



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Third party intervention by the Council of Europe Commissioner for Human Rights

under Article 36, paragraph 3, of the European Convention on Human Rights

Applications:

Abdullah Kaplan v. Turkey (no. 4159/16)
Adem Tunc v. Turkey (no. 4552/16)
Ahmet and Zeynep Tunc v. Turkey (no. 4133/16)
Ahmet Tunc v. Turkey (no. 39419/16)
Alpaydinci and Others v. Turkey (no. 10088/16)
Altun v. Turkey (no. 4353/16)
Balcal and Others v. Turkey (no. 8699/16)
Bedri and Halime Duzgun v. Turkey (no. 901/16)
Caglak v. Turkey (no. 2200/16)
Cengiz Abis and Others v. Turkey (no. 10079/16)
Dagli and Others v. Turkey (no. 6990/16)
Dolan v. Turkey (no. 9414/16)
Erkaplan v. Turkey (no. 10085/16)
Eroglu v. Turkey (no. 478/16)
Gecim v. Turkey (no. 5332/16)
Gorgoz v. Turkey (no. 480/16)
Inan v. Turkey (no. 2105/16)
Irmak v. Turkey (no. 5628/16)
Karaduman and Cicek v. Turkey (no. 6758/16)
Karaman v. Turkey (no. 5237/16)

Kaya v. Turkey (no. 9712/16)
Koc and Others v. Turkey (no. 8536/16)
Omer Elci v. Turkey (no. 63129/15)
Oncu v. Turkey (no. 4817/16)
Oran v. Turkey (no. 1905/16)
Paksoy v. Turkey (no. 3758/16)
Sariyildiz v. Turkey (no. 4684/16)
Seniha Surer and Others v. Turkey (no. 10073/16)
Seviktek v. Turkey (no. 2005/16)
Sultan and Suleyman Duzgun v. Turkey (no. 891/16)
Tunc and Yerbasan v. Turkey (no. 31542/16)
Uysal v. Turkey (no. 63133/15)
Vesek v. Turkey (no. 63138/15)
Yavuzel and Others v. Turkey (no. 5317/16)

Introduction

1. On 21 February 2017, the Council of Europe Commissioner for Human Rights (hereinafter: 'the Commissioner') informed the European Court of Human Rights (hereinafter: 'the Court') of his decision to intervene as a third party in the Court's proceedings, in accordance with Article 36, paragraph 3 of the European Convention on Human Rights (hereinafter: 'the Convention'), and to submit written observations concerning a group of 34 cases. These cases are related to events which have occurred since August 2015 in the context of counter-terrorism operations and curfews in South-Eastern Turkey.
2. According to his mandate, the Commissioner fosters the effective observance of human rights; assists member states in the implementation of Council of Europe human rights instruments, in particular the Convention; identifies possible shortcomings in the law and practice concerning human rights; and provides advice and information regarding the protection of human rights and the prevention of human rights violations.¹
3. The protection of human rights in the fight against terrorism is a priority theme of the Commissioner's work in all Council of Europe member states. The Commissioner has repeatedly underlined that, while terrorist activity in itself is a fundamental violation of human rights, state attempts to combat it must be human rights compliant and remain within the rule of law. He has addressed a number of recommendations to member states in this regard.
4. In his dialogue with the Turkish authorities, the Commissioner has raised concerns about Turkey's compliance with human rights standards in the fight against terrorism. These include concerns related to the excessive use of force during counter-terrorism operations and the prevalence of impunity for serious human rights violations committed by security forces in that context, both issues to which the Commissioner's predecessor also directed extensive attention.
5. The present submission is based on two visits the Commissioner carried out to Turkey from 6 to 14 April 2016 (Istanbul, Ankara and Diyarbakir) and from 27 to 29 September 2016 (Ankara); the ensuing Memoranda (in particular the Memorandum on the human rights implications of anti-terrorism operations in South-Eastern Turkey published in December 2016);² and his continuous country monitoring. During his visits, the Commissioner held discussions with a number of state authorities and met with representatives of national and international non-governmental organisations, as well as journalists and lawyers. In the context of the April 2016 visit, the Commissioner also observed the situation in a specific location in the Sur neighbourhood of Diyarbakir, which had been directly affected by counter-terrorism operations and subjected to curfews.
6. Section I of the present written submission provides information about the general context of counter-terrorism operations and curfews and their impact on the local population in South-Eastern Turkey. Section II focuses on major issues of concern about the human rights implications of counter-terrorism operations, including the protection of the right to life; the lack of effective investigations and the problem of impunity; restrictions on relatives paying their last respects to their deceased family members; and the undue interference with the work of human rights defenders. These sections are followed by the Commissioner's conclusions.

¹ Resolution (99)50 on the Council of Europe Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999.

² Memorandum on the human rights implications of anti-terrorism operations in South-Eastern Turkey, by Nils Muižnieks, Council of Europe Commissioner for Human Rights, [CommDH\(2016\)39](#), 2 December 2016. This submission also takes into account the findings of two further Memoranda of the Commissioner based on the afore-mentioned visits: Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, by Nils Muižnieks, Council of Europe Commissioner for Human Rights, [CommDH\(2016\)35](#), 7 October 2016; and Memorandum on freedom of expression and media freedom in Turkey, by Nils Muižnieks, Council of Europe Commissioner for Human Rights, [CommDH\(2017\)5](#), 15 February 2017.

I. General observations on counter-terrorism operations and curfews in South-Eastern Turkey

7. The Commissioner is fully aware of the severe terrorist threat faced by Turkey and recognises the right and duty of the Turkish state to fight against terrorism in all its forms. He is also cognizant of the legacy of the armed confrontation between Kurdish separatists and the Turkish security forces, which caused tens of thousands of casualties and an estimated one million displaced persons, mostly during the 1990s. Unlike those events, the operations that provide the context for the applications at stake have taken place mostly in populated urban areas, following an escalation in the fighting between Turkish security forces and armed terrorist groups starting from the summer of 2015. Indeed, one of the main features of the response of the Turkish authorities to the deteriorating security situation in South-Eastern Turkey, which included the building of trenches and barricades by armed terrorist groups in certain neighbourhoods, has been the declaration of curfews in urban centres.
8. In his December 2016 Memorandum, the Commissioner already noted with concern the disproportionate use of curfews, which had resulted in a number of human rights violations in its own right (i.e. in addition to specific violations caused by the operations or the conduct of security forces). He stresses that at the time of writing that Memorandum, open-ended and round-the-clock curfews affecting urban centres with huge populations had been imposed in 32 districts and 9 provinces, without prior warning or information about their lengths. These included round-the-clock curfews lasting 79 days in Cizre and Yüksekova, 81 days in Şırnak and 134 days in Nusaybin. The Commissioner reiterates his conclusion that it is difficult to imagine a harsher application of a curfew.³
9. In essence, persons subjected to the curfews in question were confined to their homes for extended periods of time, with any deviation from this required behavior being not only unlawful, but punishable with penalties extending to imprisonment. In the Commissioner's view, this amounts to a restriction of liberty equivalent to house arrest for all intents and purposes. Persons subjected to the curfews were also exposed to very harsh conditions as a result of severe disruptions of access to basic necessities, including food, water, electricity, essential treatments and medicines as well to public services such as refuse collection. Any means of communication and access to emergency services were severely disrupted leaving people helpless even at times of urgent need for medical assistance.
10. In his exchanges with the authorities, the Commissioner was informed that efforts had been made to provide aid for basic subsistence, including packages of food, blankets or clothing, and to ensure that some amenities such as pharmacies and bakeries were left open in areas under curfews. However, the Commissioner was troubled by the inadequacy of these efforts, when considering both the size and needs of the population affected and the fact that persons living under curfew for such a long time could hardly survive without leaving their homes and exposing themselves to terrorist fire, collateral damage from security forces or, allegedly, use of force by security personnel on civilians breaking curfew. For instance, the Governor of Diyarbakir informed the Commissioner that the authorities distributed 2 100 packages of food and 11 000 loaves of bread in Sur, where 2 000 civilians were estimated to have stayed during an uninterrupted, round-the-clock curfew which lasted more than 3 months.
11. According to the Parliamentary Assembly of the Council of Europe, 1.6 million people have been affected by the curfews and at least 355 000 persons have been displaced⁴. The Commissioner heard of many cases where the authorities assumed that persons would evacuate their homes during a curfew, despite the risk of facing administrative or criminal sanctions or losing their lives as a result of ongoing fighting in the area. He considers that no adequate provision was made for the safe evacuation of civil populations prior to or during the curfews, taking into account their humanitarian needs. On the contrary, the lack of clarity of the situation and conflicting instructions given by authorities can only have contributed to further the sense of insecurity and mental suffering experienced by the local civilian population.
12. The Commissioner recalls that he has already examined the question of the existence of a legal basis in Turkish legislation for the practice surrounding these curfews,⁵ an issue also dealt with by the Venice

³ [CommDH \(2016\)39](#), *op.cit.*, paragraph 43.

⁴ Resolution of the Parliamentary Assembly of the Council of Europe on the functioning of democratic institutions in Turkey, [Resolution 2121 \(2016\)](#), 22 June 2016, paragraph 10.

⁵ [CommDH\(2016\)39](#), *op.cit.*, paragraphs 18-23.

Commission⁶ and the Parliamentary Assembly of the Council of Europe.⁷ He concluded, in line with the findings of the Venice Commission, that such practice could not be considered as meeting the applicable standards of legality. The Commissioner stresses the importance of this conclusion when the restrictions to the enjoyment of human rights caused by the curfews are assessed.

13. The Commissioner also reiterates his findings that the curfews and anti-terrorism operations have been markedly disproportionate. A first aspect of such disproportionality concerns the number of civilians affected, including those displaced for long periods, compared with the number of terrorists “rendered ineffective” (*etkisiz hale getirilen*). According to official figures related to Sur, for example, 22 000 persons were displaced for 50 terrorists rendered ineffective; a ratio of 1 to 440.⁸
14. A second aspect relates to the levels of destruction brought about by the operations. The Commissioner received numerous credible reports, backed up by documentary evidence and video footage, that in some cases the Turkish security forces deployed heavy weaponry in populated areas, including artillery and mortar fire, and used tanks and machine guns. There have also been allegations of aerial bombardments, in particular concerning the towns of Idil and Nusaybin. This is consistent with the level of destruction witnessed by the Commissioner during his visit in April 2016. From the location in the Sur neighbourhood of Diyarbakir where the President of the Diyarbakir Bar Association Tahir Elçi was murdered, the Commissioner observed that all the buildings in that street, without exception, had collapsed in heaps of rubble. This was one street among several neighbourhoods in Sur which had been subjected to curfews. The Governor of Diyarbakir estimated that 50% of houses in six neighbourhoods in Sur had become entirely uninhabitable and that a further 25% had been damaged. The Commissioner notes that satellite imagery made available by international and non-governmental organisations show similar levels of destruction in other cities, including the Cudi and Sur neighbourhoods of Cizre, and the Nusaybin district of Mardin. The Commissioner furthermore notes allegations he received that operations of similar intensity were conducted outside areas with trenches and barricades, whereas the removal of these were the avowed reason behind the operations.
15. The Commissioner fully recognises that the Turkish authorities faced an extremely dangerous and volatile situation fighting the PKK and armed groups affiliated with it in South-Eastern Turkey, including the deployment by terrorist militia of advanced urban guerrilla tactics and the death of many members of security forces. However, the Commissioner notes that when conducting counter-terrorism operations such as these, authorities must plan and control them so as to minimise recourse to lethal force and show the requisite care for the lives of the civilian population by taking all feasible precautions in the choice of means and methods.
16. The Commissioner was also informed – and shown images and video footage – of many cases of racist and chauvinist slogans being painted on buildings by security forces and songs associated with ultra-nationalist movements being played at full volume from armoured vehicles. He regrets that such practices reinforced a widespread perception of the curfews and anti-terrorism operations as “collective punishment” of the civilian population, who were allegedly automatically branded as PKK-sympathisers by the security forces. The Commissioner also notes two cases, which were covered in the Turkish media, concerning the deliberate dragging of a dead body behind an armoured vehicle and the displaying of the naked body of a woman, with both persons, presumed to be terrorists, captured dead during operations.
17. Despite the serious allegations of excessive use of force, abuse or misconduct by the security forces, only few, if any, criminal investigations were initiated where members of security forces were identified as suspects, as detailed further below. Here, the Commissioner wishes to stress that the lack of judicial investigations into alleged human rights violations is disheartening and revives concerns about the systemic problem of impunity enjoyed by the security forces during the fight against terrorism in South-Eastern Turkey in the 1990’s, which has been widely attested in the Court’s case-law.
18. The Commissioner also emphasises that the areas under curfew were blockaded and cut off from the outside world. All communication means, including telephone services, were severely disrupted, causing

⁶ Venice Commission Opinion No. 842/2016 on the Legal Framework governing Curfews, [CDL-AD\(2016\)010](#), 13 June 2016, paragraph 99.

⁷ [Resolution 2121 \(2016\)](#), *op. cit.*, paragraph 11.

⁸ [CommDH\(2016\)39](#), *op. cit.*, paragraph 28.

prolonged isolation of the population during the operations. The Commissioner received reports that security forces refused to give access to the curfew-affected districts to civil society members, including human rights organisations and media representatives. In some areas, the ban persisted even after the end of operations and human rights groups were prevented from interviewing local populations or conducting fact-finding missions. In the face of an almost complete blackout of information, in his public statements on curfews and counter-terrorism operations on-going in Cizre and Silvan,⁹ the Commissioner urged the authorities to allow access by independent observers, including Turkey's national human rights structures, in order to dispel doubts about the conduct of security forces. The Commissioner also notes in this respect that the Ombudsperson refused to conduct a fact-finding visit considering the situation in the region as being too tense and sensitive,¹⁰ and that after visiting Cizre following the first round of operations in September 2015, the Turkish Human Rights Institution abandoned the idea of drawing up a report on that visit.

19. The Commissioner received many allegations of cases where journalists and media actors trying to cover the curfews and anti-terrorism operations were deliberately targeted or impeded in their work by security forces. These include the case of Refik Tekin, a cameraman allegedly shot by the security forces whilst filming people carrying dead bodies on the streets in Cizre, and footage showing a police officer threatening a journalist by putting a gun against his head in Silvan.

II. Implications of counter-terrorism operations on specific human rights

Alleged infringements of the right to life

20. The Commissioner received serious allegations that security forces deployed excessive lethal force, including, as mentioned above, as a result of the conducting of heavy military interventions in towns. He notes that there are significant discrepancies concerning the number of civilian deaths between the official figures and those referred to by human rights organisations. Despite the Commissioner's explicit request for official figures on deaths of civilians during the operations, the information provided by the authorities omitted any such information and only referred to the number of deaths of security officers and of "counteracted" terrorists. On the other hand, at the time of writing the December 2016 Memorandum, the Human Rights Foundation of Turkey claimed having documented 310 deaths of non-combatant civilians during the operations at the time (subsequently updated to 321, of whom 79 were children and 30 senior citizens)¹¹. In their observations on the Commissioner's Memorandum, the authorities state that "[i]n the course of this terrorist campaign since July 2015 (as of November 2016) 799 security personnel and 323 civilians were murdered".¹² However, this information clearly does not refer to civilian deaths which may have occurred as a result of the use of force by security forces. This reinforces the Commissioner's impression that the authorities have so far not fully and publicly acknowledged any such deaths, a circumstance which may have implications both on the initiation and outcome of investigations into those deaths.
21. Allegations were reported to the Commissioner of force used by security forces on civilians breaking curfew. It was reported for instance, that on 8 September 2015 two unarmed women, Maşallah Edin and Zeynep Taşkın, were killed by police snipers in the Cudi neighbourhood of Cizre. The Commissioner also notes footage in which security forces are seen opening fire on what appears to be unarmed civilians carrying white flags, while they are allegedly trying to rescue injured people and retrieve dead bodies from the streets. Human Rights Watch claims that it documented at least two incidents in which the evidence indicates security forces firing mortar rounds on Dağkapı neighbourhood, leading to the death of two children. The delegation of the Diyarbakir Bar Association, led by Tahir Elci, reported 15 cases of civilian deaths by firearms, 4 of whom were children, during the operations in Cizre between 4-12 September 2015.

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⁹ [Statement](#), Turkey should ensure immediate access to Cizre by independent observers, 11 September 2015;

[Statement](#), Turkey should ensure the protection of human rights in the fight against terrorism, 18 November 2015.

¹⁰ Decision of the Ombudsperson Institution in the petition No.2016/737 against the Governor's Office of Şırnak, 14 July 2016.

¹¹ [CommDH\(2016\)39](#), *op.cit.*, paragraph 52.

¹² Initial Observations by Turkey on the Memorandum of Commissioner Muižnieks on Counter-Terrorism Operations In South-Eastern Turkey, 28 November 2016.

¹³ Report of the Diyarbakir Bar Association's "Curfew in Cizre, A survey Report of Events of 4-12 September 2015",

22. The Commissioner is mindful of the principle established in the case-law of the Court that it is the state authorities who bear the burden of showing that the use of lethal force was no more than absolutely necessary in the exceptional circumstances where this is permitted. In addition, the Commissioner draws attention to the combined effect of a number of factors, including the almost complete isolation of the areas subjected to curfew from the outside world during the operations, as illustrated in the previous section, and the fact that the authorities have in practice exclusive access to the evidence and knowledge that can assist in establishing any possible infringement of the right to life that may have occurred in the framework of these counter-terrorism operations. In these circumstances, it is simply not possible for complainants to establish even a *prima facie* case for their allegations without the co-operation of the authorities, notably in the form of effective judicial investigations.
23. Furthermore, the Commissioner stresses that due diligence in planning and implementing security operations is of the utmost importance to minimise recourse to lethal force. The authorities must take all feasible precautions by showing the requisite care for human lives. In this connection, the Commissioner recalls the tragic events having occurred in three basements in Cizre, which is also at the origin of some of the present applications. A number (estimated to be between 130 and 189) of persons died in the basements as a direct result of the counter-terrorism operations. The Commissioner notes that basic facts such as whether any of those trapped in the basements were injured people, civilians or even children, have been disputed. Irrespective of civilian or combatant status, what seems to be established is that people trapped in the basements, some of whom had been wounded, were all killed at the end of the operations. The Commissioner deeply regrets that 4 applicants to whom interim measures were granted by the Court died and another 43 people, whose requests for the indication of interim measures had been refused, lost their lives with many others at the end of operations.
24. As for access to emergency services, the Commissioner notes credible allegations of health facilities being destroyed or used as military bases. In other scenarios, ambulances were not sent to the wounded or sick, notably on account of the presence of trenches and barricades on the streets, and were dispatched instead to nearby locations. It is difficult to see, however, how people could be expected to assist the wounded in reaching emergency services without risking their own lives, bearing in mind the fighting in the streets and allegations of people being targeted for breaching curfews.

Deficiencies in investigations and risk of impunity

25. The Commissioner is mindful of the fact that the need for effective investigations into alleged violations of the right to life and the prohibition of torture stems from the procedural limbs of Articles 2 and 3 of the Convention and that the essential purpose of these investigations is to ensure accountability and impose deterrent sanctions on those responsible.
26. The Commissioner finds the number of criminal investigations initiated by judicial authorities disheartening compared to the large number and gravity of allegations concerning the excessive use of force and misconduct of security forces. During his visit, the Commissioner was informed of only two cases where security personnel were suspended pending investigations, following the outrage caused by images of a dead body being dragged behind an armoured police vehicle in Şırnak in October 2015 (see paragraph 16). Another investigation was instigated where the death of a civilian was confirmed by the public prosecutor; however, no suspects had been identified at the time of the Commissioner's visit. Moreover, the investigation into the murder of Tahir Elçi, who as mentioned, was fatally shot in Diyarbakir, has similarly been unacceptably slow and hindered by deficiencies in the collection of evidence, such as the crime scene being damaged due to armed clashes and footage from the police and several CCTV cameras in the street being lost or irretrievable. The expert report submitted in the investigation file concluded that it was impossible to determine the source of the bullet which killed Mr Elçi and the Commissioner understands that no indictment has been issued to this date. In May 2016 the authorities informed the Commissioner that disciplinary proceedings had been issued against 63 personnel; however, no up-to-date information was provided regarding the number of on-going judicial investigations. The Commissioner is alarmed by the failure of the Turkish authorities to effectively investigate the allegations of serious human rights violations

which took place in the region despite the length of time elapsed since 16 August 2015, which is the date of the first declared curfew.

27. During his April 2016 visit, the Commissioner was particularly worried by consistent reports about the public prosecutors' alleged refusal to carry out crime-scene investigations in the basements in Cizre due to safety concerns, prompting the relatives and lawyers of the deceased to collect the relevant evidence. The Commissioner understands that law enforcement officers and prosecutors may have encountered challenging work conditions in areas damaged by operations; however, given the information blackout prevailing in the region at the relevant time, the Commissioner stresses the importance of the state authorities' duty to establish the facts relating to alleged violations through credible and effective investigations.
28. The Commissioner also received accounts of deliberate destruction of evidence. In this respect, he particularly notes the hasty removal of rubble of the destroyed buildings in Cizre where a number of presumed terrorists had taken shelter. He was also the recipient of reports of irregularities in the way bodies had been transported to forensic laboratories, particularly the fact that they appeared in morgues without any clothing, thus stripped of crucial evidence that might reveal the cause of death. The number and consistency of such allegations indicate an irreversible state of loss of evidence, which, combined with the time elapsed since some of the operations and the general attitude of prosecutors, raises serious doubts that any future investigation will comply with the standards of effectiveness set by the Court. The Commissioner considers that one of the main problems in the present cases is the reluctance of prosecutors and judges to confront security forces in an independent and impartial fashion, as well as to take independent sources of information conflicting with the official version of the events seriously.
29. Looking more broadly at remedies that would allow for alleged violations of the right to life or the prohibition of torture flowing from the counter-terrorism operations to be addressed, the Commissioner notes the five Turkish Constitutional Court rulings in response to requests for interim measures from persons taking shelter in the basements in Cizre. He notes that the Constitutional Court rejected all of these requests considering that either the applicants had not reached out to the authorities to inform them of their need for assistance or they had not sufficiently collaborated with the authorities to meet the ambulance dispatched in a nearby location. He also notes that the said decisions did not examine the question of the legality of the curfews; nor did they appear to take into account the specific vulnerabilities of the applicants, who were suffering life endangering injuries with no access to basic necessities or means of communication. Some of the Commissioner's interlocutors have underlined that these decisions have not sent out a clear message compelling the authorities to take all necessary steps to protect the fundamental rights of persons in the curfew zones and to effectively investigate alleged violations. The Commissioner can only note in this respect that while more than a year has lapsed since the allegations were brought to the attention of the authorities, including the Turkish Constitutional Court, no meaningful action has been taken by the investigating authorities to this date.
30. More generally, the Commissioner cannot but take note of the fact that a number of international bodies including the Venice Commission, GRECO, the EU and the International Commission of Jurists expressed their concerns regarding the erosion of judicial independence and the increasing interference by the executive in the judiciary in Turkey¹⁴, which in turn diminishes public trust in the effectiveness of judicial remedies in the country.
31. The Commissioner maintains that his above-mentioned concerns about the effectiveness of investigations and domestic remedies are further magnified by the deep-rooted problem of impunity in the country, which has been an issue of concern for both the Commissioner and his predecessor¹⁵. The Commissioner notes

¹⁴ See respectively: Venice Commission Declaration on Interference with Judicial Independence in Turkey, 20 June 2015, <http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf>; GRECO, Evaluation Report on Turkey "Corruption prevention in respect of members of parliament, judges and prosecutors", [Greco Eval IV Rep \(2015\) 3E](#), 16 October 2015; Commission staff working document, [Turkey 2016 Report](#), sections 2.3 and 2.43, 9 November 2016; and International Commission of Jurists, [report](#) entitled "Turkey: the Judicial System in Peril—A briefing paper", 2 June 2016.

¹⁵ See, in particular, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Turkey from 10 to 14 October 2011, [CommDH\(2012\)2](#), paragraphs 44-62; Report by Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Turkey from 1 to 5 July 2013, [CommDH\(2013\)24](#), 26 November 2013, Section I.3; and [CommDH \(2016\)39](#), *op.cit.*

with regret that the attitude and conduct of the Turkish authorities during the curfews and anti-terrorism operations in the South-East not only justified but also exacerbated such concerns.

32. In this respect, the Commissioner must note that a series of laws adopted since March 2015 further strengthened the shield of impunity. In particular, Law No. 6722 of 23 June 2016 introduces the requirement to seek authorisation from the relevant ministries before launching judicial investigations into the acts of public officials carried out during counter-terrorism operations and provides that any offence committed in the framework of these operations would fall within the jurisdiction of military courts, effectively shielding military personnel from any civil investigation or proceedings. Crucially, this law also introduced a provisional article to the Provincial Administration Law, making these provisions retroactively applicable to operations conducted before its adoption.
33. The Commissioner observes that the tolerance for excessive use of force employed by security forces in counter-terrorism operations in South-Eastern Turkey has been reinforced during the state of emergency which was declared following the coup attempt in July 2016 via a series of legislative decrees. In particular, the decree No. 667 issued on 22 July 2016 granted legal, administrative, criminal and financial immunity to administrative authorities acting within the framework of the said decree. In the Commissioner's view, these legislative changes which grant broad immunity to state agents, including immunity from criminal liability, send the wrong message in the fight against impunity and bear the risk of opening the door to further abuses.

Right to pay last respects to one's relatives

34. The Commissioner notes that the Court has recognised the right of the relatives of deceased people – including those who are presumed to be terrorists by state authorities- to participate in the funeral ceremonies of their loved ones or to have at least some kind of opportunity to pay their last respects.¹⁶
35. During the Commissioner's visit to Diyarbakir, families reported difficulties in finding and claiming the bodies of their deceased relatives during the operations and curfews. A particular case reported to the Commissioner by lawyers concerned Ms Taybet İnan, a 57 year old woman who was shot dead by security forces near her home in Silopi. Her body could not be retrieved from the street for seven days due to the ongoing armed clashes and, allegedly, the indiscriminate fire opened by security forces on family members attempting to retrieve the body.
36. Another issue of concern for the Commissioner in this respect is the imposition of further restrictions on burials via the series of changes made between January and April 2016 to the Regulations relating to the implementation of the Law on the Forensic Institute and in the Regulations relating to cemeteries. Accordingly, the period during which family members can claim bodies from the morgue was reduced from 15 to 5 days and the governors and sub-governors were authorised to order the burial themselves if the families had failed to do so within 24 hours. The Commissioner considers these time-limits to be unreasonable given the dire circumstances prevalent in curfew affected zones. It was reported to the Commissioner that as a result of these changes, dozens of bodies were stuck at forensic institutes or buried in locations without the knowledge of family members. The Commissioner underlines that these measures not only pose a risk of destruction of evidence but are also bound to deprive the bereaved families of their right to claim the bodies of their relatives and to carry out funeral rites according to their beliefs.

Interference with the work of human rights defenders

37. Human rights defenders and organisations are key partners of the Commissioner, who has a specific duty to work in this field.¹⁷ The work of human rights defenders is essential for the advancement of human rights, democracy and the rule of law. Human rights defenders are instrumental in defending victims of human

¹⁶ *Sabanchiyeva and Others v. Russia*, judgment of 6 June 2013.

¹⁷ Pursuant to the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, 6 February 2008, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d3e52.

rights violations and ensuring their access to redress and remedy, and play a central role in making state policies human rights compliant and holding authorities accountable. Restrictions and obstacles to their work raise important concerns for the Commissioner.

38. In the course of his work, the Commissioner has become familiar with numerous situations in different countries where human rights defenders face serious difficulties and risks, including regular and severe threats and attacks against their personal security as well as administrative and legal obstacles. Defenders are accused of spying, being enemies of the state, getting support from outside forces, threatening national security or helping criminals. Criminal prosecutions and sometimes defamation and libel suits are initiated against them, causing a chilling effect on their work. The Commissioner recalls that according to their international obligations, states should not only abstain from interfering with the legitimate activities of human rights defenders but also create an enabling environment conducive to their work¹⁸.
39. The Commissioner has addressed the situation of human rights defenders in Turkey on several occasions. In a Memorandum on freedom of expression and media freedom in Turkey he published in February 2017, he drew attention in particular to their exposure to judicial measures targeting them.¹⁹ In this context he referred in particular to the arrest and the clearly unnecessary detention of renowned human rights defender Şebnem Korur Fincancı, President of Turkish Human Rights Foundation. Prior to that, the Commissioner had already referred to obstacles, intimidation and smear campaigns that human rights defenders faced in connection with their work in South-Eastern Turkey. In this respect, the Commissioner received several credible allegations that human rights organisations were prevented by security forces from interviewing locals and visiting affected areas even after the end of the counter-terrorism operations. He also noted with concern a statement by the President of the Turkish Republic on 7 April 2016 which referred to certain NGOs, without naming them explicitly, publishing reports on the situation in the South-East, and which challenged their role in writing such reports stating that they should be “countered” (*üzerine gitmek*). It has been reported that, following these statements, police and local authorities prevented several local groups from operating in Cizre. The Commissioner notes in this respect that he continued to receive reports concerning the arrest or prosecution of NGO representatives in connection with their NGO activities.
40. The Commissioner considers that violence, physical assaults or killings or disappearances of human rights defenders amount to one of the most serious violations of human rights requiring firm actions from state authorities to ensure the safety and security of human rights defenders and accountability of those responsible. In this respect, the Commissioner notes once again with deep regret that the investigation into the assassination of Tahir Elçi, a prominent human rights defender and President of the Diyarbakir Bar Association, has been pending with no concrete outcome since 28 November 2015.
41. With reference to the role of human rights defenders in assisting victims in seeking justice, notably in relation to violations that may have occurred in the framework of the operations that are the subject of the present submission, the Commissioner observes that Ramazan Demir, a lawyer who brought many of the requests for interim measures to the Court and to the Turkish Constitutional Court during the curfews, was arrested and detained in connection with suspected terrorist activity on 6 April 2016. He was conditionally released five months later after spending that time in pre-trial detention. The Commissioner notes the allegations of Mr Demir’s lawyers that his detention was linked to his having brought these cases to the Court and is deeply troubled by the fact that the questions directed at him by the Istanbul Prosecutor’s Office on 17 March 2016 included the following allegation: “within his propaganda and agitation activities on behalf of the terrorist organisation, aiming at weakening our country through discourse such as rights violations, torture, etc., both nationally and in the international fora, [Mr Demir] was going to conduct interviews/meetings with a person named ‘Delegation’ (*sic*), a foreign national”. The Commissioner must stress the fact that around the same time, his Office had contacted Mr. Demir to organise a meeting with him during the Commissioner’s visit, to be able to obtain information directly from the lawyer who brought interim measure requests to the Court. The Commissioner takes this situation, which indeed suggests that Mr Demir was arrested, whether primarily or incidentally, in connection with his legitimate role of bringing cases to the Court, very seriously. The Commissioner is also deeply concerned by the assertion of Mr Demir’s lawyers that this arrest and detention had an impact on the pursuit by the families in question of their applications to the Court and served as a deterrent.

¹⁸ *Ibid.*, UN General Assembly United Nations Declaration on Human Rights Defenders, 9 December 1998.

¹⁹ [CommDH\(2017\)5](#), *op. cit.*

Conclusions

42. In conclusion, the Commissioner considers that the curfews imposed and counter-terrorism operations carried out in South-Eastern Turkey since August 2015 caused widespread human rights violations. In particular:
- the curfews did not rest on a sufficient legal basis. The practice surrounding the curfews and the counter-terrorism operations have been seriously disproportionate to the declared aims behind the curfews.
 - the imposition of open-ended, 24-hour curfews, accompanied with severe deprivations have caused disproportionate restrictions on a huge population for an extended period and subjected them to severe hardship and suffering;
 - the anti-terror operations have been characterised by excessive use of force, including the employment of heavy weaponry in residential neighbourhoods, strongly suggesting that the authorities did not minimise lethal force or show the requisite care for the lives of the civilian population by taking all feasible precautions in the choice of means and methods;
 - the authorities did not adequately plan and implement the safe evacuation of curfew zones and humanitarian assistance in order to minimise the harm inflicted on the civilian population;
 - despite the reporting of numerous allegations of human rights violations committed by members of security forces, the authorities did not treat them with the requisite seriousness, which bears a worrying resemblance to the pattern of impunity of the 1990s;
 - the authorities have prevented independent observers from entering areas under curfew, hampering the exercise of required oversight which is all the more necessary in times of crisis;
 - in these circumstances, it is simply not possible for alleged victims of human rights violations that may have occurred in the framework of these counter-terrorism operations to establish even a *prima facie* case without the co-operation of the authorities, notably in the form of effective judicial investigations;
 - families faced practical and procedural obstacles or stigmatisation in retrieving the bodies of their deceased relatives and were denied an opportunity to pay their last respects;
 - there are clear indications that human rights defenders working on the human rights situation in South-Eastern Turkey during the curfews and counter-terrorism operations and assisting alleged victims in seeking justice have been subjected to various forms of reprisals and intimidation in retaliation for their legitimate activities;
43. Lastly, the Commissioner acknowledges the predicament of the Turkish authorities and the Turkish security forces, who have the duty to fight against terrorism, but recalls that in this fight they should show much higher regard to the human rights of populations affected by the measures they take and ensure that all allegations are promptly, adequately and effectively investigated by the judicial authorities with a view to enforcing laws and maintaining the principle of the rule of law.