

Political Incarceration in Turkey: Human Rights Abuses Against Prisoners and Detainees Among the COVID-19 Pandemic

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I. INTRODUCTION

As the notorious Turkish mob leader, Alaattin Cakici, exercised his newfound freedom, political opponents to Turkey's ruling party were and are left behind in Turkish prisons during the SARS-CoV-2 ("COVID-19") pandemic.¹ These political prisoners are lawyers, politicians, activists, and journalists who have been charged and convicted under Turkey's so-called "anti-terrorism" laws.² One notable figure stuck in prison during the pandemic was Ahmet Altan, a 71-year-old award-winning author, who was imprisoned for more than four and a half years—due to charges that have since been dropped—and who has been looked to as an example of Turkey's continuing human rights abuses through its anti-terrorism laws.³

Close to half a century before Altan's own arrest, his father, Çetin Altan, served police officers coffee when they came to arrest him after the 1971 coup.⁴ Altan followed in his father's footsteps by doing the same when police came to arrest him after the attempted coup in 2016.⁵ Altan also followed in his father's footsteps by publishing from inside prison, writing "I will never see the world again. I will never see a sky unframed by the walls of a courtyard" in his latest book.⁶ Thankfully, he was wrong.⁷

Altan was initially convicted for "attempting to overthrow the Turkish constitutional order" in 2018, but he was released a year after being sentenced to life in prison without the opportunity for parole.⁸ Altan was then re-arrested and convicted for "aiding a terrorist group without being a member of it," resulting in a ten-and-a-half-year sentence that he served until mid-April 2021.⁹ Turkey's 2020 parole reform response to the pandemic excluded Altan based on the nature of his crime. Turkey's government classified Altan as a terrorist, hinging this classification on supposed subliminal messages Altan sent during a television interview the day before the failed coup in 2016.¹⁰

¹ *Let's Not Forget Turkey's Political Prisoners in the Face of COVID19 Threat*, ARRESTED LAWS. INITIATIVE (Apr. 27, 2020), <https://arrestedlawyers.org/2020/04/27/lets-no-forget-turkeys-political-prisoners-in-the-face-of-covid19-threat/> [hereinafter *Let's Not Forget*].

² *Id.*

³ Mary Lynk & Brandie Weikle, *Imprisoned Turkish Journalist Writes Memoir on Bits of Paper and Has It Smuggled Out*, CBC (June 18, 2020, 5:35 PM), <https://www.cbc.ca/radio/ideas/imprisoned-turkish-journalist-writes-memoir-on-bits-of-paper-and-has-it-smuggled-out-1.5615991>;

Agence France-Presse, *Turkey Releases Writer Ahmet Altan After More than Four Years in Prison*, THE GUARDIAN (Apr. 14, 2021, 3:47 PM), <https://www.theguardian.com/world/2021/apr/14/turkey-releases-writer-ahmet-altan-after-more-than-four-years-in-prison>.

⁴ *Prisoner of Conscience: Ahmet Altan*, FRIEDRICH NAUMANN FOUND. FOR FREEDOM (July 1, 2020), <https://www.freiheit.org/ost-und-sudosteuropa/prisoner-conscience-ahmet-altan>.

⁵ *Id.*

⁶ *Id.*

⁷ Agence France-Presse, *supra* note 3.

⁸ *Prisoner of Conscience: Ahmet Altan*, *supra* note 4.

⁹ *Id.*; Agence France-Presse, *supra* note 3.

¹⁰ Lynk & Weikle, *supra* note 3.

Altan's lawyer, international human rights attorney Philippe Sands, characterizes his charges as "trumped up" and utterly lacking in any factual basis,¹¹ backed up by the Turkish government recently dropping all charges against the journalist.¹²

Meanwhile, Altan was forced to write on scraps of paper that his lawyers smuggled out so that he may continue to have a voice even when he was unjustly stripped of his freedom.¹³ Yet, Altan's voice was further limited by his unwillingness to publish in Turkish for fear of his publisher's safety.¹⁴ Altan's prison memoir has been published in several languages, but many of his own people are unable to read his words. Altan was only eventually released and his charges dropped because his lawyer pursued his case beyond Turkey's domestic courts and up to the European Court of Human Rights (ECtHR), which concluded that Turkey had violated Altan's civil rights and demanded his freedom from the Turkish government.¹⁵ Turkey's Court of Cassation, its appeals court, ordered Altan's release a day later,¹⁶ likely due to Altan's high public profile. However, Altan's lawyer acknowledged that the ECtHR is "deluged with cases from Turkey," numbering in the tens of thousands.¹⁷ Altan's own ECtHR application was pending for over five years, since January 2017.¹⁸ While Altan won his freedom, his words may be right for his fellow journalists and activists; many of them are unlikely to ever see the world again.

This note will discuss Turkey's recent history of human rights abuses against political prisoners like Altan who have been charged under the state's anti-terrorism laws. International court decisions have found that these laws violate multiple human rights treaties and conventions that Turkey has ratified, but Turkey continues to perform these abuses.¹⁹ The situation has only become more dire for political prisoners during the COVID-19 pandemic. In response to the pandemic, the Turkish government has pushed forward Law No. 7242 ("Law") to reform the state's parole system.²⁰ However, Turkey's ruling party, the Justice and Development Party (AKP), has explicitly excluded political prisoners from the opportunity for early parole.²¹ Because of the nature of the reform, pretrial detainees—many of whom were arrested under

¹¹ *Id.*

¹² Agence France-Presse, *supra* note 3.

¹³ Lynk & Weikle, *supra* note 3.

¹⁴ *Id.*

¹⁵ *Id.*; Agence France-Presse, *supra* note 3.

¹⁶ Agence France-Presse, *supra* note 3.

¹⁷ Lynk & Weikle, *supra* note 3.

¹⁸ *Id.*

¹⁹ *See infra* Section II.C.

²⁰ *See infra* Part III.

²¹ *Id.*

Turkey's anti-terrorism laws²²—have also been left to face the pandemic in prison.

This note's primary purpose is to consider possible domestic and international solutions to the human rights abuses Turkey is committing against its pretrial detainees. Parts II, III, and IV will give background on Turkey's human rights abuses, the parole reform law, and the COVID-19 pandemic. Parts V and VI will analyze the possibilities of both domestic and international cases against Turkey. Finally, Part VII will propose domestic and international solutions and analyze the likelihood that those solutions might be effective.

II. TURKEY'S HISTORY OF HUMAN RIGHTS ABUSES

Human rights abuses from the Turkish government are not a new phenomenon. However, these abuses have been particularly targeted against the ruling party's political opponents during the AKP's tenure. The following sections will outline the AKP's rise to power, how it has maintained said power, and how the party targets its political prisoners and detainees.

A. *The Justice and Development Party (AKP)*

The AKP rose to power through elections in 2002 after running on a platform prioritizing economic security and EU membership.²³ However, while the party claims a secularist agenda, many observers suspect it has not truly departed from its Islamist roots due to its continued, conservative stance on social issues.²⁴ Two major examples of the AKP's advancement of conservative issues are its efforts to Islamize both the state's educational systems and its judiciary.²⁵ These efforts are not only problematic in that they call the AKP's actual agenda and its transparency into question, but also because the efforts violate the principles of secularism written into the Turkish Constitution.²⁶

1. AKP's Struggle to Remain in Power

The AKP has faced major periods of turbulence during its tenure, most notably in 2008 and 2016. In 2008, the Turkish Constitutional Court (TCC) found the AKP guilty of advancing anti-secular policies unconstitutionally, and the party was in danger of being shut down.²⁷ However, by a narrow one-vote margin, the party escaped being banned from Turkish politics.²⁸ In 2016,

²² See *infra* Part III.A.

²³ ANGEL RABASA & F. STEPHEN LARRABEE, *THE RISE OF POLITICAL ISLAM IN TURKEY* 51, 54 (2008).

²⁴ *Id.*

²⁵ *Id.* at 55.

²⁶ *Id.* at 73.

²⁷ *Id.*; Vincent Boland, *Turkey's AKP Survives Court Fight*, *FIN. TIMES* (July 30, 2008), <https://www.ft.com/content/24ffa904-5e41-11dd-b354-000077b07658>.

²⁸ Boland, *supra* note 27.

the AKP government survived a bloody military coup attempt²⁹—an event that played a crucial part in AKP’s human rights abuses that followed. The AKP government arrested tens of thousands of Turkish citizens for terrorist associations in the ensuing weeks, and thousands of civil servants, academics, and journalists lost their jobs due to alleged links to the coup.³⁰

The European Union (EU) accused Turkey’s leadership “of using the coup attempt as an excuse to eliminate the [political] opposition,” which is consistent with questions on how Turkey was able to determine the arrestees’ alleged links to the coup so quickly.³¹ According to the Council of Europe in 2019, the Turkish government’s crackdown following the attempted coup has resulted in the second-largest prison population in Europe—approximately 300,000—and Europe’s most overcrowded prison system.³² Certain reports have found that occupancy levels in Turkish prisons can reach as high as 153 percent.³³

2. AKP’s Influence on Turkey’s Courts

The TCC is the state’s highest legal authority, and the President of Turkey, currently Recep Tayyip Erdoğan, appoints twelve out of its fifteen members.³⁴ Following the AKP’s close call in 2008, the party was eager to increase its influence on the TCC, which had been described as “a bastion of secularism,” as well as the state’s wider judiciary.³⁵ The AKP has primarily accomplished this by purging approximately 4,000 judges in the wake of the 2016 coup attempt and replacing them with young loyalists,³⁶ who are being appointed and “promoted because of their political connections,” despite having little to no professional experience.³⁷

²⁹ *Turkey’s Failed Coup Attempt: All You Need to Know*, AL JAZEERA (July 15, 2017), <https://www.aljazeera.com/news/2017/7/15/turkeys-failed-coup-attempt-all-you-need-to-know>.

³⁰ *Id.*

³¹ *Id.*

³² *Turkey to Free Thousands of Prisoners Due to Coronavirus Pandemic*, AL JAZEERA (Apr. 14, 2020), <https://www.aljazeera.com/news/2020/4/14/turkey-to-free-thousands-of-prisoners-due-to-coronavirus-pandemic> [hereinafter *Turkey to Free Thousands*].

³³ *Let’s Not Forget*, *supra* note 1.

³⁴ Sinan Ekim & Kemal Kirişci, *The Turkish Constitutional Referendum, Explained*, BROOKINGS (Apr. 13, 2017), <https://www.brookings.edu/blog/order-from-chaos/2017/04/13/the-turkish-constitutional-referendum-explained>.

³⁵ RABASA & LARRABEE, *supra* note 23, at 73; Carlotta Gall, *Erdogan’s Purges Leave Turkey’s Justice System Reeling*, N.Y. TIMES (June 21, 2019), <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>.

³⁶ Carlotta Gall, *Erdogan’s Purges Leave Turkey’s Justice System Reeling*, N.Y. TIMES (June 21, 2019), <https://www.nytimes.com/2019/06/21/world/asia/erdogan-turkey-courts-judiciary-justice.html>.

³⁷ *Special Report: How Turkey’s Courts Turned on Erdogan’s Foes*, REUTERS (May 4, 2020, 6:04 AM), <https://www.reuters.com/article/us-turkey-judges-specialreport/special-report-how-turkeys-courts-turned-on-erdogans-foes-idUSKBN22G17N> [hereinafter *Special Report*].

The thousands of purges and replacements have contributed to a “brain drain” in Turkey’s judiciary since many of the newly-appointed judges are barely out of college.³⁸ The head of the Turkish Bar Association estimates the average level of experience of Turkey’s 14,000 judges is only two-and-a-half years of practicing law.³⁹ Even Turkey’s highest courts have been filled with inexperienced appointees, with judges who have less than five years of experience being appointed to the Supreme Court of Appeals—Turkey’s highest appeals court.⁴⁰ In fact, a lawmaker for the AKP and chairman of the Justice Commission in Turkey’s parliament, Hakki Kolyu, acknowledged that some judges “have been appointed without adequate training.”⁴¹ One lawyer, who understandably wished to remain anonymous, had one of these young judges presiding over her case ask her to help write the court’s verdict, despite the case being “very simple.”⁴²

In addition to these new judges’ youth and inexperience, an influx of cases followed the failed 2016 coup that has overburdened the judiciary.⁴³ To give an idea of the scale of the judiciary’s workload, over 500,000 people have been investigated since the coup attempt.⁴⁴ This overburdening has increased the use of copy-paste indictments and rulings.⁴⁵ Yonca Demir, an academic prosecuted under Turkey’s anti-terrorism laws, called her trial a sham and said, “Whatever you say in court has no impact whatsoever on the judges. From the indictment to the rulings, everything was a copy-paste.”⁴⁶ Combine inexperience, a massive workload, and the fact that Turkey has not reformed the dismissal laws that allowed 4,000 judges to be removed,⁴⁷ and Turkey is left with a judiciary too timid to confront the Turkish AKP government and enforce laws against it.

While Turkish officials claim the process is merely routine and due to health and administrative reasons, the Turkish government also exerts control over the judiciary by constantly reshuffling its judges.⁴⁸ These switches often occur in the middle of proceedings, such as during Gultan Kisanak and

³⁸ Gall, *supra* note 36.

³⁹ *Id.*

⁴⁰ *Special Report, supra* note 37.

⁴¹ *Id.*; see also INT’L COMM’N OF JURISTS, TURKEY’S JUDICIAL REFORM STRATEGY AND JUDICIAL INDEPENDENCE 8 (2019) [hereinafter INT’L COMM’N (2019)].

⁴² *Special Report, supra* note 37.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*; see also Amnesty Int’l, *Turkey: First Academic to Go to Prison for Signing Peace Petition in a Flagrant Breach of Freedom of Expression* 1 (Apr. 30, 2019), <https://www.amnesty.org/en/documents/eur44/0290/2019/en/> (showing the commonness of copy-paste indictments in Turkey, especially for those indicted under anti-terrorism laws).

⁴⁷ See *infra* Section VII.A (discussing the laws regulating judicial dismissal).

⁴⁸ *Special Report, supra* note 37.

Sebahat Tuncel's trial in 2019.⁴⁹ The women's trial occurred before a three-judge panel, but, by the time Kisanak and Tuncel were convicted, sixteen judges had passed through those three seats.⁵⁰ The women's lawyer, Cihan Aydın—a human rights lawyer and chairman of the Diyarbakir bar association—said, “At every hearing there was a new group of judges, and every time we had to start the defence from the beginning.”⁵¹ Such judicial switching prevents defendants from mounting effective defenses and decreases the likelihood that AKP's political opponents will be released.⁵²

Despite President Erdoğan's assertions to the contrary, Turkey does not have an independent judiciary.⁵³ Former judge and appeals court prosecutor Omer Faruk describes Turkey's current judiciary as a “weapon of the political government,” and adds, “This is not a problem in Turkey that just erupted in one day, but it is a problem that reached its peak under this government.”⁵⁴

B. Turkey's Anti-Terrorism Laws

The state's anti-terrorism laws can minimally be described as “broad,” and their primary function seems to be enabling the Turkish government to detain and punish its political opponents.⁵⁵ Major targets of these laws have been activists, journalists, and lawyers.⁵⁶ Those advocating against Turkey's anti-terrorism laws argue that they employ vague language to allow Turkey's government to repeatedly “prosecute the expression of non-violent opinions” and place an undue burden on free expression in the state.⁵⁷

In 2019, for example, Professor Fünsun Üstel became the first academic to go to prison merely for having signed a peace petition that the Turkish government viewed as “denigrating the Turkish nation.”⁵⁸ The peace petition at issue advocated that the Turkish government restart peace negotiations with the Kurdistan Workers' Party (PKK), at one point totaling 2,212 signatures.⁵⁹ Many of the signatories, including Üstel, have been subject to criminal investigations and copy-paste indictments.⁶⁰ Üstel joins the ranks of

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *See id.*

⁵³ Gall, *supra* note 36.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Amnesty Int'l, *supra* note 46.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*; see also *supra* Section II.A.2 (discussing copy-paste indictments and rulings).

691 academics who have gone to trial on charges of “making propaganda for a terrorist organization” as of April 24, 2019.⁶¹

C. European Court of Human Rights Decisions

The Turkish government’s exclusion of prisoners convicted under its anti-terrorism laws caught the international human rights community’s attention due to Turkey’s repeated human rights abuses through the implementation of such laws.⁶² In thirteen separate decisions from 2015 to 2020, the ECtHR, the United Nations Human Rights Council, and the United Nations Working Group on Arbitrary Detention have held that Turkey’s anti-terrorism laws violate international human rights treaties, such as the European Convention on Human Rights (ECHR).⁶³

III. TURKISH PENAL REFORM LAW NO. 7242

The Turkish government passed Law No. 7242 (“Law”) on April 13, 2020 to address hazardous prison overcrowding and prevent the spread of COVID-19 in its prisons.⁶⁴ The result of the Law was to release approximately 100,000 convicted prisoners⁶⁵—approximately a third of Turkey’s prison population⁶⁶—either by cutting their sentences short or releasing them on parole.⁶⁷ The Law included prisoners convicted of corruption, violent crimes, and drug offenses, but excluded prisoners convicted under the country’s anti-terrorism laws; and, despite their equal risk of contracting COVID-19, the Law did not even attempt to address prisoners in pretrial detention.⁶⁸ As of April 2020, there were approximately 43,000 pretrial detainees in Turkey’s prison system.⁶⁹ Overcrowding in Turkish prisons has worsened as the Turkish government

⁶¹ Amnesty Int’l, *supra* note 46.

⁶² See Bar Human Rights Committee of England & Wales, *Political Prisoners in Turkey in the Face of the COVID-19 Pandemic* (Apr. 3, 2020), https://www.barhumanrights.org.uk/wp-content/uploads/2020/04/BHRC-Statement-on-Turkish-political-prisoners_3-April-2020.pdf [hereinafter BHRC].

⁶³ *Id.*

⁶⁴ *Let’s Not Forget*, *supra* note 1.

⁶⁵ *Turkey: New Prison Release Law Leaves Innocent and Vulnerable Prisoners at Risk of COVID-19*, AMNESTY INT’L UK (Apr. 14, 2020, 11:24 AM), <https://www.amnesty.org.uk/press-releases/turkey-new-prison-release-law-leaves-innocent-and-vulnerable-prisoners-risk-covid-19>.

⁶⁶ *World Prison Brief Data: Turkey Overview*, WORLD PRISON BRIEF, <https://www.prisonstudies.org/country/turkey> (last visited Aug. 31, 2021).

⁶⁷ Koray Sogut et al., *COVID-19: Turkey Amends Criminal Procedure and Sentence Execution Provisions*, LEXOLOGY (Apr. 17, 2020), <https://www.lexology.com/library/detail.aspx?g=6ffc383a-4d52-4538-a4f0-359a29b13142>.

⁶⁸ Ali Yildiz, *Early Parole Reforms in Turkey Put Political Prisoners at Increased Risk*, OPENGLOBALRIGHTS (July 2, 2020), <https://www.openglobalrights.org/early-parole-reforms-in-turkey-put-political-prisoners-at-increased-risk/>.

⁶⁹ *Turkey: COVID-19 Puts Sick Prisoners at Grave Risk*, HUMAN RIGHTS WATCH (Apr. 3, 2020), <https://www.hrw.org/news/2020/04/03/turkey-covid-19-puts-sick-prisoners-grave-risk> [hereinafter *Turkey: COVID-19*].

arrests more and more of its political opponents,⁷⁰ many of whom wait years in pretrial detention before having their days in court.⁷¹

A. How Law No. 7242 Interacts with Turkey's Anti-Terrorism Laws

In addition to the Turkish Law's exclusion of prisoners convicted under the country's anti-terrorism laws, its exclusion of pretrial detainees also functions to target the government's political opponents. The Bar Human Rights Committee of England & Wales (BHRC) notes that,

[I]n conducting observations of the trials of a number of these political prisoners, . . . many have been subjected to excessive and unlawful pre-trial detention . . . and . . . the detention of many of these individuals appears to have been pursued for an improper motive – namely to stifle dissent and limit the freedom of political debate⁷²

The BHRC has also observed a pattern in which the Turkish authorities pursue and arrest individuals who have already been released or acquitted.⁷³ The stark mistreatment of those Turkey classes as terrorists is made clear by looking at the Law's method of reform.

B. Method of Reform and Effects

The Law shortens the minimum amount of time after which most prisoners may be released on parole depending on their sentence.⁷⁴ Before the bill, the general rule was that prisoners had to complete two-thirds of their prison sentences before they could be freed on supervised release.⁷⁵ Now, most prisoners only have to serve one-sixth of their sentence before being released under the early parole reform.⁷⁶

Prisoners convicted under anti-terrorism laws were already worse off since they had to complete three-quarters of their prison sentences before becoming eligible for supervised release.⁷⁷ The minimum sentence completion before supervised release for prisoners convicted under anti-terrorism laws is unchanged under the reform.⁷⁸ For example, an ordinary prisoner with a nine-year sentence is now eligible for supervised release after only 18 months of

⁷⁰ *Let's Not Forget*, *supra* note 1.

⁷¹ *Maximum Pretrial Detention in Turkey Increased from 5 to 7 Years*, STOCKHOLM CTR. FOR FREEDOM (Aug. 27, 2017), <https://stockholmctr.org/maximum-pretrial-detention-in-turkey-increased-from-5-to-7-years/>.

⁷² BHRC, *supra* note 62.

⁷³ *Id.*

⁷⁴ Yildiz, *supra* note 68.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

prison time served.⁷⁹ Prisoners convicted under anti-terrorism laws and sentenced to nine years are only eligible for supervised release after serving 69 months of their sentence.⁸⁰

IV. COVID-19 PANDEMIC

Despite its name, COVID-19 came into play on the global stage at the beginning of 2020, and the pandemic has had a broad impact on every aspect of both life and law. Around the world, one of the critical legal questions resulting from the pandemic was what to do with prisoners during such a health crisis. Due to limited space, limited resources, and high traffic levels going in and out of prisons, incarcerated individuals are particularly at-risk during health crises.⁸¹

While there are good reasons for imprisoning individuals who have been convicted of or charged with crimes—i.e., incapacitation, deterrence, rehabilitation, and retribution—prisoners still have human rights and society still has a duty to protect them. Society must balance the four justifications for punishment against prisoners' human right to life in times such as the COVID-19 pandemic. Determining this balance is especially important in states whose prisons are chronically overcrowded, like Turkey.

C. Transmissibility

Due to the novelty of the COVID-19 virus, scientists are still learning about its transmissibility and mortality rates. Essentially, COVID-19 is a virus spread through a respiratory pathogen—meaning it is primarily an airborne disease.⁸² The virus may spread from one person to another through respiratory droplets released when an infected person “coughs, sneezes, sings, talks, or breathes.”⁸³ The primary infection method occurs when another person inhales those respiratory droplets released by the infected person.⁸⁴ However, the virus can also spread when people touch surfaces where respiratory droplets have landed and then touch their mouths, noses, or eyes.⁸⁵

Evidence suggests that droplets and airborne particles released by infected individuals can remain suspended in the air.⁸⁶ Best practices are to keep at

⁷⁹ *Id.*

⁸⁰ Yildiz, *supra* note 68.

⁸¹ *Responses to the COVID-19 Pandemic*, PRISON POL'Y INITIATIVE (Nov. 6, 2020), <https://www.prisonpolicy.org/virus/virusresponse.html>.

⁸² *Coronavirus Disease 2019 (COVID-19): Frequently Asked Questions*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (last visited Nov. 2, 2020) [hereinafter *Coronavirus Disease FAQs*].

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

least six feet away from others and wear face coverings whenever in public.⁸⁷ Face coverings—specifically those that cover both the nose and mouth—prevent infected individuals from spreading respiratory droplets and spreading the virus to uninfected individuals.⁸⁸ Along with social distancing and hygiene precautions—i.e., washing hands and disinfecting surfaces—face coverings are among the most important factors in preventing the spread of COVID-19.

D. Mortality Rates and Risk Factors

The mortality rate of COVID-19 is not stable across continents, states, or even time. For example, the mortality rate in the U.S. decreased from 6.7 percent in April 2020 to 1.9 percent in September 2020.⁸⁹ In the United Kingdom, the mortality rate dropped from nearly 3 percent in June 2020 to approximately 0.5 percent in August 2020 and then rose back up to 0.75 percent in October 2020.⁹⁰ Several population factors and characteristics may drive mortality rate shifts, such as age distribution.⁹¹ Mortality rates are also likely to fall as time passes—even if infection rates spike again—as scientists and doctors learn more about the virus and become more adept at treating it.⁹²

Age is a critical factor to COVID-19 mortality rates because older individuals face higher risks of complications and serious effects once infected with the virus; therefore, the risk of death from the virus increases with age.⁹³ Beyond age, many other characteristics can increase an individual's likelihood of death or serious complications once infected with the virus. These characteristics primarily include pre-existing conditions such as heart conditions, obesity, smoking, asthma, and high blood pressure.⁹⁴ Individuals who are immunocompromised have both higher risks of simply contracting COVID-19 as well as of experiencing serious complications once infected.⁹⁵

E. COVID-19 in Overcrowded Turkish Prisons

⁸⁷ *Coronavirus Disease FAQs*, *supra* note 82.

⁸⁸ *Id.*

⁸⁹ Ivana Kottasová, *COVID-19 Deaths Aren't Rising as Fast in Europe and US, Despite Soaring New Infections. That Doesn't Mean the Virus is Less Deadly*, CNN (Oct. 28, 2020), <https://www.cnn.com/2020/10/28/europe/coronavirus-death-rate-second-wave-lower-intl/index.html>.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Coronavirus Disease 2019 (COVID-19): People with Certain Medical Conditions*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited: Nov. 7, 2020).

⁹⁵ *Id.*

Turkey is home to Europe's most overcrowded prison system,⁹⁶ with certain facilities reaching occupancy levels of 153 percent.⁹⁷ While overcrowding is not a new problem in Turkish prisons and a reform has been in the works for years, the COVID-19 pandemic pushed the AKP administration into immediate action out of necessity.⁹⁸ Limited space is already one reason prisons often function as infection amplifiers, and overcrowding amplifies the risks even further.⁹⁹ Social distancing—a major way of reducing transmission—is already difficult in prison environments, and overcrowding makes it practically impossible. Overcrowding also drains resources more quickly, such as soap being used up faster and not having enough face coverings for everyone. In short, overcrowding makes an already dire situation even worse.

V. DOMESTIC PROSECUTION

An action for annulment of the Law has already been filed with the TCC; nonetheless, since the AKP holds considerable sway over the TCC, the action is unlikely to succeed.¹⁰⁰ Turkish Law No. 5271 (Section 1(d) of Article 141 of Turkey's Code of Criminal Procedure) provides that "Persons who . . . have been lawfully detained but not brought before a legal authority within a reasonable time and who have not been tried within such time . . . during criminal investigation or prosecution may demand all pecuniary and non-pecuniary damages they sustained from the State."¹⁰¹ However, a "reasonable" standard is subjective and unlikely to hold up against the AKP's sway over the judiciary.¹⁰²

As opposed to how Turkey's TCC might interpret reasonable pretrial detention, the ECtHR interprets a similar provision in the ECHR more narrowly.¹⁰³ Therefore, instead of looking to domestic law, activists seeking justice for pretrial detainees and those convicted of anti-terrorism laws must look to international law.

VI. EUROPEAN COURT OF HUMAN RIGHTS PROSECUTION

⁹⁶ *Turkey To Free Thousands*, *supra* note 32.

⁹⁷ *Let's Not Forget*, *supra* note 1.

⁹⁸ *Id.*

⁹⁹ *Responses to the COVID-19 Pandemic*, *supra* note 81.

¹⁰⁰ Yildiz, *supra* note 68.

¹⁰¹ *Araz v. Turkey*, App. No. 44319/04, ¶15 (May 20, 2010), <https://www.refworld.org/cases,ECHR,4bfd23fe2.html>.

¹⁰² *See supra* Section II.A.2.

¹⁰³ *See infra* Section VI.A.3.

The ECtHR, formed in 1959 and based in Strasbourg, France, serves to safeguard the ECHR.¹⁰⁴ ECtHR judgments are binding on states that have signed and ratified the ECHR, allowing the court to enforce the convention.¹⁰⁵

A. *The European Convention on Human Rights*

The ECHR is an international human rights treaty between the members of the Council of Europe.¹⁰⁶ The Council of Europe formed and proposed the ECHR primarily in response to the Second World War, drafting the convention in 1949.¹⁰⁷ Turkey ratified the ECHR on May 18, 1954, and is therefore subject to its provisions and ECtHR decisions.¹⁰⁸ The ECHR guarantees prisoners a right to life, a prohibition of torture, a right to liberty and security, and a prohibition against discrimination.¹⁰⁹

1. Right to Life

Article 2 of the ECHR provides a right to life for prisoners, ensuring that “No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.”¹¹⁰ Turkey’s exclusion of pretrial detainees from the recent Law puts these detainees’ lives at risk due to the COVID-19 pandemic.

Logically, we know these detainees’ lives are at risk. However, it is difficult to put together an accurate picture of coronavirus spread in Turkey’s prisons since there is little reliable data; therefore, it may be useful to look at COVID-19 spread in the country generally. As of September 6, 2021, there have been 6,435,773 confirmed cases and 57,283 deaths, with the first spike in cases and deaths occurring in April 2020¹¹¹—when Law No. 7242 was passed. This calculates to an approximate 0.89 percent mortality rate in Turkey’s general population.

As for Turkish prisons, like in many places around the world, reports have indicated a lack of available tests, meaning there will be unreported confirmed

¹⁰⁴ *What is the European Convention on Human Rights?*, AMNESTY INT’L (Aug. 21, 2018, 4:47 PM), <https://www.amnesty.org.uk/what-is-the-european-convention-on-human-rights>.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Treaty List for a Specific State: Turkey*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/country/TUR> (last visited Sept. 6, 2020) [hereinafter *Treaty List*].

¹⁰⁹ Council of Eur., *Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, Nov. 4, 1950, E.T.S. No. 5 [hereinafter *European Convention on Human Rights*].

¹¹⁰ *Id.* art. 2.

¹¹¹ *Turkey Situation*, WORLD HEALTH ORGANIZATION, <https://covid19.who.int/region/euro/country/tr> (last visited Sept. 6, 2021).

cases.¹¹² Going beyond lacking tests, Turkey's Ministry of Health instructed certain prisons to stop testing altogether.¹¹³ As of September 2021, information collected by Prison Insider showed at least 446 confirmed positive cases of coronavirus amongst prisoners and six confirmed prisoner deaths, though those numbers had not changed in over a year¹¹⁴ despite a major spike in Turkey's COVID-19 cases and deaths in December 2020, April 2021, and August 2021.¹¹⁵ Using Prison Insider's numbers to calculate the mortality rate in Turkish prisons, Turkish prisoners face a 1.35 percent mortality rate once infected. While the prison system's mortality rate is higher than in the general public, it is important to remember that the chronic lack of testing and likely underreporting by the administration decrease the significance of the difference to essentially nothing.

Even with the comparatively low number of *reported* deaths (notably lacking any reports from the latter third of 2020 or any reports from 2021 at all), Turkish prisons' mortality rate is not insignificant, and COVID-19 is a serious illness.¹¹⁶ Many common preexisting conditions put prisoners at risk of both contracting COVID-19 and experiencing severe side effects once infected.¹¹⁷ Disregarding Turkey's unequal treatment of pretrial detainees versus other prisoners, Turkey is not sufficiently protecting any of its prisoners' right to life. A report from the Civil Society in the Penal System Association prepared in September 2020 found disregard of social distancing protocols, poor disinfection of common spaces, lack of hygiene products,¹¹⁸ and lack of masks¹¹⁹ in Turkish prisons. Prison institutions are already considered infection amplifiers,¹²⁰ and lack of protection equipment and hygiene products adds additional risk.

¹¹² *Middle East: Coronavirus, Prison Fever*, PRISON INSIDER, <https://www.prison-insider.com/en/articles/moyen-orient-coronavirus-la-fievre-des-prisons> (last visited Sept. 5, 2021) [hereinafter *Middle East*].

¹¹³ One such prison is the Silivri Prison, notably where Ahmet Altan was being held. *Turkey Stops Testing Prisoners for COVID-19 in Notorious Silivri Prison*, STOCKHOLM CTR. FOR FREEDOM (May 20, 2020), <https://stockholmcf.org/turkey-stops-testing-prisoners-for-covid-19-in-notorious-silivri-prison/> [hereinafter *Turkey Stops Testing*]. Altan had managed not to contract COVID-19 as of February 2021, despite the virus' presence in the prison. Lynk & Weikle, *supra* note 3.

¹¹⁴ *Middle East*, *supra* note 112.

¹¹⁵ *Turkey Situation*, *supra* note 111.

¹¹⁶ *See Turkey: COVID-19*, *supra* note 69.

¹¹⁷ *Id.*; *see supra* Part III.

¹¹⁸ *Prison Conditions in Turkey Amid Pandemic: "No Ventilation, Disinfectants, Masks..."*, BIANET (Oct. 1, 2020), <http://bianet.org/english/human-rights/231925-prison-conditions-in-turkey-amid-pandemic-no-ventilation-disinfectants-masks> [hereinafter *Prison Conditions*].

¹¹⁹ *Middle East*, *supra* note 112.

¹²⁰ *See Responses to the COVID-19 Pandemic*, *supra* note 81.

2. Prohibition of Torture

Article 3 of the ECHR simply provides that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”¹²¹ On its face, Article 3 may not seem particularly relevant to a discussion on pretrial detention; however, considering the poor conditions in Turkish prisons, the lack of proper personal protective equipment, and the threat of COVID-19, Turkey’s blanket exclusion of pretrial detainees from its incarceration reform may qualify as inhuman or degrading treatment.¹²²

Though the ECHR provides no general obligation for prisons to release detainees due to health concerns, Article 2 and Article 3 work in combination to place states under a duty to provide prisoners with adequate medical assistance.¹²³ The ECtHR has specifically interpreted Article 3 to require: the transfer of prisoners to civilian hospitals when prisons lack the necessary equipment and specialists; the conversion of a prisoner’s sentence to house arrest when their age or health status is incompatible with remaining in prison; and the protection of prisoners with pre-existing conditions from factors that may exacerbate their condition.¹²⁴ The last interpretation comes from the case *Elefteriadis v. Romania*, in which the ECtHR found that the Romanian government violated Article 3 by keeping a prisoner with chronic pulmonary disease in a cell with smokers, exposing him to harmful passive smoke.¹²⁵

The situation in *Elefteriadis* is comparable to a pandemic scenario where a prisoner has certain pre-existing conditions that predispose them to catching, dying from, or suffering complications from the circulating virus. Pre-existing conditions are common among prisoners.¹²⁶ Lacking information from within Turkey itself and using the U.S. as a sample, U.S. state prisons saw rates of chronic medical conditions reaching 42.8 percent in 2009.¹²⁷ The risk of severe illness from COVID-19 also increases with age,¹²⁸ putting older pretrial detainees and political prisoners like Ahmet Altan at even higher risk from remaining in prison during the pandemic.

¹²¹ *European Convention on Human Rights*, *supra* note 109, art. 3.

¹²² See BHRC, *supra* note 62.

¹²³ GRACE CHEUNG & TEMISAN BOYO FANOU, PRISONERS: THE RIGHT TO MEDICAL TREATMENT—INTERNATIONAL LAW PROVISIONS 6 (2019).

¹²⁴ *Id.* at 7.

¹²⁵ *Id.*; *Elefteriadis v. Romania*, Case No. 38427/05 (Jan. 25, 2011), <https://hudoc.echr.coe.int/eng#!%22itemid%22:%22002-634%22>].

¹²⁶ *Responses to the COVID-19 Pandemic*, *supra* note 81.

¹²⁷ Andrew P. Wilper et al., *The Health and Health Care of US Prisoners: Results of a Nationwide Survey*, 99 AM. J. PUB. HEALTH 666, 666 (2009).

¹²⁸ *Coronavirus Disease 2019 (COVID-19): Older Adults*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html> (last visited Nov. 7, 2020).

3. Right to Liberty and Security

Article 5 of the ECHR provides a right to liberty and security, ensuring that “[e]veryone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article 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 pending trial.”¹²⁹ Domestic policy in Turkey requires much the same as the ECHR, simply mandating that detainees be “brought before the trial court within a reasonable time” and “receive a judgment within a reasonable time.”¹³⁰ The ECHR standard is stricter than Turkey’s domestic policy because it requires “prompt” appearance rather than just appearance within a “reasonable” time.

The United Nations Subcommittee on Prevention of Torture has issued detailed advice to governments on COVID-19 protocols, specifically advising that countries review all cases of pretrial detention.¹³¹ Additionally, numerous cases before the ECtHR from before the COVID-19 pandemic have already found Turkey to have violated Article 5 §3 of the ECHR.¹³² In one case, *Fetullah Akpolat v. Turkey*, the ECtHR was considering a pretrial detention period of approximately ten years and six months, which the court indicated was comparable to detention periods in other cases such as *Tutar v. Turkey* and *Cahit Demirel v. Turkey*.¹³³ While the extended lengths of these pretrial detention periods are probably not typical, that they occurred at all is indicative of a wider problem in Turkey’s pretrial detention system, and the ECtHR’s analysis will only get more strict under COVID-19 conditions.

4. Prohibition Against Discrimination

Protocol No. 12 to the ECHR provides a prohibition against discrimination,¹³⁴ and discrimination is the essence of the complaint against Turkey’s Law No. 7242. In other words, the Law discriminates against people with political views contrary to the AKP. While the ECtHR does not have the authority to annul national laws, states that have ratified the ECHR are bound by the court’s decisions and bound to amending legislation that violates the ECHR.¹³⁵ The ECtHR would almost certainly hold that Turkey violated the ECHR when considering the case of an *individual* pretrial detainee arrested

¹²⁹ *European Convention on Human Rights*, *supra* note 109, art. 5 § 3.

¹³⁰ Act No. 5271 of 4 Dec. 2004, art. 141 § 1(d); *see also supra* Part V.

¹³¹ *COVID-19: Measures Needed to Protect People Deprived of Liberty*, UN Torture Prevention Body Says, U.N. HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER (Mar. 30, 2020), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25756>.

¹³² *Fetullah Akpolat v. Turkey*, App. No. 22077/03, ¶25 (February 15, 2011), <https://www.refworld.org/cases,ECHR,4d5d248e2.html>.

¹³³ *Id.* ¶¶24-25.

¹³⁴ *European Convention on Human Rights*, *supra* note 109, Protocol 12.

¹³⁵ *European Court of Human Rights*, INT’L JUST. RES. CTR., <https://ijrcenter.org/european-court-of-human-rights/> (last visited: Nov. 2, 2020).

following the 2016 attempted coup, who is still waiting for their trial, and who has not had access to adequate hygiene products or personal protective equipment. However, in order to force Turkey to amend its Law, there needs to be discrimination in how the law is written or applied—hence, why the prohibition against discrimination is crucial to this analysis. Concerning Law No. 7242, there is discrimination in excluding political prisoners and detainees who have not yet been convicted.

The issue with enforcing this protocol against Turkey is that, while the state signed the protocol on April 18, 2001, Turkey has yet to ratify it.¹³⁶ Protocol No. 12 is therefore not binding on Turkey as a matter of law, and challenging the Law itself before the ECtHR would probably be unsuccessful.

B. Likely Result

To hold Turkey accountable for its human rights abuses during the COVID-19 pandemic on a broad rather than individual scale, activists in the country need to push to get Protocol No. 12 of the ECHR ratified. Individual pretrial detainees or political prisoners bringing claims under the ECHR would probably succeed, but, while these cases may set precedents, they only enforce relief for the individuals in question.¹³⁷ Lacking ratification of Protocol No. 12, the ECtHR might also consider customary international law—defined as norms that emerge “when a preponderance of states (and other actors with international legal personality) from different regions of the world converge on a common understanding of the norm’s content and expect future behavior to conform to the norm.”¹³⁸

While the ECtHR’s jurisdiction is limited to the ECHR and its protocols, the ECHR is a living document, and the court’s interpretation is often guided by customary international law.¹³⁹ Additionally, language from ECtHR decisions suggests that international law may provide a relevant obligation even if the state that is a party to the litigation has not ratified a particular treaty or protocol.¹⁴⁰ This runs contrary to the basic international law principle that states cannot be bound without their consent; though, absent persistent objection, “silence in the face of a developing customary norm is presumed to evidence consent.”¹⁴¹ Nevertheless, Turkey’s continued persecution of AKP’s political opponents through both anti-terrorism laws and, now, Law No. 7242

¹³⁶ *Treaty List*, *supra* note 108.

¹³⁷ Considering also the amount of time it takes to appear before the ECtHR and get a decision, an individualistic approach for the tens of thousands of pretrial detainees is unhelpful and unrealistic. *See, e.g.*, Lynk & Weikle, *supra* note 3.

¹³⁸ HURST HANNUM ET AL., *INTERNATIONAL HUMAN RIGHTS: PROBLEMS OF LAW, POLICY, AND PRACTICE* 142 (6th ed. 2017).

¹³⁹ Ineta Ziemele, *Customary International Law in the Case Law of the European Court of Human Rights—The Method*, 12 L. & PRAC. INT’L CTS. & TRIBUNALS 243, 243 (2013).

¹⁴⁰ *Id.* at 246.

¹⁴¹ HANNUM ET AL., *supra* note 138, at 143.

could amount to persistent objection to a customary norm for freedom to engage in political processes without discrimination for political views.¹⁴²

Regional customary law from the EU could be even more persuasive than international custom, but the distinction between a legally binding norm and simply likeminded practices can be nebulous.¹⁴³ Either way, it would be challenging to enforce customary law against Turkey without a clear protocol outlining such a tool's uses and limitations that EU member states could ratify.¹⁴⁴

Finally, even if a binding challenge against Law No. 7242 could succeed before the ECtHR, Turkey would be unlikely to heed the decision. For example, despite the numerous cases decided against Turkey's anti-terrorism laws on the international stage, the AKP has failed to change its stance on taking political prisoners and punishing them unduly—as evidenced by their explicit exclusion under Law No. 7242. Simply releasing one high-profile prisoner on the ECtHR's demand¹⁴⁵ does not signify a departure from Turkey's long-standing policy of ignoring international court decisions.

VII. POTENTIAL COURSES OF ACTION

A. Domestic

Domestic goals primarily include methods for reforming Turkey's judiciary to operate outside of the political influence of the AKP so that justice may be served from within the country's own court system without having to seek international intervention and remedies. The easiest way to remove influence is for the ruling party and executive branch to agree to an independent judiciary. However, relying on people in power to give up that power is both dangerous and unrealistic. The AKP and President Erdoğan have “publicly guaranteed” an independent judiciary even as they work to increase their influence on it.¹⁴⁶ Perhaps Turkish citizens rising up and electing a different party to power, other than the AKP, would stop the trend away from an independent judiciary; however, there is no way to know how smoothly an actual transfer of power would occur or whether a different party in the executive branch would act any differently.

In an ideal world, Turkey's executive branch and its officials would publicly and privately endorse the separation of powers, enforce court decisions—even those contrary to itself—and would actively refrain from impeding the freedom

¹⁴² See G.A. Res. 217(III) A, Universal Declaration of Human Rights, arts. 2, 7, 19–21 (Dec. 10, 1948) for establishment of this customary norm in international law.

¹⁴³ See Ziemele, *supra* note 139, at 250–51.

¹⁴⁴ See *id.*

¹⁴⁵ Agence France-Presse, *supra* note 3.

¹⁴⁶ Gall, *supra* note 36.

of association or expression of judges and prosecutors.¹⁴⁷ Again, voluntary release of power from the ruling party is highly unlikely. Since the AKP controls Turkey's legislature through a coalition, that branch is also unlikely to enforce the separation of powers or place restrictions on the executive.

The legislature is further unlikely to help enforce the separation of powers because the AKP successfully decreased its power through the 2017 constitutional referendum.¹⁴⁸ The referendum's result was to elevate the president above legislative scrutiny¹⁴⁹ and reduce legislative decision-making power by requiring an absolute majority—above 50 percent—in order for the legislature to re-pass bills the president sends back for reconsideration.¹⁵⁰ The previous requirement to bypass the president's objections was a simple majority of a quorum¹⁵¹—prescribed to be at least “one plus a quarter of the total number of members” under Turkey's Constitution.¹⁵² Though the latter change could reduce the president's ability to pass legislation if the AKP does not maintain its majority, losing the majority is unlikely to happen in the near future. The actual result is to reduce the legislature's decision-making capacity on avenues not sanctioned by the president and their party.¹⁵³ The 2017 constitutional referendum also increased President Erdoğan's power over the judiciary by increasing his control over the Council of Judges and Prosecutors (HSK), which is responsible for judicial appointments and promotions.¹⁵⁴

The only reasonable solution to the Turkish government's undue influence on the state's judiciary is for the judiciary to reform itself from within. Many of these reforms must be led by the HSK, though this will be difficult due to the aforementioned control President Erdoğan holds over the council.¹⁵⁵ The cooperation of both the executive and legislative branches would be necessary to decrease this control, so this note will focus on reforms the HSK can carry out internally. Essentially, the HSK needs to take charge of judicial reform and prioritize justice over political alignments. Necessary reforms that the HSK

¹⁴⁷ INT'L COMM'N OF JURISTS, TURKEY: THE JUDICIAL SYSTEM IN PERIL 22–23 (2016), <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf> [hereinafter Int'l Comm'n (2016)].

¹⁴⁸ Ekim & Kirişci, *supra* note 34.

¹⁴⁹ This was accomplished by eliminating legislators' right to submit oral or written questions to the president as part of the legislature's auditing process. *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² CONSTITUTION OF THE REPUBLIC OF TURKEY Nov. 7, 1982, art. 96.

¹⁵³ Ekim & Kirişci, *supra* note 34.

¹⁵⁴ *Id.* This was accomplished by reducing the overall size of the body from 22 members to only 13. *Id.* The president's allotment of four appointees to the Council remained undiminished so that the president went from appointing approximately 18 percent of the body to approximately 31 percent. *Id.*

¹⁵⁵ To clarify, the President of Turkey directly appoints four of the thirteen members of the HSK, and the National Assembly appoints a further seven members. INT'L COMM'N (2019), *supra* note 41, at 3.

might accomplish include heightening professional standards, revising disciplinary procedures, increasing transparency, and making criminal peace judgeship decisions subject to appeal before Turkey's ordinary courts.

Heightening professional standards for judges will help counteract the "brain drain" occurring in Turkey's judiciary.¹⁵⁶ Currently, the judge selection process in Turkey involves a written exam and an interview with a seven-member board, five of whom are from the Ministry of Justice.¹⁵⁷ Promotion requires only two years of service at the judge's current position.¹⁵⁸ A former judge, Koksal Sengun, has suggested a minimum age, such as 40, for high judges and judges on criminal courts.¹⁵⁹ According to Sengun, "These [criminal] judges have three or five years' experience, sitting at the top of a court that hands down the heaviest sentences."¹⁶⁰ Imposing a minimum age or number of years' experience for promotions is crucial to ensuring that judges have the experience necessary to cope with pressure and enforce justice. The International Commission of Jurists (ICJ) also recommends distancing the interview process from the Ministry of Justice and prioritizing training in human rights and constitutional law for new judges.¹⁶¹

The second reform the HSK must consider is revising its disciplinary procedures. The HSK needs to conform its process for considering disciplinary cases against judges and prosecutors to international standards. It should also consider taking special note of documents such as the ECHR, the International Covenant on Civil and Political Rights, the UN Basic Principles on the Independence of the Judiciary, and the UN Guidelines on Prosecutors.¹⁶² Currently, the law "only requires a mere 'connection' or 'affiliation' with an [sic] 'structure, formation, or group' that the National Security Council has 'determined to operate against the national security of the State'" in order to justify judicial dismissal.¹⁶³ In conforming its process to international standards—especially due process—HSK disciplinary decisions must also be subject to appeal within the court system.¹⁶⁴ Finally, the ICJ notes that judicial transfers—often ordered by the Ministry of Justice—must be independently reviewed so that these transfers are not used to either interfere with cases or as disguised disciplinary measures.¹⁶⁵ Increased transparency will also help ensure that judicial transfers are done for legitimate reasons.

¹⁵⁶ See *supra* Section II.A.2.

¹⁵⁷ INT'L COMM'N (2019), *supra* note 41, at 12.

¹⁵⁸ *Id.* Promotion requirements also include not "being subject to any adverse court ruling or disciplinary sanction." *Id.*

¹⁵⁹ *Special Report*, *supra* note 37.

¹⁶⁰ *Id.*

¹⁶¹ INT'L COMM'N (2019), *supra* note 41, at 12–13, 16–17.

¹⁶² INT'L COMM'N (2016), *supra* note 147, at 22.

¹⁶³ INT'L COMM'N (2019), *supra* note 41, at 8.

¹⁶⁴ INT'L COMM'N (2016), *supra* note 147, at 22.

¹⁶⁵ INT'L COMM'N (2019), *supra* note 41, at 9, 16–17.

Beyond reforming transfers and the disciplinary process, which would decrease judges' and prosecutors' fear of retribution for deciding or acting against the AKP's interests, the HSK generally needs to provide more transparency for all of its decisions, in particular for appointments. Increased transparency can help expose exactly where, and to what extent, the AKP is exerting influence over the judiciary. More detailed information will help human rights organizations and justice activists target their efforts to where they will be most effective.

This note's final domestic reform recommendation is to make criminal peace judgeship decisions subject to appeal before ordinary courts. Turkey established courts of criminal judgeships of peace in 2014, which supervise investigations and issue search, arrest, and detention warrants.¹⁶⁶ These criminal judgeships of peace are separate from ordinary courts, and the means of appealing the judgeships' decisions are limited to review before another judgeship in the original district,¹⁶⁷ which has been described as a "horizontal" appeal and deemed insufficient by the Venice Commission of the Council of Europe.¹⁶⁸ The judgeships' decisions may only be appealed to the TCC under the most exceptional circumstances, creating an effectively closed system.¹⁶⁹ Given the state's history of human rights abuses under criminal anti-terrorism laws, Turkey's criminal warrant system should be opened to appeal in ordinary courts.

B. International

Beyond Turkey's domestic borders, Turkey needs to be held accountable to international law. Even without having ratified Protocol No. 12, Turkey has ratified other essential provisions of the ECHR, such as the right to life and prohibition of torture.¹⁷⁰ While the ECtHR needs to rule against Turkey where the state does violate the ECHR because it is an authoritative condemnation from the international community, the many decisions from the ECtHR and other international courts have not seemed to effect any actual change in Turkey's policies or abuses.

The ECtHR is a body in the Council of Europe, and the Council's Committee of Ministers enforces its decisions.¹⁷¹ However, the Committee of Ministers operates in a supervisory role, with actual punitive measures for noncompliance primarily limited to fines.¹⁷² States and decisions remain under supervision until the Committee of Ministers decides the underlying problem

¹⁶⁶ INT'L COMM'N (2016), *supra* note 147, at 18.

¹⁶⁷ *Id.* at 19.

¹⁶⁸ INT'L COMM'N (2019), *supra* note 41, at 6.

¹⁶⁹ INT'L COMM'N (2016), *supra* note 147, at 19.

¹⁷⁰ *Treaty List*, *supra* note 108.

¹⁷¹ *European Court of Human Rights*, *supra* note 135.

¹⁷² *The Supervision Process*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/execution/the-supervision-process#%2214997657%22:0,%2214997692%22:1> (last visited Nov. 3, 2020).

in the state has been resolved,¹⁷³ but this is a very indefinite and seemingly ineffective enforcement method—at least concerning Turkey.

A common criticism of international law and international legal bodies is that they lack “centralized means of enforcement.”¹⁷⁴ The responsibility of enforcing international law is generally focused domestically.¹⁷⁵ That cannot be the end of the analysis for Turkey, because domestic enforcement of international law has failed thus far. Since both Turkey’s judiciary and international legal bodies have been ineffectual, international intervention from other states might be the solution.

For example, economic and trade sanctions can be useful tools in forcing states to abide by international treaties and standards.¹⁷⁶ However, sanctions may have differing levels of success depending on what activities they are targeting. A number of studies have found that economic sanctions typically have adverse effects on human rights in target states.¹⁷⁷ These adverse effects depend on the types of human rights violations being targeted—using categories such as economic rights, basic human rights, women’s rights, and political and civil liberties.¹⁷⁸ For example, economic sanctions do not seem to affect economic rights, but they do have a positive relationship with improving women’s rights in target states due to the fact that more women enter labor markets following economic shocks.¹⁷⁹ However, said positive relationship only applies to women’s economic and not their social rights, which deteriorate.¹⁸⁰

A study from 2020 found that economic sanctions—specifically those from the U.S.—have an adverse effect on both basic human rights as well as political and civil liberties in target states.¹⁸¹ There may be even more significant adverse effects when the sanctions come from international organizations, such as the U.N., than from individual states.¹⁸² Beyond the negative immediate effects of economic sanctions, continued implementation still sees

¹⁷³ *Id.*

¹⁷⁴ MATH NOORTMANN, *ENFORCING INTERNATIONAL LAW: FROM SELF-HELP TO SELF-CONTAINED REGIMES 2* (Taylor & Francis Group 2005).

¹⁷⁵ *Id.* at 2–3.

¹⁷⁶ Harun Onder, *Trade Wars and Trade Laws*, BROOKINGS (July 9, 2019), <https://www.brookings.edu/blog/future-development/2019/07/09/trade-wars-and-trade-laws/>.

¹⁷⁷ See Jerg Gutmann et al., *Precision-guided or Blunt? The Effects of US Economic Sanctions on Human Rights*, 185 PUB. CHOICE 161 *passim* (2020); Reed M. Wood, “A Hand Upon the Throat of the Nation”: *Economic Sanctions and State Repression, 1976–2001*, 52 INT’L STUD. Q. 489 *passim* (2008); Darsun Peksen, *Better or Worse? The Effect of Economic Sanctions on Human Rights*, 46 J. PEACE RSCH. 59 *passim* (2009).

¹⁷⁸ See generally Gutmann et al., *supra* note 177 (listing the four categories).

¹⁷⁹ *Id.* at 175, 177.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 175.

¹⁸² Wood, *supra* note 177, at 509. See also Peksen, *supra* note 177, at 74.

no improvement.¹⁸³ Essentially, economic sanctions on Turkey may compound the state's human rights violations against its political prisoners, both during the COVID-19 pandemic and beyond. Alternative, noneconomic tools, such as arms embargoes or banning participation in international sporting events, may be more likely to promote change in Turkey without endangering civilians due to sanctions fallout.¹⁸⁴

VIII. CONCLUSION

Turkey's continued incarceration of its prisoners in pretrial detention during the COVID-19 pandemic violates international human rights law, specifically Articles 2, 3, and 5 and Protocol No. 12 of the ECHR. The ECHR guarantees prisoners a right to life, a prohibition of torture, a right to liberty and security, and a prohibition against discrimination. Turkey should be held to these provisions, which may be accomplished domestically by heightening professional standards for judges, amending HSK disciplinary policies to accord with international standards, increasing transparency in the HSK generally, and opening up Turkey's criminal peace judgeship system for greater appeal possibilities. Internationally, the ECtHR should attempt to hold Turkey accountable for its human rights abuses and force an amendment to Law No. 7242, but Turkey's refusal to ratify Protocol No. 12 of the ECHR and the ECtHR's inability to impose customary international law make this avenue for accountability unlikely. Intervention from other states in the form of noneconomic sanctions would likely be necessary for enforcement and conformity to international law.

¹⁸³ Peksen, *supra* note 177, at 74.

¹⁸⁴ Wood, *supra* note 177, at 510.