

IN THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 72796/16

BETWEEN:

Kamuran Akin and 80 others

Applicants

- and –

Turkey

Respondent

WRITTEN SUBMISSIONS ON BEHALF OF THE

THIRD PARTY INTERVENERS

Prof. Helen Duffy and Philip Leach

on behalf of

The Coalition of Academic Intervenors (names in annex)

I. Introduction

1. These submissions are made on behalf of a group of academics (together the “Interveners”) pursuant to leave granted by the President of the Second Section on 19 November 2021 under Rule 44 § 3 of the Rules of Court. The list of academics and our professional affiliations appears in the annex. Collectively we are specialised in international human rights law and practice, many with particular expertise in legal standards related to academic freedom.
2. The present case emerges from a statement issued on 11 January 2016 by a group of academics, entitled “We will not be a party to this crime,” which critically questioned the Turkish Government’s role in the conflict in South-east Turkey and associated serious violations of human rights (the “Academics for Peace Petition”).¹ The day after the petition was published, President Erdoğan described signatories as “so-called intellectuals” and “pseudo academics” and accused them of treason,² which was followed by their public vilification as “terrorists”.³ In response academics were subject to disciplinary, administrative and criminal proceedings across the country. Following the July 2016 coup attempt, hundreds of academics, including the applicants, were dismissed from their positions at universities across Turkey through a series of emergency decrees.⁴
3. The protection of academic freedom within the European Convention on Human Rights (ECHR) system is at the heart of this case. As academics, the Interveners have a shared interest in ensuring that this protection is rigorous in a context where academic freedom remains relatively underexplored in the jurisprudence of the Court.⁵ We submit that the issue, and the standards addressed in this brief, deserve the Court’s considered attention for several reasons.
4. First, the focus on academic freedom enables a fuller appreciation of the nature and impact of the violations. As explored at Section II, restrictions on academic freedom have implications for the array of rights under the ECHR and broader international human rights law (IHRL), not only of the academics directly affected but many others, and for the fundamental values underpinning the ECHR.
5. Second, academic freedom has implications for the interpretation and application of the Convention. As set out in Section III, it informs states’ positive obligations to create an “enabling environment” for academic freedom. A strict approach to permissible restrictions on private life and freedom of expression (Articles 8 and 10) is required when academic freedom is stifled. Measures directed at curtailing the academic function raise questions as to the relationship with the “emergency” justifying derogation (Article 15), and whether they pursued an ulterior purpose under Article 18.
6. Third, the issue is timely and pressing in the context of increasing attacks on academic freedom in Turkey and around the globe. Authoritative sources have described a “severe blow to [...] academic freedom” and to democratic institutions in Turkey in recent years.⁶ This case has provoked particular concern and solidarity from colleagues across Council of Europe (CoE) member states,⁷ while monitoring and reporting by independent international non-governmental organisations and journalists indicate that it forms part of a pattern of various types of attacks against academics and institutions.⁸ The Turkish situation unfolds in a

¹ Academics for Peace, “We will not be a party to this crime!”, 10 January 2021 <https://barisicinakademisyenler.net/node/63>

² Human Rights Foundation of Turkey, Academics for Peace: A brief history, March 2019, <https://www.tihvakademi.org/wp-content/uploads/2019/03/AcademicsforPeace-ABriefHistory.pdf>.

³ Newspaper “Yeni Akit” published names and photos of signatories on the front page and alleged that they were members of a terrorist organisation; Human Rights Watch (HRW), “Turkey: Academics Jailed for Signing Petition – Hundreds Investigated for “Terrorism”, 16 March 2016: <https://www.hrw.org/news/2016/03/16/turkey-academics-jailed-signing-petition>

⁴ Decrees Laws No. 667, of 23 July 2016; no. 672, of 1 September 2016; no. 675, of 29 October 2016; no. 679, of 6 January 2017; No. 686, of 7 February 2017; and No. 689, of 29 April 2017; and Anti-Terror Law No. 3713, of 12 April 1991.

⁵ R. Quinn and J. Levine, Intellectual-HRDs and claims for academic freedom under human rights law, *The International Journal of Human Rights* 2014, Vol. 18, p. 902/903.

⁶ E.g. the European Commissioner’s Memorandum on Freedom of Expression and Media Freedom in Turkey, 15. Feb. 2017, paras.62-64; Parliamentary Assembly of the Council of Europe (PACE) Resolution 2156 (2017) on functioning democratic institutions in Turkey, para.20 on the systemic stifling of dissent including of academics, “jeopardising the foundations of a democratic society.”

⁷ Venice Commission Opinion on Emergency Decree Laws nos. 667-676, adopted following the failed coup of 15 July 2016, CDL-AD(2016)037, December 2016; International Appeal, 20 January 2016: <https://www.medico.de/en/international-appeal-16372>; Open Letter of Support for Academics under Attack in Turkey: <https://docs.google.com/document/d/1UXZU47gA24YPLlBA-p4uysCKcO7uASisHX6xH3mskOU/preview#heading=h.gjdgxs>

⁸ See e.g. Report by “Scholars at Risk”, an NGO based at NYU, detailing multiple cases from Turkey during 2021: <https://www.scholarsatrisk.org/academic-freedom-monitoring-project-index/>. Many other reports by NGOs such as Human Rights Watch (HRW) (<https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics>) the European Instrument for Democracy & Human Rights (EIDHR) (https://www.ohchr.org/Documents/Issues/Opinion/Submissions/Academics/INSAN_HAKLARI_OKULU3.pdf) and journalists (e.g. <https://www.nytimes.com/2019/07/24/magazine/the-era-of-people-like-you-is-over-how-turkey-purged-its-intellectuals.html>).

troubling broader global context of restrictions on academic expression and independence of individuals and institutions.⁹ The decision of the Court and its approach to academic freedom is therefore likely to resonate far beyond the immediate applicants, to the many other academics in Turkey directly and indirectly affected, and to the broader international academic community and the societies which they serve.

II. The Nature and Significance of Academic Freedom

Academic Freedom Increasingly Reflected in International, Regional and National Standards

7. The importance of academic freedom is recognised in a growing body of regional and global law and practice. International treaties,¹⁰ jurisprudence of this Court¹¹ and others,¹² and soft law instruments (including of the CoE),¹³ embrace academic freedom and the fundamental principles that underpin it.
8. The protection of academic freedom within member states' legal systems reaches back to the nineteenth century.¹⁴ Today many laws and constitutions within the region, and globally, uphold the right to academic freedom for individual academics and institutions.¹⁵ The Turkish Constitution refers to the freedom to “study and teach, express, and disseminate science and the arts, and to carry out research in these fields freely”.¹⁶ Consensus across European countries on its importance led to the explicit commitment in the EU Charter on Fundamental Rights that “academic freedom shall be respected”.¹⁷ The trend towards more explicit inclusion also at the domestic level is reflected in the recent growth in the number of laws enshrining academic autonomy across Europe.¹⁸ Globally, increased academic freedom provisions appear in newer constitutions, alongside the broadening of scope of protections.¹⁹ These trends have been described as reflecting the historical reality of attacks on academic freedom as instruments of repression, and the need to rigorously protect academic freedom for the future.²⁰

Relationship between Academic Freedom, Human Rights and Democratic values under the ECHR

9. When academic freedom is curtailed, a broad array of human rights is implicated, directly and indirectly, for the academics in question and for society more broadly. For those directly affected this includes freedom of

⁹ See, among others, 2021 “Free to Think” scholars at risk report <https://www.scholarsatrisk.org/wp-content/uploads/2021/12/Scholars-at-Risk-Free-to-Think-2021.pdf>

¹⁰ Art. 15(3) International Covenant on Economic Social and Cultural Rights (ICESCR) and Article 13(2) Charter of Fundamental Rights of the European Union (EU Charter).

¹¹ On academic expression under Article 10 see: eg. *Sorguc v Turkey*, App. No. 17089/03, 23 Jun 2009; *Mustafa Erdoğan v. Turkey*, App. No. 346/04 and 39779/04, 27 May 2014; *Hasan Yazıcı v. Turkey*, App No. 40877/07, 15 Apr 2014; on denying entry to academics *Cox v. Turkey*, App. No. 2933/03, 20 May 2010.

¹² IACHR, *Ricardo Israel Zipper v Chile*, 10 Nov 2009, <http://cidh.oas.org/annualrep/2009sp/Chile12470.sp.htm>. See also AfCHPR, *Good v. Republic of Botswana*, Comm. No. 313/05, 26 May 2010, paras. 196–200.

¹³ E.g. Rec- CM/Rec(2012)7 of the Council of Europe (CoE) Committee of Ministers (COM) on the responsibility of public authorities for academic freedom and institutional autonomy, 20 June 2012; PACE Rec. 1762 (2006) on Academic freedom and university autonomy, 26 September 2007; Magna Charta Universitatum, 18 September 1988; Declaration on Academic Freedom and Autonomy of Institutions of Higher Education (“Lima Declaration”), 10 September 1988; UNESCO Rec. concerning the Status of Higher-Education Teaching Personnel, 11 November 1997; European Parliament Rec. on Defence of Academic Freedom in the European Union’s (EU) external action (2018/2117(INI)), 29 November 2018; UNESCO World Declaration on Higher Education for the 21st Century: Vision and Action, 9 October 1998; UNESCO Rec. on Science and Scientific Researchers 2017; IACHR, Inter-American Principles on Academic Freedom and University Autonomy (“Inter-American Principles”).

¹⁴ League of European Research Universities, Academic Freedom as a Fundamental right, Advice Paper No. 6, Dec.2010, para. 5.

¹⁵ Quinn and Levine, Intellectual-HRDs and claims for academic freedom under human rights law, 2014, p. 912: states that “20 state constitutions include explicit protections, 99 direct protections and 77 indirect protections.”; see also League of European Research Universities, Academic Freedom as a Fundamental right, December 2010, para. 9. In Europe the majority of states protect academic freedom, either explicitly in their constitution, through particular legislation “or through the protection of freedom of expression, see M. Stachowiak-Kudla, Academic freedom as a source of rights violations: a European perspective, Higher Education 82, 2021, pp. 1031-1048; and T. Karran in, How to protect academic freedom, interview by I. Vesper in Horizons – The Swiss Research Magazine, 4 December 2017, <https://www.horizons-mag.ch/2017/12/04/how-to-protect-academic-freedom/>, See also similar provisions in other constitutions e.g. South Africa, Kenya, Dominican Republic, El Salvador and Japan.

¹⁶ Article 27 of the Turkish Constitution. On non-application, concerns see e.g. Scholars at Risk’s Submission to the Third Cycle of Universal Periodic Review of Turkey 35th Session of the United Nations Human Rights Council to be held in January 2020; Ayşe Çağlar, ‘Blow by Blow: The Assault on Academic Freedom in Turkey’, Reset Dialogues on Civilizations, 29 September 2017, <https://www.resetdoc.org/story/blow-blow-assault-academic-freedom-turkey/>.

¹⁷ Art. 13 (2) of the Charter of Fundamental Rights of the European Union, 26 October 2012; CJEU, C-66/18, *Commission v Hungary*, Judgment of 6 October 2020, at para. 225: “that freedom is not restricted to academic or scientific research, but that it also extends to academics’ freedom to express freely their views and opinions”.

¹⁸ K.D. Beiter, T. Karran, K. Appiagyei-Atua, Academic Freedom and Its Protection in the Law of European States, EJCL 3 (2016) 254-345 <https://download.ej-je.org/Docs/WebDepot/Academic%20Freedom%20and%20Its%20Protection%20in%20the%20Law%20of%20European%20States.pdf>

¹⁹ R. Quinn and J. Levine, Intellectual-HRDs and claims for academic freedom under human rights law, 2014, p. 912. See also Network of Concerned Historians, <http://www.concernedhistorians.org/content/to.html>

²⁰ Quinn and Levine, *ibid.*

expression and of information, and the right to respect for private and professional life, at issue in this case (see Section III below), as well as the rights to education, equality, freedom of thought, freedom of association and assembly, the right to work and – depending on the measures taken – the right to liberty and security, foreseeable application of criminal law, freedom of movement, and to an effective remedy, among others.

10. The human rights significance of academic freedom lies, however, in the broader impact its curtailment has on the rights of others, and on values underpinning the Convention system. This is reflected in the recognition that academics may constitute “human rights defenders” (HRDs),²¹ and in CoE recommendations noting academic freedom as “indispensable for democratic societies”.²²
11. Academic freedom is inherently linked to the protection of many civil, political, economic, social and cultural rights. Among others, it is an essential prerequisite to the right to quality education, including “educat[ion] for citizenship and for active participation in society”²³. As the European Parliament noted, education is in turn a pre-requisite to “the enjoyment of all other human rights and sustainable development; whereas this right can only be enjoyed in an atmosphere of academic freedom and with the autonomy of institutions of higher education”²⁴ It is also closely associated with the right to truth, recognised by this Court as pertaining to victims *and* to society as a whole.²⁵ The freedom to research, opine and publish ideas has frequently been referred to as “an essential condition for the search for truth” in society.²⁶ Academic freedom may thus be seen as a free-standing right, or as a “composite” right or a “constellation of rights” enshrining a value that is more than the sum of its parts.²⁷
12. The role of academia is described by UNESCO as lending intellectual authority, to identify, forecast and address issues that affect the well-being of communities, nations and global society, and to “speak out on ethical, cultural and social problems”²⁸. This highlights the potential significance of academic expression on controversial policies for human rights protection, democratic debate, and accountability. As judges of this Court have noted, “there can be no democratic society without free science and free scholars.”²⁹ The Inter-American Court of Human Rights (IACtHR) has likewise reflected that “a society that is not well informed is not a society that is truly free.”³⁰ In turn, as the President of the Court emphasised in a speech at Istanbul University, the “fundamental role of academic freedom and free speech in a democracy governed by the rule of law” is a “core value [...] at the heart of the [Convention]”.³¹

Essential Elements of Academic Freedom

13. International standards recognise various facets of the academic role; these include research and publication, intellectual leadership and innovation, education, exchange with fellow academics, as well as advancing public democratic discourse.³² As the Committee of Ministers (of the CoE) has noted, university staff and students must be free to exercise these functions “without the fear of disciplinary action, dismissal or any other form of retribution”.³³ While academic freedom is not subject to precise definition, international standards highlight overlapping institutional, individual, and public dimensions.³⁴ Two elements deserve emphasis in

²¹ E.g. European Parliament Recommendation 2018/2117(INI), 29 November 2018, para R; OHCHR, Human Rights Defenders: Protecting the Right to Defend Human Rights, Fact Sheet 29 (2004), pp. 6 – 8; UNESCO World Declaration on Higher Education 1998.

²² CM/Rec(2012)7 CoE, Preamble.

²³ UNESCO World Declaration on Higher Education 1998, Art.1 (b).

²⁴ European Parliament Rec. 2018/2117(INI), 2018, Art. B.

²⁵ *Husayn (Abu Zubaydah) v. Poland*, App. No. 7511/13, 24 Jul 2014, Para 489.

²⁶ CM/Rec(2012)7 CoE, 20 June 2012, para 5. See also “a free search for the truth” is correspondingly seen as “for the benefit of society as a whole”, in Beiter, Karran, and Appiagyei-Atua, *Academic Freedom and Its Protection in the Law of European States*, 2016, fn 98; “academic freedom extends to the freedom of academics to [...] distribute knowledge and truth without restriction” in European Parliament Rec. 2018/2117(INI), 2018.

²⁷ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 13 on the Right to Education, 8 December 1999, para. 39; R. Uitz, *Academic freedom as a human right? Facing up to the illiberal challenge*, pp. 12-15, https://www.law.ox.ac.uk/sites/files/oxlaw/draft_3_academic_freedom_as_a_human_right_uitz_febr_2020.pdf; UNESCO recommendation concerning the Status of Higher-Education Teaching Personnel, 1997; R. Spano, President of the Court, *Academic Freedom - Its Fundamental Role in a Democracy*, 4 September 2020, refers to a “constellation of rights and fundamental freedoms which require that Government in all their actions be balanced and proportionate”, https://www.echr.coe.int/Documents/Speech_20200904_Spano_Honorary_Doctorate_Istanbul_ENG.pdf

²⁸ UNESCO World Declaration on Higher Education, 1998, Art. 2.

²⁹ Joint concurring opinion of Judges Sajó, Vučinič and Kūris in *Mustafa Erdoğan v. Turkey*, 2014, para. 6

³⁰ IACtHR, *Advisory Opinion*, OC-5/85 Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism 13 November 1985, para 70.

³¹ R. Spano, *Academic Freedom - Its Fundamental Role in a Democracy*, 2020.

³² CM/Rec(2012)7 CoE, p.2; UNESCO Rec. 11 November 1997, paras. 26-30.

³³ CM/Rec(2012)7 CoE, para 5

³⁴ E.g. UNCESCR, Gen. Comment No. 13 on the Right to Education, 1999, paras.38-40; UNESCO Rec. 11 November 1997, paras. 13 and 27; UNESCO World Declaration on Higher Education, 1998, Arts. 1 and 2; UNESCO Rec. 2017, para. 10.

the context of this case.

a) Understanding Academic Freedom as Embracing Public and Social Dimensions

14. The role that academics play as part of healthy informed democratic debate has been noted.³⁵ As the Parliamentary Assembly of the Council of Europe (PACE) recognises, academia “need[s] to be close enough to society to be able to contribute to solving fundamental problems”.³⁶ Scholars’ freedom to express their views and opinions embraces freedom “intra-murally” to share ideas within academic institutions and between fellow academics and “extramurally”, to communicate those ideas to the general public.³⁷ As noted by the Inter-American Commission on Human Rights (IACHR) academic freedom “encompasses the right to express oneself, to assemble and to protest peacefully concerning issues being researched or discussed within the academic community in any space, including the media”.³⁸
15. The public and social dimension of the exercise of academic freedom therefore defies artificial distinctions between the purely “academic” and other issues or contexts.³⁹ It is also inherent in the nature of the role that it may embrace contentious political issues and the expression of ideas that may in some cases be provocative or unpopular.⁴⁰ In this respect it has been noted that “the asking of questions and expression of ideas — especially disputed or unpopular ideas — is not only essential to quality higher education; it is the root of democratic legitimacy and rule of law”.⁴¹

b) Independence and Autonomy from the State

19. At the core of academic freedom, as the term suggests, is the independence and autonomy of academic institutions and personnel. Academic autonomy, guaranteeing functional independence from the state or others, has been widely recognised, including by the Committee of Ministers,⁴² the PACE,⁴³ and by the domestic institutions of several of its member states.⁴⁴ While historically autonomy focused on institutions, it is well-established that it also applies to individuals. As Judges of this Court have noted, “although academic freedom refers, first and foremost, to institutional autonomy [...] scholars’ institutional autonomy is meaningful only if they enjoy personal freedom of research that entails unimpeded communication of ideas within, but not exclusively within, the scholarly community”.⁴⁵
20. Academic freedom entails “respecting the autonomy of higher education institutions and the freedom of faculty and students to, inter alia, express opinions [and] fulfil their functions without discrimination or *fear of repression by the State or any other actor*”.⁴⁶ This autonomy has been described as a “necessary precondition to guarantee the proper fulfilment of the functions entrusted to higher-education teaching personnel and institutions”.⁴⁷ Similar conclusions were drawn by the Court of Justice of the European Union.⁴⁸

³⁵ Joint concurring opinion of Judges Sajó, Vučinič and Kūris in *Mustafa Erdoğan v. Turkey*, 2014, para. 6; IACtHR, *Advisory Opinion*, OC-5/85, 1985, para 70.

³⁶ PACE Rec. 1762 (2006), para 4.4.

³⁷ UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, UN Doc. A/75/261, 28 July 2020, paras. 20 *et seq*; Joint concurring opinion of Judges Sajó, Vučinič and Kūris *Mustafa Erdoğan v. Turkey* 2014.

³⁸ IACHR, Inter-American Principles, Principle I.

³⁹ Quinn and Levine, Intellectual-HRDs and claims for academic freedom under human rights law, 2014, p. 901; R. Quinn, What is academic freedom? in: *A New Beginning, A Philip Schwarz Initiative for researches at risk*, p. 13 https://www.humboldt-foundation.de/fileadmin/Entdecken/Newsroom/Dossier_Philipp_Schwartz-Initiative/5-Jahre-Philipp-Schwartz-Initiative.pdf; OHCHR/University of California, Irvine School of Law, „Summary of Expert Consultation on Academic Freedom and Freedom of Expression“, 27-29 May 2020, para 13, <https://www.ohchr.org/Documents/Issues/Opinion/Submissions/SummaryExpertConsultationAcademicFreedom.pdf>.

⁴⁰ *Cox v. Turkey*, App. No. 2933/03, 20 May 2010, para. 42; Quinn and Levine, Intellectual-HRDs and claims for academic freedom under human rights law, 2014, p. 908.

⁴¹ Scholars at Risk Network, SAR urges expression of support for Turkey’s threatened higher education sector, 19 July 2016 <https://www.scholarsatrisk.org/2016/07/support-for-turkeys-higher-education/>

⁴² “Academic freedom should guarantee the right of both institutions and individuals to be protected against undue outside interference, by public authorities or others. It is an essential condition for the search for truth, by both academic staff and students, and should be applied throughout Europe. University staff and/or students should be free to teach, learn and research without the fear of disciplinary action, dismissal or any other form of retribution” in CM/Rec(2012)7 CoE, para 5.

⁴³ “[A]cademic freedom in research and in training should guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction” in PACE Rec. 1762 (2006), para 4.4.

⁴⁴ See e.g. The Constitutional Council of France recognised that the independence of university teachers and researchers stems from a fundamental constitutional principle, Decision no. 86-165 DC, 20 January 1984 <https://www.conseil-constitutionnel.fr/decision/1984/83165DC.htm>

⁴⁵ Joint concurring opinion of Judges Sajó, Vučinič and Kūris in *Mustafa Erdoğan v. Turkey*, 2014.

⁴⁶ UN Special Rapporteur in the field of cultural rights, report on the right to enjoy benefits of scientific progress and its applications, 14 May 2012, UN Doc. A/HRC/20/26, para 40 (emphasis added).

⁴⁷ UNESCO Rec. 11 November 1997, para 18.

⁴⁸ CJEU, C-66/18, *Commission v. Hungary*, Judgment of 6 October 2020, at para. 227.

While this autonomy can be compromised in many ways, standards highlight the need to safeguard against interference with academic content and ensuring employment security, both central issues in this case.⁴⁹

c) Impermissibility of Academic “Loyalty” Requirements

21. Requiring academics to be “loyal” to the State, which the Turkish Government appears to expect from academics in the same way as other public servants,⁵⁰ is at odds with the foregoing principles. The Interveners are aware that in *Piskin v. Turkey* the Court stated that “a democratic State is entitled to require civil servants to be loyal to the constitutional principles on which it is founded”.⁵¹ This reflects the fact that public servants such as prosecutors and judges wield a portion of the State’s “sovereign power”,⁵² and democracy must, as the Court noted, be “capable of defending itself” against undemocratic tendencies.⁵³ However, two distinctions should be made clear. First, adherence to the constitution and rule of law is distinct from loyalty to a government, still less to particular policies. Second, the role of public servants exercising state functions is not comparable to the academic role; any loyalty requirements applicable to the former cannot apply to the academic role which, as noted above, depends on independence and the ability to engage in democratic discourse even if considered unfavourable by government.
22. Requiring “loyalty” from academics is therefore antithetical to the notion of academic freedom, eviscerating the core elements of autonomy and the public discursive function, set out above. Indeed, it has been suggested that “far from reflecting disloyalty, academics have a special *responsibility* within democratic society to ask questions and to impart information and ideas to the public”.⁵⁴
23. For this reason, some national constitutions and legislation in member states guard against such requirements. In Germany, while academics must observe the constitution, the broader duty of loyalty expected by other public servants does not apply.⁵⁵ The Spanish Constitution recognises the right to academic freedom⁵⁶ as limited only by the obligation to respect the fundamental rights recognised in the laws and constitution.⁵⁷ The Irish University Act recognises that academics are bound by law, but their freedom “to put forward (...) state controversial or unpopular opinions”⁵⁸ is explicitly stressed.

III. Academic Freedom and the Legal Framework under the ECHR

Positive obligations to ensure an “enabling environment” for academic freedom

24. It is now well established that member states have positive obligations to create an enabling environment for the enjoyment of human rights under the ECHR.⁵⁹ In *Dink v Turkey*, the Court (applying Article 10) found that Turkey was “required to establish an effective mechanism for the protection of authors and journalists in order to create a favourable environment for participation in public debate [expressing] opinions and ideas without fear, even if they run counter to those defended by the official authorities or by a significant part of public opinion”.⁶⁰ Positive obligations in relation to academic freedom specifically are also reflected in recognition that “academic freedom [...] should *guarantee* freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction”.⁶¹ The IACHR has echoed that “States are obligated to create a favourable environment for participation in higher education institutions, as well as for research, discussion, and dissemination of

⁴⁹ UNCESCR, Gen. Comment No. 13 on the Right to Education, 1999: education includes academic freedom notes importance of security of employment, including “tenure or its functional equivalent, where applicable”, in paras. 45 and 46.

⁵⁰ See the justification provided by the Government for the adoption of Emergency Decree Law No.685.

⁵¹ *Pişkin v. Turkey*, App. No. 33399/18, 19 Apr 2021, para. 213.

⁵² *Pellegrin v. France*, App. No. 258541/95, 8 Dec 1999, para. 65; Venice Commission Opinion CDL-AD(2016)037, para 107 (“Judges, prosecutors, police officers and military personnel belong par excellence to the category of public servants ‘wielding a portion of the State’s sovereign power’”).

⁵³ *Vogt v. Germany*, Application no. 17851/91, 26 Sep 1995, noting state defence against “anti-constitutional” aims.

⁵⁴ R. Quinn, Academic Freedom on Trial in Turkey, 26 April 2016 <https://www.washingtonpost.com/news/grade-point/wp/2016/04/26/academic-freedom-on-trial-in-turkey/> (emphasis added).

⁵⁵ See Art. 5 § 3 Basic Law Germany, 1949; Gärditz in: Dürig/Herzog/Scholz (publishers), Basic Law commentary, 95th Edition 2021, Art. 5 § 3 Basic Law para. 189 limiting academic loyalty compared to other civil servants.

⁵⁶ Art. 20.1.c) Spanish Constitution, 1978.

⁵⁷ *Ibid.*, Art 20.4.

⁵⁸ Art. 14 § 3 Irish University Act, No. 24 of 1997, Updated to 10 November 2021 (Act No. 33 of 2021 and S.I. No. 589 of 2021)

⁵⁹ *Mustafa Erdogan and Others v. Turkey*, 2014, para. 40 and Joint Opinion of Judges Sajó, Vucinic and Kuris; PACE Rec. 1762(2006), para. 4.1; *Taskin v. Turkey* RE; Recommendation CM/Rec (2012)7 CoE 20 June 2012, para 5.

⁶⁰ *Dink v. Turkey*, Apps Nos. 2668/07 and others, 14 Dec 2010, para. 137

⁶¹ *Mustafa Erdogan and Others v. Turkey*, 2014, para. 40

academic knowledge”.⁶²

25. Other international standards, including UN Special Rapporteur reports and UNESCO recommendations, develop and clarify positive obligations to create an “*enabling* environment for seeking, receiving and imparting information and ideas”⁶³ and a “*conducive* environment” in which scholars can fulfil their role without restraint.⁶⁴ Most recently the European Parliament called on EU member states to “proactively protect higher education institutions, academics and students from attacks”, including with “mechanisms for monitoring and reporting attacks, threats and undue restrictions on higher education and individual scholars” and programmes and placements for academics at risk.⁶⁵ As potential HRDs, the duty to create an “enabling environment” for their work is recognised by the CoE,⁶⁶ the UN⁶⁷ and others.
26. The widespread chilling effect and self-censorship that arises where academic freedom is stifled and public information is neutered, as recognised specifically in the Turkish context, runs counter to these obligations relevant to the many affected, directly and indirectly, by the erosion of academic freedom.⁶⁸

Academic Freedom and the rights to private life and freedom of expression

27. As noted, interference with academic freedom constitutes a restriction on several rights of the academics directly concerned, including private life and freedom of expression at issue in the present case.
28. Academic freedom and the right to respect for private life (Art. 8): Article 8 guarantees respect for “multiple aspects of the person’s physical and social identity”,⁶⁹ “personal development” and “relationships with [...] the outside world”.⁷⁰ The Court recognises this includes relationships “of a professional or business nature”,⁷¹ and the interplay between professional life and other fundamental aspects of Article 8, namely personal, social and intellectual autonomy, identity and self-development.⁷² Likewise, the Court has held that “it is not always possible to distinguish clearly which of an individual’s activities form part of his professional or business life and which do not. Thus, especially in the case of a person exercising a liberal profession, his work in that context may form part and parcel of his life to such a degree that it becomes impossible to know in what capacity he is acting at a given moment of time”.⁷³ It is clear that the dismissal of academics from their professional position, the impugning of their integrity and impeding the exercise of their professional role, all plainly entail Article 8 restrictions.
29. Academic freedom and the right to freedom of expression (Art. 10): Likewise, academic freedom, and its fundamental social, political and personal value, are essentially linked with “academics’ freedom to express freely their opinion [...] and freedom to distribute knowledge and truth without restriction”.⁷⁴ The Court has emphasised that democracies thrive on freedom of expression and that it is essential in a democracy to be able to seek to resolve problems through public debate.⁷⁵ Thus it has described free expression and contentious debate as necessary to the pluralism, tolerance and broadmindedness necessary in a democratic society.⁷⁶ As

⁶² Inter-American Principles, Principle VII (emphasis added).

⁶³ UN Special Rapporteur on Freedom of Opinion and Expression, 2020, para 9; See OHCHR and others, Joint Declaration on Media Independence and Diversity in the Digital Age, May 2018, principle 1a. See also Principle VII Inter-American Principles.

⁶⁴ UNESCO Rec. 11 November 1997, para.27: “All higher-education teaching personnel should have the right to fulfil their functions without discrimination [...] and without fear of repression by the state or any other [...].[They] can effectively do justice to this principle if the environment in which they operate is conducive, which requires a democratic atmosphere.”

⁶⁵ European Parliament Rec. 2018/2117(INI), 2018. The document encourages recognition of academics and students as human rights defenders under attack, requiring a robust response by state authorities (para R).

⁶⁶ Art. 2 Declaration of the COM on CoE action to improve the protection of HRDs, 6 February 2008.

⁶⁷ Art. 18.2. UNGA Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 December 1998, UN Doc. A/RES/53/144.

⁶⁸ European Parliament Rec. 2018/2117(INI), 2018; UN Special Rapporteur on Freedom of Opinion and Expression, 2020, para 31. On Turkey see: I. Ö. Taştan and A. Ördek, A Report on Academic Freedoms in Turkey in the Period of the State of Emergency, 2020, pp. 40 et seq. https://www.ohchr.org/Documents/Issues/Opinion/Submissions/Academics/INSAN_HAKLARI_OKULU3.pdf .“

⁶⁹ *Aksu v. Turkey*, App Nos. 4149/04 and 41029/04, 15 Mar 2012, para. 58.

⁷⁰ *Zehnalová and Zehnal v. The Czech Republic*, App. No. 38621/97, 14 May 2002, A.

⁷¹ *C. v. Belgium*, App. No. 21794/93, 7 Aug 1996, para 25. See also *Niemietz v. Germany*, App No 13710/88, 16 Dec 1992, para. 29. The Court also recognized the right to a “*private social life*” in *FNASS and Others v. France*, App Nos. 48151/11 and 77769/13, 18 Jan 2018, para. 153. “it is in the course of their working lives that the majority of people have a significant, if not the greatest, opportunity to develop relationships with the outside world.”; *Bărbulescu v. Romania*, App No. 61496/08, 5 Sept 2017, para. 71; *Niemietz v. Germany*, App. No. 13710/88, 16 Dec 1992, para. 29.

⁷² See eg, *Fernández Martínez v. Spain*, App No. 56030/07, 12 Jun 2014, para. 126; *A.-M.V. v. Finland*, App No. 53251/13, 23 Mar 2017, para. 76; *ECommHR, Brüggemann and Scheuten v. Germany*, App. No. 6959/75, 12 Jul 1977, para. 55.

⁷³ *Niemietz v. Germany*, 1992, para. 29.

⁷⁴ *Sorguç v. Turkey*, 2009, para 35.

⁷⁵ *Mehmet Hasan Altan v. Turkey*, App. No. 13237/17, 10 Sep 2018, para 210.

⁷⁶ *Zana v Turkey*, App. No. 69/1996/688/880, 25 Nov 1997, para 51.

recognised by this Court and others, political expression on an issue of human rights deserves a very high level of protection.⁷⁷ The particular role of critical academic expression, alongside that of other key actors such as journalists, deserves emphasis.

30. The close inter-relationship between academic freedom and freedom of expression is recognised by UN Special Rapporteurs⁷⁸ and the IACHR,⁷⁹ among others. As the IACHR notes, “an arbitrary interference with academic freedom, as well as an administrative sanction, the removal from office or any other act aimed at silencing or inhibiting the expressions of a professor, may entail a violation of the right to freedom of thought and expression”,⁸⁰ and “obstacles to academic freedom slow the advancement of knowledge, undermine public debate, and reduce democratic spaces”.⁸¹

Strict approach to Permissible Restrictions in cases of Academic Freedom

31. Academic freedom is not absolute. It is well established under the Convention that rights under Article 8 and 10 are subject to permissible restrictions, provided applicable conditions are met. However, the Court’s case-law and abundant international standards underscore the need to ensure that any interference with academic freedom is “exceptional”, with restrictions interpreted narrowly, and subject to “strict oversight”. The Court has noted the need for “careful scrutiny [of] any restrictions on the freedom of academics to carry out research and to publish their findings”.⁸²
32. A restrictive approach to permissible exceptions is justified by the implications of restrictions on academic freedom for the individuals concerned, the human rights of others, scientific and social development and healthy democracy, as emphasised throughout this brief. This is reflected in international standards referring to heightened, “special” levels of protection of academic freedom. Like the press, their “watchdog” role in democratic societies requires a high level of protection of free expression on matters of public concern.⁸³ Thus the IACHR’s Principles on Academic Freedom note the need for “special protection” in light of academia’s role (as “agents for discovery, self-reflection, progress, the promotion of democratic principles, ownership of human rights”), as well as vulnerability to violations “as a result of their research, thinking, and criticism, especially when they are involved in the discussion of matters of public interest”.⁸⁴ The African Commission on Human and Peoples’ Rights (ACommHR) has likewise underscored the importance for democratic society of tolerating critical academic voices on contentious political issues.⁸⁵ Several States have also recognised domestically the higher protection of freedom of expression in an academic context.⁸⁶ A strict approach is therefore required for each element of the test for permissible restrictions set out below.
33. **Requirement of Legality:** First, it is well established that any interference with Articles 8 or 10 must meet the “lawfulness” requirement, referring not only to compliance with domestic law, but the “quality of that law, requiring it to be compatible with the rule of law”⁸⁷ and in conformity with the “general principles expressed or implied” in the ECHR.⁸⁸ The law must meet the requirements of clarity, accessibility and foreseeability, providing adequate safeguard against arbitrary interference.⁸⁹ The emergency decrees in Turkey⁹⁰ and the

⁷⁷ UNHRC General Comment 34; *Wille v. Liechtenstein*, App. No. 28396/95, para. 61; *Kula v. Turkey*, App. No. 20233/06, para. 47.

⁷⁸ UN Special Rapporteur on Freedom of Opinion and Expression, 2020, paras 15 *et seq.*

⁷⁹ Inter-American Principles, Preamble.

⁸⁰ IACHR, *Ricardo Israel Zipper v Chile*, 2009, para. 63.

⁸¹ Inter-American Principles, Preamble.

⁸² *Aksu v. Turkey*, 2012, para 71; see also *Mustafa Erdoğan v. Turkey*, 2014, para. 40; Inter-American Principles, Preamble; UN Special Rapporteur on Freedom of Expression, 2020, paras. 16 and 24.

⁸³ ECtHR Guide on Article 10 of the ECHR, 30 April 2021, paras 283-286.

⁸⁴ Inter-American Principles, Preamble. See wording of ECHR Guide on Article 10 of the ECHR, 30 April 2021, para 286.

⁸⁵ AfCommHR, *Good v. Republic of Botswana*, 2010, paras. 196–200; Inter-American Principles, Preamble and Principle VII.

⁸⁶ See e.g. Decision No. 83-165 DC, of 20 January 1984, by the French Constitutional Council recognised the special nature of freedom of expression in the academic context and that professors and researchers enjoy “full independence and full freedom of expression in the performance of their duties” (para 19). Similarly, the Mexican Supreme Court noting that “in an academic environment, any restriction on the content of an expression may be pernicious, to the extent that it can sometimes be incompatible with research and dissemination of knowledge. This calls for a higher degree of tolerance for criticism in academia” in *Coordinadora del programa de doctorado (MEOP) v. Postulante a doctorado (APTO)*, App. No. 3123/2013, 7 February 2014.

⁸⁷ *Halford v. the United Kingdom*, App. No. 20605/92, 25 Jun 1997, para. 49; *Karastelev and others v. Russia*, App. No. 16435/10, 06 Jan 2021, para. 78.

⁸⁸ *Turan and Others v. Turkey*, Apps. No. 75805/16 and 426 others, 23 Nov 2021, para.80.

⁸⁹ E.g. *Karastelev and others v. Russia*, 2021, para. 78.

⁹⁰ Decree-Law No. 667 mandated dismissals “on grounds of membership, affiliation, connection or contact with terrorist organisations or bodies, entities or groups which are decided by the National Security Council to have acted against the national security of the State.”, “Affiliation”, “connection” and “contact”, which had not been part of the law prior to the state of emergency.

criminal law targeting terrorism and broad associated offences to which they refer,⁹¹ raise serious concerns regarding compatibility with the principles of legality including clarity and foreseeability.⁹² This is reflected in criticism by this Court and other international authorities.⁹³ The existence of such laws contributes to an environment in which academics' and others' vulnerability is increased, and their activities stifled.

34. **Necessity and Proportionality:** Restrictions on academic freedom must also be “necessary in a democratic society” and pursue one of the legitimate aims established in Articles 8 and 10. The Court can reject the aims provided by the government and provide reasons for doing so.⁹⁴ When supervising the necessity of restrictions, it will consider the case as a whole, “including the content of the remarks held against the applicant and the context in which [they were] made”.⁹⁵ It must also assess whether measures were “proportionate to the legitimate aim pursued” and reasons given by the authorities were “relevant and sufficient”.⁹⁶
35. Key considerations in the proportionality analysis in this context include: the nature of the comments, and whether they incite violence or hatred;⁹⁷ the nature of the authors, in this case academics; the nature of the response, and the consequences for individuals – among others, dismissal, labelling as traitors and terrorists, criminal prosecution, and what has been termed “civil death” for those within society in Turkey opposed to the government.⁹⁸ The general or widespread nature of measures, or blanket rules, are also less likely to be justified than targeted measures based on individualised assessments of all the circumstances.⁹⁹ Crucially, the impact on academic freedom, education and democratic debate of measures that have a chilling effect or lead to self-censorship¹⁰⁰ described as threatening the basis of democracy,¹⁰¹ should also be considered.
36. **Safeguards and Remedy:** The infringement of academic freedom must also be subject to effective judicial review.¹⁰² This requirement is closely linked to the right under Article 13 to a timely, accessible and effective remedy before a body empowered to deal with the substance of the complaint, order cessation and reparation.¹⁰³ Serious concerns as to effective remedies in the Turkish context are well documented, as explored by others.¹⁰⁴ These include concerns regarding the State of Emergency Inquiry Commission (Commission), with jurisdiction over reinstatement claims, which reports indicate has yet to find in favour of any claimant. Likewise, even in the rare case where the Turkish Constitutional Court found academics' freedom of expression had been violated, that decision was not given effect.¹⁰⁵

Academic freedom and derogation under Article 15 ECHR

37. In emergency situations in which states derogate, as Turkey did between 21st July 2016 and 8th August 2018,¹⁰⁶

⁹¹ Article 220, 314, 220/7 of the Turkish Criminal Code (membership, aiding, abetting and supporting organisations), Article 7 of the Anti-Terror Law (propagandising of terrorist organisations).

⁹² E.g. *Yılmaz and Kılıç v Turkey*, App No. 68514/01, 17 Jul 2008; *Gül and others v. Turkey*, App. No. 4870/02, 8 Jun 2010; *Gülcü v. Turkey*, App. No. 17526/10, 19 Jan 2016; *Işıkırık v Turkey*, App. No. 41226/09, 14 Nov 2017; *İmret v. Turkey*, App No. 57316/10, 10 Jul 2018; *Bakır and Others v. Turkey*, App. No. 46713/10, 10 Jul 2018.

⁹³ *Selahattin Demirtaş v. Turkey (n 2)*, App. No. 14305/17, 22 Dec 2020, paras 276-280; Venice Commission, Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey, CDL-AD(2016)002, 11-12 March 2016 (The opinion concludes that Turkish law concerning membership of terrorist organisations is vague and unforeseeable).

⁹⁴ See Article 18 below.

⁹⁵ *Zana v. Turkey*, 1995, para. 51.

⁹⁶ *Ibid.*

⁹⁷ *Mehmet Hasan Altan v. Turkey*, 2018, para. 209 defines statements that incite to violence as those which “advocate recourse to violent actions or bloody revenge, justify the commission of terrorist acts in pursuit of their supporters’ goals and can be interpreted as likely to encourage violence by instilling deep-seated and irrational hatred towards specified individuals”.

⁹⁸ Scholars at Risk, “Report: Free to Think”, 2020

⁹⁹ Venice Commission Opinion CDL-AD(2016)037, paras. 131-139.

¹⁰⁰ European Commission, Key findings of the 2020 Report on Turkey, 6 October 2020, p. 2 https://ec.europa.eu/commission/presscorner/detail/en/country_20_1791

¹⁰¹ *Kavala v. Turkey*, App. No. 28749/18, 10 Dec 2019, para 231.

¹⁰² R. Spano, “Academic Freedom - Its Fundamental Role in a Democracy”, 2020; See *Kula v. Turkey*, App. No. 20233/06, 19 June 2018, paras 50-52.

¹⁰³ *Metropolitan Church of Bessarabia and others v. Moldova*, App No. 45701/99, 13 December 2001; *Hatton v. the United Kingdom*, App No. 36022/97, 8 July 2003.

¹⁰⁴ The Commission’s compatibility with Article 13 standards has been challenged in detailed NGO reports see Amnesty International, Turkey: Weaponizing Counterterrorism, 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf> is p.19; The Turkish Litigation Support Project (TLSP), Access to Justice in Turkey? October 2019, <https://static1.squarespace.com/static/5b8bbe8c89c172835f9455fe/t/5e13373ddbd43712f438077a/1578317708753/State+of+Emergency+Commission+Report+Edited+Version+final.pdf>, and also addressed in TLSP’s 3rd party intervention in this case.

¹⁰⁵ *Zübeyde Füsün Üstel and Others*, 2018/17635, 26 Jul 2019.

¹⁰⁶ Date of the withdrawal of derogation letter. The State of Emergency had ended at the 19th July 2018, <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=005&codeNature=0>

it is well established that rule of law safeguards continue to apply.¹⁰⁷ These include legality, legitimacy, necessity and proportionality, and effective oversight. Even in a public emergency therefore, restrictions on academic freedom must be set out in clear law, be genuinely linked to the emergency and strictly required by it. However, in the present context experts point to several challenges.

38. First, as noted above, serious concern surrounds the scope and vagueness of Turkish laws on “terrorism” and loose forms of support for it,¹⁰⁸ as well as their unforeseeable interpretation and application in practice,¹⁰⁹ in violation of the principle of legality.¹¹⁰
39. Second, whether specific measures were related to the emergency, “strictly required by the exigencies of the situation” and used for that purpose, has been questioned by this Court in other cases.¹¹¹ The Office of the High Commissioner for Human Rights (OHCHR) in turn expressed concern that emergency decrees in Turkey constitute “omnibus legislation” regulating “various matters which seem unrelated to any threat to national security, such as lifting the elections of rectors in universities, dismissing public officials, closing civil society organizations, schools, universities, and media”.¹¹² The Venice Commission similarly observed that “information supports the perception that the measures allowed by the Decrees are actually designed and/or used to address (also) more general problems facing the Turkish authorities as they see it, not necessarily having a link to the management of the state of emergency”.¹¹³
40. Third, in assessing necessity and proportionality, the factors the Court will consider include the nature and impact of restrictions on academic freedom (addressed above), alongside the circumstances of the emergency and of the particular case.¹¹⁴ As the Court has cautioned, “even in a state of emergency [...] the Contracting States must bear in mind that any measures taken should seek to protect the democratic order from the threats to it, and every effort must be made to safeguard the values of a democratic society, such as pluralism, tolerance and broadmindedness”.¹¹⁵ In *Mehmet Hasan Altan v. Turkey*, the Court cautioned that an emergency “must not serve as a pretext for limiting freedom of political debate, which is at the very core of the concept of a democratic society”¹¹⁶ and that absent “incitement to violence [...] the Contracting States cannot restrict the right of the public to be informed of them”.¹¹⁷ Similarly, on academic freedom specifically, the IACHR notes that “States may not invoke the existence of exceptional situations as a means of suppressing or denying, denaturalizing, or depriving of real content academic freedom, university autonomy, or, in general, the rights guaranteed by the American Convention on Human Rights”.¹¹⁸
41. Fourth, it is inherent in exceptional emergency measures,¹¹⁹ that they cease when the emergency ends. Measures taken – or remaining in effect – after derogation is withdrawn should be examined on the basis that the Convention is fully applicable.¹²⁰ International experts have expressed deep concern (including in relation to Turkey) regarding the danger of normalising exceptional measures, and slippage into a *de facto* permanent state of emergency.¹²¹ Finally, as addressed above, independent oversight of emergency measures and

¹⁰⁷ PACE notes that “no State has the right to disregard the principle of the rule of law, even in extreme situation” in Rec. 1713 (2005) Democratic oversight of the security sector in member states, 23 June 2005.

¹⁰⁸ Amnesty International, Turkey: Weaponizing Counterterrorism, 2021, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>; Venice Commission CDL-AD(2016)037, para 61.

¹⁰⁹ *Turan and Others v. Turkey*, 2021, paras. 79-92. Pre-trial detention of the judiciary was according to domestic law, but was nonetheless unlawful as provisions were interpreted in a manner that did not comply with the foreseeability requirements.

¹¹⁰ UNHRC Gen. Comment No. 29 on States of Emergency (Article 4) requiring that states constitutional and other provisions of law govern the proclamation and exercise of emergency powers. U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001), para. 2.

¹¹¹ See *eg. Şahin Alpay v. Turkey*, App. no. 16538/17, 20 Mar 2018, para. 78; *Turan and Others v. Turkey*, 2021, para. 52; and *Mehmet Hasan Altan v. Turkey*, 2018, para. 94; *Lawless v. Ireland (no.3)*, 1961, App. No. 332/57, 1 Jul 1961, para. 38.

¹¹² OHCHR, “Report on the impact of the state of emergency on human rights in Turkey”, March 2018, para. 46 https://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf

¹¹³ Venice Commission Opinion no. 888/2017 on the Provisions of the Emergency Decree Law No. 674 of 1 September 2016, 9 October 2017, CDLAD(2017)021.

¹¹⁴ *Brannigan and McBride v. the United Kingdom*, App nos. 14553/89-14554/89, 26 May 1993, para. 43; *A. & Others v. the United Kingdom*, App. No. 3455/05, 19 Feb 2009, para. 173.

¹¹⁵ *Mehmet Hasan Altan v. Turkey*, 2018, para. 210; *Şahin Alpay v. Turkey*, 2018, para 180.

¹¹⁶ *Mehmet Hasan Altan v. Turkey*, 2018, para. 210.

¹¹⁷ *Ibid.*, para. 209; see also *Dareskizb Ltd v. Armenia*, App. No. No. 64004/11, para. 77.

¹¹⁸ Inter-American Principles, Principle VI.

¹¹⁹ UNHRC General Comment No. 29 on States of Emergency, 2001, para. 2; PACE Res. 2209(2018) 24 April 2018 noting that a state of emergency must be limited in duration, circumstance and scope, and not exceed the emergency. Turkey was found to have “exceeded what is strictly required”.

¹²⁰ *Brogan and Others v. the United Kingdom*, App Nos. 11209/84; 11234/84; 11266/84; 11386/85, 29 Nov 1998, para. 48.

¹²¹ E.g. UN Special Rapporteur on counter-terrorism and human rights, Report on the human rights challenge of states of emergency in the context of countering terrorism, 2018, UN Doc. A/HRC/37/52; UN Economic and Social Council, Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency, 27 July 1982, UN Doc E/CN.4/Sub.2/1982/15, paras 112-117,

effective remedies are essential, and rule of law principles are applicable at all times.¹²²

a) Restrictions on Academic Freedom as prohibited “ulterior purpose” under Article 18

42. The Court has confirmed that the separate examination of a case under Article 18 is “warranted if the claim that a restriction has been applied for a purpose not prescribed by the Convention appears to be a fundamental aspect of the case”.¹²³ This case has at its core the stifling of academic criticism and punishment of academics deemed disloyal to the state. As such, in the context of this case, the Court’s consideration under Article 18 is imperative to understand the motivation behind, and nature of, such measures.
43. Under Article 18 the Court “examines all the material before it irrespective of its origin”¹²⁴ to assess if restrictions serve an “ulterior purpose” contrary to the Convention’s aims. Since *Merabishvili v. Georgia*¹²⁵ and *Navalnyy v. Russia*¹²⁶ it no longer “applies the general presumption of good faith.” It considers, inter alia, whether the case forms part of a pattern, evidenced by similar cases before the Court.¹²⁷
44. In the context of Turkey, various factors are relevant to the pattern of which this case forms part.¹²⁸ In the *Kavala* case the Court emphasized the sequence of Mr. Kavala’s targeting by the Turkish President and his subsequent detention and criminal prosecution. It held that Article 18 was violated as the detention of the well-known activist “pursued an ulterior purpose, namely to reduce him to silence as a human-rights defender”.¹²⁹ The same conclusion was drawn in the *Demirtas* case concerning a prominent Kurdish opposition politician targeted by the President and detained as a result of his political speeches concerning the Kurdish question.¹³⁰ Other cases have involved measures taken against other sectors of society openly critical of the Government.¹³¹ The petition at hand, also critical of the Government’s position towards Kurds adds another important actor in society, namely academia, to the list. Even before 2016, the Court noted in the *Cox* case that the Turkish Government had refused re-admission to the country of an academic to “repress the exercise of (...) freedom of expression and stifle the spreading of ideas.”¹³²
45. In relation to academic freedom specifically, the UN Special Rapporteur described an environment “especially hostile to academic freedom” and a “serious chilling effect on the autonomy of higher education institutions” of criminalization and retaliatory disciplinary procedures against academics for their activities.¹³³ This is consistent with reports of diverse forms of attack on academic freedom and institutional autonomy in Turkey, as noted in the introduction.
46. **Conclusion:** The present case is emblematic of a serious problem within Turkey and beyond. The impact of stifling academic freedom on the individuals concerned, on the rights of others and on the principles underpinning the Convention system call for rigorous engagement by the Court with the issue and the standards set out in this brief. Any restrictions must be exceptional, provided for in law that is clear and consistent with the Convention and strictly applied, necessary and proportionate and subject to robust judicial oversight with real effect. The Court is urged to exercise strict scrutiny of the ulterior purpose behind the measures, as well as their direct and indirect, immediate and longer-term, effect on the rights of many and the quality of democracy within the Convention space.

¹²² E.g. Article 2(3) ICCPR. See also UN Working Group on Arbitrary Detention, Opinion No. 52/2014 (Australia and Papua New Guinea), A/HRC/WGAD/2014/52, para 52; M. Cherif Bassiouni, International Recognition of Victims’ Rights, *Human Rights Law Review* 6:2 (2006), 203-279, p. 204.

¹²³ *Merabishvili v. Georgia*, App. No. 72508/13, 28 Nov 2017, para. 291; *Mammadli v. Azerbaijan*, App. No. 47145/14, 19 Apr 2018, para. 97; *Rashad Hasanov and Others v. Azerbaijan*, Apps. Nos. 48653/13 and others, 7 Jun 2018, para. 120; *Aliyev v. Azerbaijan*, App. Nos. 68762/14 -71200/14, 20 Sep 2018, para. 199; *Navalnyy v. Russia*, App. nos. 29580/12 and others, 15 Nov 2018, para 164; *Navalnyy v. Russia (no. 2)*, App. No. 43734/14, 9 Apr 2019, para. 92; *Kavala v. Turkey*, 2019, para. 198; *Natig Jafarov v. Azerbaijan*, App. No. 64581/16, 16 Sep 2019, para. 63; *Ibrahimov and Mammadov v. Azerbaijan*, App. Nos. 63571/16 and others, 13 Fe 2020, para. 150; *Khadija Ismayilova v. Azerbaijan (no. 2)*, App. No. 30778/15, 27 Feb 2020, para. 112; and *Yunusova and Yunusov v. Azerbaijan (no. 2)*, App. No. 68817/14, 16 Jul 2020, para. 186

¹²⁴ ECtHR Guide on Article 18 of the ECHR, 31 August 2020, p. 20.

¹²⁵ *Merabishvili v. Georgia*, 2017, para. 310.

¹²⁶ *Navalnyy v. Russia*, 2018, para.165.

¹²⁷ *Navalnyy v. Russia*, 2018, paras. 167-170; *Aliyev v. Azerbaijan*, 2018, para. 223.

¹²⁸ *Şahin Alpay v. Turkey*, 2018; *Kavala v. Turkey* 2019; *Selahattin Demirtaş v. Turkey (No. 2)*, App. No. 14305/17, 20 Nov 2018; *Turan and Others v. Turkey*, 2021.

¹²⁹ *Kavala v. Turkey*, 2018, para. 224.

¹³⁰ *Selahattin Demirtaş v. Turkey (No. 2)*, 2018, para. 426.

¹³¹ *Turan and Others v. Turkey*, 2021, in which judges and prosecutors were dismissed and detained after openly criticizing the government are part of this context, albeit Article 18 was not argued in that case.

¹³² *Cox v. Turkey*, 2010, para. 44.

¹³³ UN Special Rapporteur on Freedom of Opinion and Expression, 2020, para 33.

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