

**Presse : PUBLICATION IMMÉDIATE**

## **LES JUGES du TRIBUNAL DE TURQUIE DONNENT LEUR AVIS FINAL**

**Vendredi 24 septembre** : les juges du Tribunal pour la Turquie donnent leur avis final sur la question de savoir s'il y a suffisamment de preuves pour juger que l'Etat turc est responsable de violations flagrantes des droits de l'homme et en outre sur la qualification de ces actes comme crimes contre l'humanité.

En réponse au jugement, le **Prof. Dr. Rik Van Walle**, recteur de l'Université de Gand, a clairement déclaré que,

"Le Tribunal ne peut être considéré comme une initiative **contre** la Turquie, **mais** comme une initiative **en faveur** de la protection des droits de l'homme."

Le professeur Dr. Marc baron Bossuyt, président du comité d'organisation a déploré qu'aucun État européen n'ait initié une requête étatique devant la Cour européenne des droits de l'homme.

"Une telle requête interétatique", a déclaré le Prof. Bossuyt, "enverrait un signal clair à la Turquie que son bilan actuel en matière de droits de l'homme est inacceptable."

Le Tribunal turc a été suivi par 5 observateurs afin de s'assurer de l'impartialité et de l'indépendance du tribunal. Leur déclaration est jointe à ce communiqué de presse.

Au lieu de s'engager de quelque manière que ce soit dans la présentation des preuves et d'écouter les déclarations des citoyens turcs en quête de justice, le gouvernement turc a tenté de faire annuler l'événement. Leurs tentatives de faire taire le Tribunal turc ont échoué.

Le Tribunal turc a prouvé que les gens veulent avoir un jugement public sur les preuves présentées. En plus d'une audience présent lors des audiences, environ 70 000 personnes ont regardé chaque jour le flux en continu de l'événement sur la chaîne YouTube dans 85 pays. Au fur et à mesure que les preuves et les déclarations des témoins étaient publiées en ligne, plus d'un million d'impressions sur Twitter ont atteint un pic de 1 404 828 le jeudi. Certaines interviews individuelles sur le web ont atteint plus de 60 000 vues.

L'organisateur du Tribunal pour la Turquie, le professeur Dr. Johan Vande Lanotte, ministre d'État belge (titre honorifique) a déclaré que,

*"Ce niveau d'intérêt sans précédent pour les procédures du Tribunal turc a montré la nécessité de rompre le silence et d'examiner cet énorme ensemble de preuves de manière légale et médico-légale. Ce tribunal a enfin donné une voix forte à tous les millions de Turcs qui ont été forcés de subir de telles violations des droits de l'homme."*

Vande Lanotte conclut,

*"Avec cet avis sans équivoque des juges, nous allons aller de l'avant pour poursuivre le gouvernement Erdogan devant la Cour pénale internationale."*

## **RÉSUMÉ DES CONCLUSIONS DU TRIBUNAL POUR LA TURQUIE :**

Tout d'abord le Tribunal reconnaît le courage dont ont fait preuve les témoins lors de leur témoignage et leur contribution à briser le silence. Le Tribunal espère que son avis inspirera et encouragera l'amélioration du respect et de la protection de la dignité humaine et des droits de tous.

### **Avis sur la torture en Turquie**

- Le Tribunal est d'avis qu'il existe un usage systématique et organisé de la torture en Turquie, en particulier à l'encontre des personnes perçues comme étant liées ou favorables au peuple kurde et au mouvement Gülen, ainsi que des personnes soupçonnées de crimes ordinaires.
- Le Tribunal réitère l'obligation de l'Etat turc de prendre des mesures pour prévenir et enquêter sur les allégations de mauvais traitements et estime que le comportement de la Turquie n'est pas conforme à ses obligations en vertu du droit international.

### **Avis sur les disparitions forcées de citoyens turcs**

- Les victimes présumées sont privées de leur liberté de manière arbitraire et en dehors de toute procédure judiciaire formelle ; des représentants du gouvernement turc sont, au moins indirectement par acquiescement, impliqués dans leur privation de liberté ; et les autorités turques refusent de révéler le sort des personnes concernées et l'endroit où elles se trouvent. Par conséquent, au sens du droit international, les enlèvements s'apparentent à des disparitions forcées.
- Le Tribunal est d'avis que la disparition subséquente pendant une période prolongée et la détention arbitraire ne sont pas conformes au droit international. Sur la base des informations présentées au Tribunal, il existe des motifs raisonnables de conclure que les disparitions forcées nationales sont menées par des fonctionnaires du MIT ou d'autres individus travaillant avec ou pour l'État turc.
- Le Tribunal note que la Turquie reconnaît publiquement son implication et donc sa responsabilité en ce qui concerne les disparitions forcées dans des pays autres que la Turquie elle-même.
- Le Tribunal est d'avis que les plaintes et allégations relatives à ces disparitions forcées ne font pas l'objet d'enquêtes efficaces.
- Le Tribunal conclut que la Turquie n'agit pas en conformité avec son obligation positive d'enquêter en vertu du droit international et qu'il n'existe aucune protection effective des droits à la liberté, à l'intégrité personnelle et à la vie des opposants présumés au gouvernement.

### **Avis sur la suppression de la liberté de la presse en Turquie**

- Le Tribunal est d'avis que la répression contre la presse et la liberté d'expression témoigne d'une politique plus large de l'État visant à faire taire les voix critiques et à limiter l'accès de la population à l'information.
- Le Tribunal est d'avis que le comportement de la Turquie, en ce qui concerne la liberté de la presse, ne répond pas à ses obligations en vertu du droit international.
- Le Tribunal reconnaît avec inquiétude ce qui suit
  - le sort des journalistes maintenus en détention provisoire ou de longue durée ; les poursuites et les condamnations sévères pour insulte ou diffamation du président ou de l'État ; la criminalisation des journalistes couvrant les questions kurdes et arméniennes ; les violences physiques et mentales récurrentes infligées aux membres de la presse et des médias ; l'application à leur encontre de dispositions ambiguës de la loi sur la diffamation, l'insulte et le terrorisme ; l'abus des pouvoirs d'urgence, ainsi que l'ingérence directe et continue des autorités de l'État dans les affaires internes de la profession journalistique.
  - Le Tribunal est d'avis que le comportement de la Turquie, en ce qui concerne la liberté de la presse, ne répond pas à ses obligations en vertu du droit international.

### **Avis sur l'impunité en Turquie**

- Le Tribunal est d'avis qu'il y a eu une culture d'impunité persistante et dominante en Turquie et reconnaît l'identification par le rapport de cinq causes interconnectées qui contribuent à l'impunité et montrent la nature organisée et institutionnalisée du problème :
  - I. la structure juridique déficiente,
  - II. la rhétorique politique qui renforce les schémas d'impunité
  - III. l'absence de volonté politique de demander des comptes aux agents de l'État
  - IV. l'inefficacité et le retard des enquêtes menées par les procureurs
  - V. l'absence d'un système judiciaire indépendant.
- Le Tribunal note que l'absence d'enquêtes efficaces sur les allégations de violations graves des droits de l'homme, telles que la torture et les disparitions forcées, est le résultat de la réticence des procureurs à ouvrir des enquêtes sur les crimes commis par des agents de l'État.
- Le Tribunal est d'avis que l'impunité persistante et dominante pour les violations graves des droits de l'homme n'est pas conforme aux obligations de la Turquie en vertu du droit international. De plus, cette impunité entretient, voire favorise, le recours systématique et organisé à la torture et aux disparitions forcées en Turquie.

### **Indépendance du pouvoir judiciaire et accès à la justice**

- Le Tribunal note l'adoption de multiples (amendements aux) lois qui ont perturbé l'indépendance du pouvoir judiciaire.



- Le Tribunal note avec inquiétude le licenciement massif d'environ 4 560 juges et procureurs à la suite de la tentative de coup d'Etat.
- Le Tribunal note que de nombreux juges et procureurs qui avaient adopté des décisions ou mené des enquêtes désapprouvées par le gouvernement, ont été sommairement arrêtés et placés en détention provisoire pour suspicion d'appartenance à une organisation terroriste après la tentative de coup d'Etat. Ceci constitue, de l'avis du Tribunal, une grave intimidation du pouvoir judiciaire.
- Le Tribunal se réfère à cet égard aux dispositions pénales nationales antiterroristes, qui sont trop vagues et interprétées de manière trop large, comme l'a observé la Cour européenne des droits de l'homme.
- Le Tribunal note les limitations importantes des droits de la défense, en particulier dans les affaires de terrorisme, introduites par les décrets d'urgence, qui, selon lui, ne sont pas conformes aux obligations internationales de la Turquie en matière de droits de l'homme.
- De l'avis du Tribunal et compte tenu du manque d'indépendance du pouvoir judiciaire ainsi que de la culture d'impunité qui prévaut, l'accès effectif à la justice et donc la protection des droits fondamentaux de l'homme dans l'état actuel du système judiciaire en Turquie sont illusoire.

### **Crimes contre l'humanité**

- Le Tribunal est d'avis que, au moins depuis la tentative de coup d'État de juillet 2016, les actes de torture et les disparitions forcées se sont produits de manière systématique et organisée. Par conséquent, le Tribunal est d'avis que ces actes de torture et ces disparitions forcées ne peuvent être considérés comme de simples événements isolés. Au contraire, de l'avis du Tribunal, ils doivent être considérés comme faisant partie d'une attaque généralisée et systématique contre toute population civile qui a eu lieu en Turquie au moins depuis juillet 2016.
- Ainsi, le Tribunal est d'avis que les actes de torture et les disparitions forcées commis en Turquie, dans le cadre de requêtes portées devant un organe approprié et sous réserve de la preuve de la connaissance et de l'intention spécifiques de l'accusé, pourraient être assimilés à des crimes contre l'humanité.

### **Turkey Tribunal**

De plus amples informations sur le Tribunal pour la Turquie sont disponibles à l'adresse suivante : <https://turkeytribunal.com>.

Contact presse : [media@turkeytribunal.com](mailto:media@turkeytribunal.com)

**Press: IMMEDIATE RELEASE**

## **JUDGES of the TURKEY TRIBUNAL GIVE FINAL OPINION**

**Friday 24 September:** The Turkey Tribunal Judges give their final opinion on whether there is sufficient evidence to judge that the Turkish State is responsible of gross violations of human rights and in addition on the qualification of these acts as Crimes against Humanity.

### **Key opinions of the Turkey Tribunal Judges:**

**Torture:** The Tribunal is of the view that there is a systematic and organised use of torture in Turkey, particularly against people perceived to be linked with or supportive of the Kurdish people and the Gülen movement.

**Enforced Disappearances:** There are reasonable grounds to come to the conclusion that domestic enforced disappearances are conducted by MIT officials or other individuals working with or for the Turkish State. Turkey publicly recognizes its involvement and thus its responsibility in regard to enforced disappearances in countries other than Turkey itself. The Tribunal is of the opinion that the complaints and allegations of these enforced disappearances are not effectively investigated.

**Press Freedom:** The Tribunal is of the opinion that the conduct of Turkey, as far as press freedom is concerned, does not meet its obligations under international law.

**Impunity:** The Tribunal is of the opinion that there has been a persistent and prevailing culture of impunity in Turkey. The Tribunal notes that the lack of effective investigations into allegations of serious human rights violations such as torture and enforced disappearances is the result of the unwillingness of prosecutors to initiate investigations into crimes committed by state officials

**Judiciary:** The Tribunal refers in this regard to the national anti-terror criminal provisions, which are too vague and overly broadly interpreted, as observed by the ECtHR

### **Crimes Against Humanity: the Tribunal is of the view that the acts of torture and enforced disappearances committed in Turkey could amount to crimes against humanity**

Responding to the judgement, Prof. Dr. Rik Van Walle, rector of the University of Ghent, clearly stated that,

“The Tribunal cannot be seen as an initiative against Turkey, but as an initiative in favour of the protection of human rights.”

Prof. Dr. Em. Marc baron Bossuyt, president of the organizing Committee deplored that no European State initiated a state complaint before the European Court of Human Rights.

“Such an inter-state application”, said Prof. Bossuyt, “would send a clear signal to Turkey that its present human rights record is unacceptable.”

The Turkey Tribunal was followed by 5 observers to ensure that impartiality and independence of the court was witnessed. Their statement is joined to this press release.

Instead of engaging in any way with the evidence being presented and listening to the witness statements of Turkish citizens seeking justice, The Turkish government tried to have the event cancelled. Their attempts to silence the Turkey Tribunal failed.

The Turkey Tribunal has proved that people want to have a public judgement on the evidence being presented. In addition to a capacity audience, each day around 70 000 people watched the livestream feed of the event on the YouTube channel in 85 countries. As the evidence and witness statements were released online, more than one million impressions on Twitter peaked with 1,404,828 on Thursday. Some individual web interviews reached more than 60 000 views.

The head of the Turkey Tribunal, Professor Dr. Em. Johan Vande Lanotte, Belgian Minister of State (hon title) stated that,

“This unprecedented level of interest in the Turkey Tribunal proceedings has shown the need to break the silence and examine this enormous body of evidence in a legal and forensic fashion. This tribunal has finally given a loud voice to all of the millions of Turkish people who have been forced to suffer such human rights violations.”

Vande Lanotte concluded,

“With this unequivocal opinion from the judges, we will move forward to take the Erdogan government to the International Criminal Court.”

---

**FULL CONCLUDING OPINION OF THE TURKEY TRIBUNAL JUDGES ATTECHED BELOW:**

## **THE TURKEY TRIBUNAL**

### **CONCLUDING OPINION OF THE TURKEY TRIBUNAL**

**24 SEPTEMBER 2021**

1. As an Opinion Tribunal, the Turkey Tribunal was mandated to assess and report independently on allegations of human rights violations taking place under the jurisdiction of Turkey. This Opinion is not legally binding but may serve as a source, with moral authority, for raising awareness. Indeed, silence is the greatest enemy of fundamental human rights.

2. The Tribunal is independent. All its judges have experience in the field of human rights. Three were judges in the European Court of Human Rights. One of the judges of the Tribunal was a justice of the

Constitutional Court of South Africa, the apex court in that country. One judge held senior positions in the United Nations. Another judge holds a senior position in a reputable international civil society organisation. All the judges are or were professors at well-known universities. None of the judges of the Tribunal has any links with Turkey or any other party that could result in either the improper favoring of, or bias against Turkey. They performed their task pro bono. This unanimous Opinion is the result of serious consideration and intense debate.

3. The Tribunal's hearing was an enlightening and profound experience. It will hopefully contribute to enhance vigilance about the human rights situation not only in Turkey, but also in the region and indeed worldwide.

4. The Opinion of the Tribunal is based on international and European human rights law and on the information made available to the Tribunal by Expert Rapporteurs and the testimony of witnesses.

5. To the extent that the government of Turkey might have been in a position to place before the Tribunal information or submissions relevant to the Tribunal's mandate, it is unfortunate that it chose not to do so.

6. The Expert Reports presented to the Tribunal were thorough, detailed and comprehensive. They contained highly valuable information.

The Opinion of the Tribunal is based the totality of information that emerged from the reports and the oral testimony.

7. As a result of the varied nature of the topics addressed, the presentation nature and contents of oral testimony by witnesses necessarily differed. The witnesses told the stories of their respective experiences. Human frailties, understandably sometimes, came to the fore. Some witnesses were nervous; and some emotional. A few showed symptoms of trauma and will hopefully receive medical or psychological attention. The Tribunal acknowledges the courage shown by the witnesses during their testimony and their contribution to breaking the silence.

8. Aspects of the testimony presented were touching; and others somewhat chilling. One witness, for example, said that when he asked his abductors where he was, he was told that he was "in a place that neither exists, nor does not exist". Others told the Tribunal not only how they had been physically tortured, but also of threats that their wives and daughters would be raped. The Tribunal realizes the long-term and perhaps everlasting consequences for future generations of gross human rights violations. The Tribunal hopes that its Opinion will inspire and encourage the improvement of respect for and the protection of the human dignity and rights of all.

9. Witnesses did not testify under oath. Because of the absence of the Turkish government or its representatives, the testimony was not tested, for example by way of cross-examination. But none of

the witnesses contradicted other witnesses, or the contents of the reports. Several in fact corroborated the information in the reports.

10. The Tribunal was mandated to address questions on six topics: torture; abduction; press freedom; impunity; judicial independence; and whether the acts of the Turkish government amount to a crime against humanity. These topics of course overlap. For example, someone who is abducted and disappears, is often tortured. Without a free press to report on events, complaints and allegations, the public and international community would not know about the abduction and torture. This silence and ignorance result in the failure to investigate the matter and bring it to a court. If the legal profession is furthermore intimidated and the judiciary not independent, impunity will necessarily follow.

11. Now let me express the Tribunal's opinion concerning the six topics:

### **Torture**

12. The Tribunal is of the view that there is a systematic and organised use of torture in Turkey, particularly against people perceived to be linked with or supportive of the Kurdish people and the Gülen movement, as well as people suspected of ordinary crimes.

13. The Tribunal recalls that Turkey is bound by the international prohibition of torture. While it acknowledges that Turkey declared the state of emergency following the attempted coup d'État and notified the Council of Ministers of its derogation from the ECHR on 20 July 2016, it reiterates that the prohibition of torture enshrined in the applicable international legal documents is absolute and that no derogation is possible.

14. The witness statements are consistent with the other information that was presented to the Tribunal in relation to the systematic and organised use of torture and confirms the prevailing pattern in the acts of torture. In this regard, the Tribunal reiterates that it is not called upon to pronounce itself on individual cases of torture but to formulate an opinion on the global human rights situation in Turkey.

15. The Tribunal particularly notes that the threats of torture to relatives, especially the rape of one's wife and daughter, affected some of the victims more than physical acts of torture to themselves. In this regard the Tribunal joins the recognition by some international instances that mental suffering of persons that are forced to watch severe mistreatment being inflicted on others, can rise to the level of gravity required under the international crime of torture.

16. Furthermore, the Tribunal acknowledges that the arbitrary arrest, detention and torture have a serious and long-lasting impact on victims, not only on a physical and a mental level, but also on a social level. In this regard, the Tribunal observes that some people, after their release from prison, were rejected by their family and communities. This social rejection can become unbearable for them, influencing their decision to flee the country.



17. Finally, The Tribunal reiterates the obligation of the Turkish state to take measures to prevent and to investigate allegations of ill-treatment.

18. In the light of the foregoing, the Tribunal deems that the conduct of Turkey is not in conformity with its obligations under international law.

### **Abductions**

19. Regarding abductions, the Tribunal is of the opinion that abductions are a part of state action towards perceived political opponents and that complaints and allegations of abductions are not properly investigated. While Turkey is not a party to the International Convention for Protection of All Persons from Enforced Disappearances, it nevertheless has obligations under *ius cogens*.

20. There are reasonable grounds to accept the following: the alleged victims are arbitrarily deprived of their liberty and outside a formal legal procedure; Turkish governmental officials are at least indirectly by acquiescence, involved in their deprivation of liberty; and the Turkish authorities refuse to disclose the fate and whereabouts of the persons concerned. Therefore, as understood under international law, the abductions amount to enforced disappearances.

21. The Tribunal furthermore observes a recurring pattern used to execute the enforced disappearances. Regarding domestic enforced disappearances, firstly, the perpetrators do not seem to be worried about an intervention by the law enforcement authorities since the forcible deprivations of liberty are carried out in broad daylight, in the presence of eye witnesses or security cameras; secondly, the abductions are carried out in a similar manner, namely using the same type of vehicles, often by provoking a car accident and by a bag being put over the heads of the alleged victims after which they are pushed into a black transporter van.

22. As to extra-territorial enforced disappearances, the Tribunal observes the following recurring situations: the extra-territorial abduction is either incited by Turkey through the cancellation of the passport of the abductee which results in his arrest when travelling, or is executed by the Turkish National Intelligence Organization without the formal consent of the host state or is conducted with the formal consent of the host state, outside a formal legal procedure.

23. The Tribunal is of the opinion that the subsequent disappearance for a prolonged period of time and arbitrary detention is not in conformity with international law.

24. Based upon the information presented to the Tribunal, there are reasonable grounds to come to the conclusion that domestic enforced disappearances are conducted by MIT officials or other individuals working with or for the Turkish State. The Tribunal notes that Turkey publicly recognizes its involvement and thus its responsibility in regard to enforced disappearances in countries other than Turkey itself.

25. Furthermore, the Tribunal is of the opinion that the complaints and allegations of these enforced disappearances are not effectively investigated.

26. The Tribunal concludes that Turkey does not act in conformity with its positive obligation to investigate under international law and that there exists no effective protection of the rights to liberty, personal integrity and life of perceived opponents of the government.

### **Press freedom**

27. The Tribunal is of the opinion that the repression against the press and freedom of expression points to a larger policy of the State to silence critical voices and limit people's access to information.

28. The Tribunal reiterates the indispensable role of freedom of expression in promoting democratic principles, including transparency and accountability. A free press can only perform its role in democratic society if access to information and the freedom to disseminate it are guaranteed. Therefore, press freedom functions as a necessary "watchdog" for government accountability and respect for human rights.

29. This Tribunal acknowledges with concern the following: the plight of journalists kept in pretrial or long-term detention; the prosecutions and severe convictions for insult or defamation of the president or state; the criminalisation of journalists covering Kurdish and Armenian issues; the recurring physical and mental violence inflicted upon members of the press and media; the application of ambiguous defamation, insult and terrorism law provisions against them; the abuse of emergency powers, as well as the direct and ongoing interference by State authorities in the internal affairs of the journalistic profession.

30. The primary area of tension between the government and its media is situated within the public and political sphere. Political expression, which includes expression concerning the public interest, is the most protected form of freedom of speech. This is not to say this freedom cannot be subjected to exceptions, but as the ECtHR has established, such exceptions "must, however, be construed strictly, and the need for any restrictions must be established convincingly.

31. Turkish media have a duty towards the public to report on matters of public interest, including terrorism, even in a context of political violence. In combatting terrorism, the State may impose certain restrictions on the press, but these must strictly follow a balancing test to ensure they are in accordance with international law.

32. The Tribunal recognises the difficult and troubling political situation in which many of the reported cases of media interference take place, in particular in the aftermath of the attempted coup of 2016. There is no denying that terrorism poses a significant threat to democracy and stability in Turkey, as elsewhere. However, it is a principal characteristic of democracy that it offers the possibility to resolve problems through public debate, as it has often done before. Criminal prosecution and detention of

journalists for the mere reporting on sensitive yet important political topics in itself a form of direct interference with freedom of the press and have a chilling effect that may result in self-censorship.

33. The restriction of freedom of expression, in particular press freedom, through the extensive use of criminalisation, prosecution, and pre-trial detention of journalists, has been exacerbated by the events of 15-16 July 2016. These restrictions inhibit both the media and the public from actively exercising these freedoms, essential in a democratic society. In addition, they deeply impact the families and communities of their direct targets.

34. In light of the above, the Tribunal is of the opinion that the conduct of Turkey, as far as press freedom is concerned, does not meet its obligations under international law.

### **Impunity**

35. The Tribunal is of the opinion that there has been a persistent and prevailing culture of impunity in Turkey since 1980, which has reached unprecedented levels in recent years, particularly since the attempted *coup d'état* of 15 July 2016.

36. The Tribunal acknowledges the Report's identification of five interconnected causes which contribute to impunity and show the organised and institutionalised nature of the problem: (i) the deficient legal structure, (ii) the political rhetoric reinforcing the patterns of impunity, (iii) the lack of political will to hold state agents accountable, (iv) the ineffective and delayed investigations by prosecutors, and (v) the lack of an independent judiciary.

37. The Tribunal notes that the lack of effective investigations into allegations of serious human rights violations such as torture and enforced disappearances is the result of the unwillingness of prosecutors to initiate investigations into crimes committed by state officials. Furthermore, the Tribunal observes that the impunity clauses under Turkish law make the prosecution of civil servants, public officials, security forces and personnel of the intelligence services – at least in practice – subject to an authorisation of the relevant administrative authority that is controlled by the government.

38. The Tribunal notes that the culture of impunity is entrenched in the judicial and more specifically the criminal justice system. As a result of the lack of effective investigations into serious human rights violations, the real and perceived lack of independence of the judiciary and the lack of accountability of perpetrators, citizens have lost their confidence in the judicial system. Moreover, victims of serious human rights violations are further traumatized by the lack of effective access to justice.

39. The Tribunal is of the view that the persistent and prevailing impunity for serious human rights violations is not in conformity with Turkey's obligations under international law. Further, this impunity sustains and even fosters the systematic and organised use of torture and enforced disappearances in Turkey.

## **Independence of the judiciary and access to justice**

40. The Tribunal observes that Turkey made important reforms to its legal and judicial system in the period between 2010 and 2013. The Tribunal refers in particular to the constitutional reform adopted in 2010 which extended the powers of the Constitutional Court in order to receive individual applications for the protection of human rights and changed the composition and the appointment procedure for the members of the High Judicial Council. This reform was a step in the right direction towards ensuring judicial independence and guaranteeing access to justice of individuals in case of human rights violations.

41. However, the Tribunal notes with concern that, even though the applicable legal framework provided effective safeguards, the rule of law was destabilized very swiftly by the government's reaction to the Gezi park protest in June 2013 and furthermore to the concrete threat of prosecution of high-ranking state officials for corruption in December 2013.

42. First, the Tribunal notes the adoption of multiple (amendments to) laws that disrupted the independence of the judiciary. In particular, the Tribunal refers to the law of February 2014 that curtailed the independence of the High Judicial Council. Moreover, the political control over the High Judicial Council and the Constitutional Court was reinforced through several amendments to the Constitution passed on 20 January 2017 that changed the selection and appointment procedures of their members.

43. Second, in addition to the forcible relocations, the Tribunal notes with concern the mass dismissals of approximately 4.560 judges and prosecutors in the aftermath of the attempted coup d'état, based on a list drawn up by the High Judicial Council.

44. Third, the Tribunal notes that multiple judges and prosecutors who had adopted decisions or performed investigations disapproved by the government, were summarily arrested and placed in pre-trial detention on suspicion of membership of a terrorist organization after the attempted coup d'état. This constitutes, in the view of the Tribunal, a severe intimidation of the judiciary.

45. The Tribunal refers in this regard to the national anti-terror criminal provisions, which are too vague and overly broadly interpreted, as observed by the ECtHR in its judgment dated 22 December 2020 in *Selahattin Demirtas v. Turkey*. In addition, the Tribunal notes the extensive limitations of the right of defence, especially in anti-terror cases, introduced by emergency decrees, which in its opinion are not in conformity with the international human rights obligations of Turkey. The Tribunal is further concerned by the prosecution of lawyers and human rights defenders. Furthermore, the Tribunal observes that Law of June 2014 established 'criminal judges of peace' and granted them extensive powers such as the issuance of search warrants, detention of individuals, blocking of websites or seizure property, without an effective review by a higher judicial authority.

46. Lastly, the Tribunal expresses particular concern over the lack of enforcement of two judgements of the ECtHR ordering the immediate release of detainees.

47. In the view of the Tribunal and referring to the lack of independence of the judiciary as well as the prevailing culture of impunity, effective access to justice and thus the protection of fundamental human rights in the current state of the judicial system in Turkey is illusory.

### **Crimes against humanity**

48. The Tribunal firmly reiterates that it does not have a mandate to assess the potential individual criminal responsibility in specific cases. However, the Tribunal is called upon to formulate an opinion on whether the acts of torture and abductions that in its view have taken place and continue to take place in Turkey are part of a specific, global context that would allow to qualify them as crimes against humanity under customary international law.

49. The Tribunal is of the view that, at least since the attempted coup d'État in July 2016, the acts of torture and enforced disappearances have occurred in a systematic and organised manner. In this regard, the Tribunal particularly notes the following: the high numbers of reported cases; the existence of specialized teams for torture; the lack of effective investigations and the prevailing impunity of state officials; the deficient legal framework; the lack of enforcement of ECtHR decisions; and the serious, long-lasting impact of these gross human rights violations on the victims and their families. In addition, the Tribunal observes that the acts of torture and enforced disappearances specifically target civilians perceived to be opponents of the government.

50. As a result, the Tribunal is of the view that these acts of torture and enforced disappearances cannot be viewed as mere isolated occurrences. Rather, in the opinion of the Tribunal, they are to be considered as part of a widespread and systematic attack against any civilian population that has taken place in Turkey at least since July 2016.

51. Thus, the Tribunal is of the view that the acts of torture and enforced disappearances committed in Turkey, in applications brought before an appropriate body and subject to the proof of the specific knowledge and intent of the accused, could amount to crimes against humanity.

Ends

### **Turkey Tribunal**

The Turkey Tribunal is an opinions tribunal which has no legally binding power but holds high moral authority due its very renowned judges. The purpose of the Turkey Tribunal is to profoundly examine some of the major human rights issues in Turkey and to create more awareness around it.



The Turkey Tribunal focuses on 6 key groups of human rights issues: torture, enforced disappearances, freedom of the press, impunity, judicial independence and the existence of crimes against humanity.

More information on the Turkey Tribunal can be found at: <https://turkeytribunal.com>.

**Press contact:**

Mail: [media@turkeytribunal.com](mailto:media@turkeytribunal.com)