go unheard, or in the event they are heard, a judgement may take up to five years to be delivered.¹⁵ This not only reflects the sense of abandonment that people feel towards finding justice in the Turkish legal system, but also that by looking to the European Court of Human Rights for help, the climate of impunity is reaffirmed by the lack of support in fairly and justly trying the all the cases brought before the ECHR.¹⁶

Imperatively, those who are facing prosecution in Turkey are subject to an unjust legal system with little accountability to upholding the legal framework and judgements that the country is a party to. One example of this is Judge Akin Gürlek, who has presided over some of the most significant trials surrounding human rights violations in Turkey, including the trial of over 20 lawyers who were dismissed from their positions on accounts of aiding terrorist organizations in Turkey.¹⁷ Following these trials, statements were made regarding the lack of fairness in the trial, noting that ‘there

was no trial, and the principle of a fair trial was severely violated. We saw that the presumption of

innocence was violated.’¹⁸ Repeated cases and statements like this demonstrate the multifaceted consequences and lack of support for human rights in the country.

Without any effective consequences in failing to comply with the rulings of the ECHR, Turkey will continue to perpetrate human rights violations against artists, activists and others, potentially to no avail. The lack of accountability, both at the national and international level, continues to encourage non-compliance with the legal and judicial systems in Turkey. The current structure in monitoring human rights in Turkey, by EU actors, has not effectively improved the situation in the country. While the EU continues to denote that the state of human rights in Turkey impacts the future of EU-Turkey relations, both sides continue to demonstrate and unwillingness to cooperate with one another.

KEY INSIGHTS AND CONCLUSIONS:

The BIC remains deeply concerned regarding the ongoing human rights violations in Turkey, and in particular the artists, academics, lawyers and activists that are denied impunity in exercising their freedom of expression. Through direct conversations with artists and activists from Turkey, it is clear that the state of human rights has deteriorated even further in recent years.

¹³ Basak Cali, “Turkey’s Relationship with the European Court of Human Rights Shows That Human Rights Courts Play a Vital Role, but One That Can Often Be Vastly Improved,” *EUROPP* (blog), March 14, 2012, <https://blogs.lse.ac.uk/europpblog/2012/03/14/turkey-echr/>.

¹⁴ Interviews conducted with Turkish activists who have escaped persecution and are living in Europe.

¹⁵ Cengiz Aktar, “Turkey and European Rights Court – a Parting of the Ways,” *Ahval*, February 21, 2019, <https://ahvalnews.com/echr/turkey-and-european-rights-court-parting-ways>; George Stafford, “The Implementation of Judgments of the European Court of Human Rights: Worse Than You Think – Part 1: Grade Inflation,” *EJIL: Talk!* (blog), October 7, 2019, <https://www.ejiltalk.org/the-implementation-of-judgments-of-the-european-court-of-human-rights-worse-than-you-think-part-1-grade-inflation/>.

¹⁶ Osman Doğru and Tolga Şirin, “Human Rights Paradox of Turkey: Punishment for Victims and Impunity for Suppressors,” *Research and Policy on Turkey* 2, no. 2 (July 3, 2017): 225–43, <https://doi.org/10.1080/23760818.2017.1350357>.

¹⁷ Interviews conducted with Turkish activists who have escaped persecution and are living in Europe. Cansu Pişkin, “Sentences Totalling 159 Years 2 Months for 18 Lawyers - Evrensel Daily,” *Evrensel.net*, March 23, 2019, <https://www.evrensel.net/daily/376197/sentences-totaling-159-years-2-months-for-18-lawyers?a=df308>; Murat Yetkin, “Erdoğan got his political opponent by getting her a jail term for tweets and a poem,” *Yetkin Report* (blog), September 6, 2019, <https://yetkinreport.com/2019/09/06/erdogan-got-his-political-opponent-getting-jail-term-for-tweets-and-a-poem/>.

¹⁸ Pişkin, “Sentences Totalling 159 Years 2 Months for 18 Lawyers - Evrensel Daily.”

Developments at the EU level have identified the need for ‘intensive judicial interaction between Strasbourg and Ankara, dialogue with all relevant stakeholders, and the determination of Turkish authorities’¹⁹ to ensure change, yet most significantly, there must be a willingness from Turkey in initiating these improvements in the legal system and improving human rights.

The international community remains unresolved in supporting the human rights situation in Turkey, as thousands of people face persecution for crimes they were arbitrarily accused of. The European Court of Human Rights reviews thousands of cases against Turkey, but Turkey repeatedly overlooks the judgements that are made, receiving zero consequences for doing so. In order to create lasting and impactful rulings against

Turkey, both the ECHR and the government of Turkey must demonstrate a desire to uphold the legal obligations that each have made to one another and to themselves in improving the human rights in Turkey.

Transformations in the state of human rights in Turkey must first and foremost take place at the national level, beginning with a transition to a more impartial judiciary. The simple solutions to the human rights abuses in Turkey do not exist, rather the violations that have been seen in past decades exist because of an emboldened executive that has taken control of all levels of the government. Therefore, improvements in the human rights situation may only exist when a systematic change in the executive branch as a whole, occurs.

BIC POLICY RECOMMENDATIONS:

- Create a platform for those who have escaped persecution in Turkey living in Europe, to voice concerns and share updates on the situations of those still living in Turkey who face persecution. By allowing an active dialogue between those who have experienced human rights abuses and both the ECHR and the European Parliamentary Subcommittee on Human Rights, it will allow for further awareness to be shared on the matter.
- Recognize that the human rights violations against artists and activists in Turkey are rooted in a corrupt system that has existed for decades. Adopting new leadership, or simply calling for the release of detainees does not address the overall poor state of human rights that has been engrained into Turkish society
- Continue to promote the right to a fair trial and an end to the arbitrary detainment, detention and persecution of individuals, particularly artists, journalists, academics, lawyers and activists. Ensuring that European Union actors who are responsible for monitoring elections and trials in Turkey have unimpeded access to ensure these processes are being upheld.
- The European Court of Human Rights must work to uphold the promises to adjudicate Turkey justly and impartially as an applicant to the Court.
- The ECHR must also identify measures that can be taken to hold Turkey accountable should failure to comply with the judgements continue, noting that a balance in the repercussions must be found, in order to encourage Turkey to comply and not overlook the rulings.

¹⁹ “Turkey,” December 9, 2019.

- Political actors within Turkey, such as the EU Delegation in Turkey, must provide increased support to Human Rights Defenders, artists, lawyers and academics by monitoring and observing trials, and working with local authorities to address these issues of human rights violations directly.
- To Maria Arena, in her capacity as the chair of the Subcommittee on Human Rights, continue to work with local actors within Turkey, and those who sought refuge from human rights abuses in Turkey, now living in Europe to engage in a continuous dialogue. Hearing the stories of those who have been directly affected will ensure continued engagement between the EU and Turkey is working to end human rights violations.

The BIC is an independent, non-profit, think-and-do tank based in the capital of Europe that is committed to developing solutions to address the cyclical drivers of insecurity, economic fragility, and conflict the Middle East and North Africa. Our goal is to bring added value to the highest levels of political discourse by bringing systemic issues to the forefront of the conversation.



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