

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

NEW YORK
CITY BAR

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September 15, 2016

H. E. Mr. Recep Tayyip Erdoğan
President of the Republic of Turkey
c/o Consulate General of Turkey
825 3rd Avenue
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New York, NY 10022

Your Excellency,

I am writing on behalf of the New York City Bar Association to convey our grave concerns regarding the exceedingly severe actions taken by the government of Turkey following the July 15, 2016 coup attempt, which undermine the rule of law and the protection of fundamental human rights. While the Association recognizes the Turkish government's central interest in eliminating the risk of future instability, we believe these goals can and should be achieved while preserving basic freedoms and complying with the government's domestic and international law obligations.

The Association is an independent, non-governmental organization of approximately 25,000 lawyers, judges, law professors, and government officials from the United States and over 50 other countries. Throughout its 145-year history, the Association has consistently maintained that respect for the rule of law is essential in all jurisdictions, and has a long history of dedication to promoting human rights and the rule of law, including within the United States, through the work of its International Human Rights Committee. We believe that advancing these rights is essential to a fair and just society.

We are deeply troubled by recent and developing reports, including reports of:

- the detention of more than 40,000 individuals, approximately 20,000 of whom have not been formally arrested or presented with evidence;
- the widespread abuse of detainees, including sexual and physical abuse, the denial of food and water, and the denial of access to legal assistance;
- the issuance of arrest warrants for journalists;
- the imposition of significant internet censorship, and the sudden cancellation of broadcasting licenses of media outlets that have been critical of the government;

- the arrest or suspension of thousands of civil servants without cause, including judges, prosecutors and police officers; and
- the arrest or dismissal of a large number of academics, including university deans, and the revocations of licenses of tens of thousands of private school teachers.

These ongoing actions violate the protections guaranteed by the International Convention on Civil and Political Rights, which Turkey has signed and ratified, including: Article 7 which provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment; Article 9 which provides that no one shall be subjected to arbitrary arrest or detention and that anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him; Article 12 which provides that everyone shall be free to leave any country, including their own; and Article 19 which provides for the right to freedom of expression, including the right to receive and impart information and ideas of all kinds.

The government's actions also violate the most basic protections provided under the Turkish constitution, including protections for personal liberty and security, the right to legal assistance, the right to request a trial within a reasonable time and to be released during investigation or prosecution, the right to a fair trial before the courts through legitimate means and procedures, freedom of association, freedom of expression and dissemination of thought and freedom of residence and movement.

We are particularly troubled by the recent announcement that the Turkish government may derogate from the European Convention of Human Rights in the course of the three month state of emergency imposed on July 21, 2016. The state of emergency must not be used to legitimize disproportionate actions. To the contrary, the ability to bypass ordinary legislative processes places an even greater responsibility upon the government to be vigilant in upholding its obligations to protect human rights. We echo the July 22, 2016 statement by Thorbjørn Jagland, the Secretary General of the Council of Europe, who noted that, “[a]s the European Court of Human Rights has made clear, any derogations must be proportionate to the situation and in no circumstances can a state derogate from Article 2: the right to life, Article 3: prohibition of torture and inhumane or degrading treatment or punishment and Article 7: no punishment without law.”¹

We are also troubled by reports that Turkey is considering the reintroduction of capital punishment. Doing so would contravene the European Convention on Human Rights, to which Turkey has been a signatory since 1954. As you know, the Turkish constitution prohibits the retrospective application of punishments even under conditions of war, martial law, or state of emergency.

¹ Thorbjørn Jagland, Secretary-General, Council of Europe, *Turkey: Protecting Democracy and Human Rights*, July 22, 2016, <http://www.coe.int/en/web/portal/-/turkey-protecting-democracy-and-human-rights>; see also Office of the U.N. High Commissioner for Human Rights, *UN Experts Urge Turkey to Adhere to Its Human Rights Obligations Even in Time of Declared Emergency*, Aug. 19, 2016, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20394> (joint statement by nineteen UN human rights experts discussing limits on authority to derogate from ICCPR).

The government's recent actions do, and the possible reintroduction of capital punishment would, violate the principles of NATO and the norms established by the Council of Europe.

As experiences around the world have repeatedly demonstrated, extreme crackdowns on civil liberties and minority rights may breed extremism and lead to even greater instability. We urge the government to adhere to its constitutional and international law obligations as it proceeds through this difficult time. This is the only option if Turkey is to maintain the legitimacy of its democratic institutions and to fulfill its commitment to the rule of law.

Respectfully,

A handwritten signature in black ink, appearing to read 'John S. Kiernan', with a long horizontal line extending to the right.

John S. Kiernan

cc:

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