

## European Court of Human Rights

*Telek v. Turkey* (Application no. 66763/17), *Şar v. Turkey* (Application no. 66767/17) and *Kivilcim v. Turkey* (Application no. 15891/18)

### Written Submission by the Human Rights Centre of Ghent University and the Scholars at Risk Network

These written comments are by the Human Rights Centre of Ghent University (Belgium)<sup>1</sup> and the Scholars at Risk Network (New York, U.S.), pursuant to leave granted by the European Court of Human Rights in its letter of 12 February 2019 in accordance with Rule 44 § 3 of the Rules of Court.

#### Executive Summary

A crackdown on higher education in Turkey followed the January 2016 publication of a peace petition signed by more than 1,100 academics (the “Academics for Peace petition”) and worsened after a July 2016 coup attempt, resulting in widespread and systemic violations of academic freedom and other protected rights. The cases of *Telek, Şar and Kivilcim v. Turkey* concern applicants, all academics, who were targeted as a part of this crackdown. All three signed the Academics for Peace petition. All three were dismissed from their academic posts and have been effectively barred from their profession in Turkey. All three have had their passports cancelled, effectively barring them from pursuing their profession outside of Turkey. All three face investigation and possible prosecution and imprisonment. Their cases raise important issues related to academic freedom and its essential connection to other protected rights, including the right to education, freedom of expression, and freedom of movement. Their cases offer a unique opportunity for the Court to reaffirm and further articulate its prior statements related to the protection of academic freedom. Such reaffirmation and further articulation is especially important and timely now, both because the pressures on academic freedom and higher education autonomy seen in Turkey—including ideological closure of universities, mass terminations, restrictions on scholars’ travel and arrests and prosecutions of scholars—are on a scale not seen in Europe since the 1930s, and because the same pressures have begun to appear on a smaller scale in other countries in Europe. A statement from the Court reaffirming and further articulating the protection of academic freedom will provide clearer guidance to States and higher education communities responding to such pressures.

This third-party intervention shall identify significant pressures on academic freedom in Turkey, specifically the situation in respect of the signatories to the Academics for Peace petition (I). In addition, the importance of academic freedom shall be highlighted (II). Based on a discussion of the Court’s case law on academic freedom (III), the Court will be invited to reaffirm and further articulate the recognition and level of protection hitherto provided by its case law as applied to the higher education context (IV). This intervention shall conclude by encouraging the Court to go beyond the provisions of the Convention raised by the applicants and to also take into account the important Article 10 dimension of their applications (V).

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## I. The State of Academic Freedom in Turkey

In January 2016, 1128 Turkish academics signed the Academics for Peace petition (the “Peace Petition”), strongly challenging the factual premises of the Turkish Government’s security operations in the Kurdish southeast and calling for a negotiated solution to the military conflict between the Turkish State and the Kurdistan Workers’ Party (PKK). Hundreds more would later add their signatures to the petition.<sup>2</sup> All signatories to the petition were placed under investigation shortly after its release. At least 407 of the petition’s signatories have been dismissed directly by emergency decrees (see hereunder) thus far, with another 38 academics dismissed from public universities, and 48 dismissed from private universities, in retaliation for having signed the petition.<sup>3</sup> Many under investigation have been subsequently subject to detention and criminal prosecution. Court proceedings have been brought against at least 390 academics who had signed the petition, charging them under Article 7(2) of Turkey’s Anti-Terror Act, for “making propaganda for a terrorist organisation.”<sup>4</sup> Thus far, at least 23 academics have been convicted and sentenced to 15 months’ imprisonment each.<sup>5</sup>

Shortly after the release of the Peace Petition, on 15 July 2016, a coup d’état was attempted in Turkey. The Turkish Government has accused the Gülen Movement of being behind this failed effort. (The State has failed to fully disclose the evidentiary basis for this accusation or the specific evidentiary basis for accusations against the targeted individuals.) On 20 July 2016, in response to the coup attempt, the Turkish Government declared a state of emergency. Under the state of emergency, which lasted until 18 July 2018, the Government was granted the extraordinary power to issue emergency decrees with the force of law.<sup>6</sup> Based on their alleged links with proscribed organisations, around 130,000 public sector workers were dismissed under the emergency decree mechanism, which failed to specify or substantiate by evidence any alleged wrongdoing.<sup>7</sup>

The higher education sector was a direct target of this crackdown, with more than 7,500 higher education personnel<sup>8</sup> dismissed from public universities under emergency decrees since the 2016 coup attempt.<sup>9</sup> Dismissal by decree involves a lifetime ban from public employment and the cancellation of passports of both the individual charged and their spouse, effectively ending their careers as academics in Turkey, and preventing them from continuing their profession abroad. Moreover, the stigma attached to these arbitrary dismissals effectively prevents those affected from taking up employment outside the public sector,<sup>10</sup> severely damaging their livelihoods overall.<sup>11</sup> The collective impact of these pressures is known as “civil death.”<sup>12</sup> While Turkey has established a State of Emergency Appeals Commission to review decisions taken by emergency decrees, including dismissals, the effectiveness of this system remains in serious doubt, given the lack of appropriate procedural

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<sup>2</sup> Scholars at Risk, *Free to Think 2018: Report of the Scholars at Risk Academic Freedom Monitoring Project* (2018), available at: <https://www.scholarsatrisk.org/resources/free-to-think-2018/> [accessed 28 January 2019].

<sup>3</sup> Human Rights Watch, *Turkey: Government Targeting Academics* (2018), available at: <https://www.hrw.org/news/2018/05/14/turkey-government-targeting-academics> [accessed 28 January 2019].

<sup>4</sup> Scholars at Risk (2018), *supra* n. 2.

<sup>5</sup> *Ibid.*

<sup>6</sup> Amnesty International, *Purged Beyond Return? No Remedy for Turkey’s Dismissed Public Sector Workers* (2018), available at: <https://www.amnesty.org/en/documents/eur44/9210/2018/en/> [accessed 28 January 2019].

<sup>7</sup> *Ibid.*

<sup>8</sup> Scholars at Risk (2018), *supra* n. 2.

<sup>9</sup> Human Rights Watch (2018), *supra* n. 3.

<sup>10</sup> Scholars at Risk (2018), *supra* n. 2.

<sup>11</sup> Amnesty International (2018), *supra* n. 6.

<sup>12</sup> Amnesty International, *No End in Sight: Purged Public Sector Workers Denied a Future in Turkey* (2017), available at <https://www.amnesty.org/download/Documents/EUR4462722017ENGLISH.PDF> [accessed February 26, 2019].

safeguards and institutional independence, as well as the sheer number of applications pending before it.<sup>13</sup>

The criminal and administrative prosecutions following these events have had serious and far-reaching consequences, not only for the individuals directly affected, but for Turkey's entire higher education sector. The silencing of disfavoured voices sends the message that certain ideas are off-limits. This has a chilling effect on the sector as a whole, by encouraging researchers and teachers to avoid topics which might be subject to political retaliation. This undermines the quality and scope of research and teaching overall, harming not only scholars but the entire society. And because the full extent of disfavoured topics cannot be known, researchers and teachers must resort to self-censorship, narrowing their expressive activity even more. This similarly decreases the level of critical inquiry and discourse throughout society, with negative impacts the exercise of other Convention rights (see Section II, *infra*).

## II. Legal Standards Relating to Academic Freedom

Academic freedom is independently and interdependently grounded in the freedom of expression and the freedom to hold opinions under Article 10, and the right to education,<sup>14</sup> as enshrined in Article 2 of Protocol Number 1, among other international instruments. Academic freedom is broadly articulated by UNESCO as the “freedom of teaching and discussion, freedom in carrying out research *and disseminating and publishing the results thereof*, freedom [of higher education personnel] to express freely their opinion about the institution or system in which they work, freedom from institutional censorship and freedom to participate in professional or representative academic bodies” (emphasis added).<sup>15</sup>

Academic freedom encompasses “freedoms of thought, opinion, expression, association, travel, and instruction.”<sup>16</sup> It is, moreover, a cross-cutting issue: in addition to the above rights, violations of academic freedom frequently manifest as violations of other rights, including liberty and security of person, freedom of association, and, as here, freedom of movement.<sup>17</sup> Academic freedom protects scholars' views and opinions, whether communicating among expert professional colleagues, as experts communicating to members of the wider public, or as non-experts commenting to the same.<sup>18</sup>

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<sup>13</sup> Ruys, T. and Turkut E., “Turkey's Post-Coup ‘Purification Process’: Collective Dismissals of Public Servants under the European Convention on Human Rights”, *Human Rights Law Review* (2018) 18, 565.

<sup>14</sup> Academic freedom is, first and foremost, about creating conditions for quality research and teaching, and necessarily implicates teaching at the primary and secondary levels. Properly understood, academic freedom includes communication among professionals, with students, and with the public, and serves as a model for democratic discourse. For these reasons, undue infringements on academic freedom implicate the right to education, as well related rights including to free expression and association, equality/non-discrimination, and rights to science and culture.

<sup>15</sup> UNESCO, *Recommendation concerning the Status of Higher-Education Teaching Personnel*, adopted by the General Conference at its twenty-ninth session, Paris, 21 October - 12 November 1997, 11 November 1997, § 27.

<sup>16</sup> European Union: European Parliament, *Recommendation of 29 November 2018 to the Council, the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy on Defence of academic freedom in the EU's external action* (2018/2117(INI)), para. G.

<sup>17</sup> Quinn, R. and Levine, R., “Intellectual-Human Rights Defenders and Claims for Academic Freedom under Human Rights Law”, *International Human Rights Law Review*, 3 (2014), pp. 898-920; Vrielink, J. *et al*, “Academic Freedom as a Fundamental Rights”, *League of European Research Universities*, Advice Paper No. 6, December 2010, § 27.

<sup>18</sup> Academic freedom protects scholars communicating within their professional expertise, whether among expert colleagues or to members of the public. Academic freedom also protect scholars communicating outside of their

Such views and opinions may, of course, be critical or unpopular. They might include views and opinions that question authorities, political systems or prevailing views on any range of broad social issues.<sup>19</sup> Academic freedom protection is not, and must not be, limited to expression of views only to academic audiences or in academic journals and classrooms. In order to be practical and effective, academic freedom protection must “guarantee freedom of expression and of action, freedom to disseminate information and freedom to conduct research and distribute knowledge and truth without restriction.”<sup>20</sup> Moreover, it must be assessed in conjunction with institutional autonomy, as the two elements are interconnected.<sup>21</sup> Universities must be economically and politically independent to effectively fill their critical role of the dissemination of knowledge and culture.<sup>22</sup>

The importance of academic freedom is evidenced in the sources of international law, including at the United Nations and Council of Europe level, as well as in multiple European constitutions.

First, it is generally considered that the scope of Article 19(2) of the International Covenant on Civil and Political Rights (“ICCPR”) includes academic freedom.<sup>23</sup> This provision states that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.” According to the UN Human Rights Committee, the right to impart information extends to teaching, including those views expressed outside of the profession.<sup>24</sup>

Second, Article 15(3) of the International Covenant on Social, Economic and Cultural Rights (“ICESCR”) requires State parties to “respect the freedom indispensable for scientific research and creative activity.” According to the Committee on Economic, Social and Cultural Rights, this “indispensable freedom” not only excludes censorship, but it also imposes a positive obligation on the State parties to encourage “scientists, artists and others to take part in international scientific and cultural research activities, such as symposiums, conferences, seminars and workshops.”<sup>25</sup>

Third, Article 13 of the ICESCR provides for the right to education. The practical and effective enjoyment of this right requires the protection of academic freedom and institutional autonomy. In this

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professional expertise--typically referred to as extramural utterances--if in such communications they are identified as a member of the higher education community and if any restrictions or pressures on such communication are intended to create or would in effect have a chilling effect on that community. Communication by scholars that is fully independent of their identification with higher education might be outside the scope of academic freedom, but might nevertheless be protected by general free expression principles. See: <https://www.scholarsatrisk.org/resources/promoting-higher-education-values-a-guide-for-discussion/> [accessed 28 January 2019].

<sup>19</sup> ECtHR, *Mustafa Erdoğan and Others v. Turkey*, 27 May 2014, nos. 346/04 and 39779/04, § 40.

<sup>20</sup> Council of Europe: Parliamentary Assembly, *Recommendation 1762 (2006)* on “*Academic freedom and university autonomy*”, adopted on 30 June 2006 at the 23rd Sitting, § 4.1.

<sup>21</sup> *Ibid.*, § 2.

<sup>22</sup> Observatory Magna Charta Universitatum, *Magna Charta Universitatum*, adopted on 18 September 1988, Principle 1.

<sup>23</sup> Vrieling, J. *et al.*, *supra* n. 17.

<sup>24</sup> Human Rights Committee, Communication 736/97, *Ross v. Canada*, Views adopted on 18 October 2000.

<sup>25</sup> Committee on Social, Economic and Cultural Rights, *General comment No. 21: Right of everyone to take part in cultural life (Article 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights)*, 21 December 2009, § 49 (c) and 52(e).

regard, the Committee on Economic, Social and Cultural Rights has recognised that the right to education “can only be enjoyed if accompanied by the academic freedom of staff and students.”<sup>26</sup>

Fourth, within the Council of Europe, the importance of academic freedom, as articulated by the above provisions, has been emphasised repeatedly in various resolutions by the Parliamentary Assembly and the Committee of Ministers.<sup>27</sup> According to the Committee of Ministers, academic freedom represents a strong indicator of “how democratic a society is.”<sup>28</sup> It is accepted that academic freedom, and university autonomy, constitute “essential values of higher education, and [that] they serve the common good of democratic societies.”<sup>29</sup> The principle of academic freedom should be “reaffirmed and guaranteed by [domestic] law.”<sup>30</sup>

Finally, Member States similarly enshrine the right within their constitutions. Reaffirming academic freedom at the constitutional level is actively encouraged by the Parliamentary Assembly of the Council of Europe.<sup>31</sup> At present, 29 Member States explicitly guarantee academic freedom or directly guarantee some element thereof, including, for example Italy;<sup>32</sup> Germany;<sup>33</sup> Greece;<sup>34</sup> Spain;<sup>35</sup> Finland;<sup>36</sup> Albania;<sup>37</sup> and Austria.<sup>38</sup> Another 14 indirectly guarantee academic freedom through other rights, such as free expression or the right to education.<sup>39</sup> Moreover, the European Parliament has explicitly called for the recognition that “academic freedom fall[s] under existing human rights law.”<sup>40</sup>

Hereunder, it will be argued that, while the case law of the European Court of Human Rights already evidences the importance of the effective protection of academic freedom for a democratic society (III); the present cases provide an opportunity for the Court to reaffirm and more fully articulate the express recognition academic freedom in its case law (IV).

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<sup>26</sup> Committee on Economic, Social and Cultural Rights, General Comment No. 13: The Right to Education (Article 13), 8 December 1999, § 38.

<sup>27</sup> See Council of Europe: Parliamentary Assembly (2006), *supra* n. 20; Council of Europe: Committee of Ministers, *Recommendation CM/Rec 1762 (2006) on “Academic freedom and university autonomy”*, adopted on 26 September 2007 at the 1005<sup>th</sup> meeting of the Ministers’ Deputies.

<sup>28</sup> Council of Europe: Committee of Ministers (2016), *supra* n. 27, § 7.

<sup>29</sup> Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2012)7 of the Committee of Ministers to member States on the responsibility of public authorities for academic freedom and institutional autonomy*, adopted by on 20 June 2012 at the 1146<sup>th</sup> meeting of the Ministers’ Deputies, Appendix, § 4.

<sup>30</sup> Council of Europe: Parliamentary Assembly (2006), *supra* n. 20, § 7.

<sup>31</sup> *Ibid.*, § 7.

<sup>32</sup> Article 33, *Costituzione della Repubblica Italiana* (1947).

<sup>33</sup> Article 5 § 3, *Grundgesetz für die Bundesrepublik Deutschland* (1949).

<sup>34</sup> Article 16 § 1, *Σύνταγμα Σύνταγμα* (1975).

<sup>35</sup> Article 20 § 1, *Constitución Española* (1978).

<sup>36</sup> Article 16, *Suomen perustuslaki* (1911).

<sup>37</sup> Article 57, *Kushtetuta e Shqipërisë* (1998).

<sup>38</sup> Article 17, *Österreichische Bundesverfassung* (1945).

<sup>39</sup> In addition, the French Constitutional Council has recently confirmed the existence of academic freedom in the legal framework of the French Republic. See French Constitutional Council decision no. 83-165 DC, 20 January 1984, § 19.

<sup>40</sup> European Union: European Parliament (2018), *supra* n. 16, para. 1(b).

### III. Case law of the European Court of Human Rights Concerning Academic Freedom

The Court has increasingly recognised the importance of academic freedom over the last decade. Most recently, in December 2018, Judge Kūris and Judge Yudkivska expressly recognised academic freedom as a category of freedom of expression.<sup>41</sup>

The Court has, in a limited number of cases, afforded explicit protection to academics, predominantly under Article 10. In the case of *Riolo v. Italy*, the Court accepted that the publication of an academic work in a newspaper entitled the applicant to the same level of protection as journalists under Article 10.<sup>42</sup>

More express protection was evidenced in the judgment of *Sorguç v. Turkey*, where the Court “underline[d] the importance of academic freedom, which comprises the academics’ freedom to express freely their opinion about the institution or system in which they work and freedom to distribute knowledge and truth without restriction” (emphasis added).<sup>43</sup> In the case of *Aksu v. Turkey*, the Court further held that its case law required it “to submit to careful scrutiny any restrictions on the freedom of academics to carry out research and to publish their findings.”<sup>44</sup>

In the case of *Mustafa Erdoğan and Others v. Turkey*, the Court has affirmed that academic freedom:

*is not restricted to academic or scientific research, but also extends to the academics’ freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence. This may include an examination of the functioning of public institutions in a given political system, and a criticism thereof [emphasis added].*<sup>45</sup>

More recently, in the case of *Kula v. Turkey*, the Court considered that a reprimand imposed on an academic for taking part in a television programme, against the instructions of his employer, amounted to an interference with his academic freedom:

*Reiterating that Article 10 of the Convention also protects the form in which ideas are conveyed [...], the Court considers that the present application relates essentially to the exercise by the applicant of his right to freely express his views as an academic during a television programme organised outside his city of residence. In the Court’s view, this issue unquestionably concerns his academic freedom, which should guarantee freedom of expression and of action, freedom to disseminate information and freedom to “conduct research and distribute knowledge and truth without restriction” [emphasis added].*<sup>46</sup>

The Court further noted that, notwithstanding the modest nature of the sanction, it could nonetheless result in a “chilling effect” on the exercise of the academic freedom of expression.<sup>47</sup>

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<sup>41</sup> ECtHR, *Brisic v. Romania*, 11 December 2018, no. 26238/10, Dissenting Opinion of Judge Kūris, Joined by Judge Yudkivska, § 22.

<sup>42</sup> ECtHR, *Riolo v. Italy*, 17 July 2008, no. 42211/07, § 63.

<sup>43</sup> ECtHR, *Sorguç v. Turkey*, 23 June 2009, no. 17089/03, § 35.

<sup>44</sup> ECtHR (Grand Chamber), *Aksu v. Turkey*, 15 March 2012, nos. 4149/04 and 41029/04, § 71.

<sup>45</sup> ECtHR, *Mustafa Erdoğan and Others v. Turkey* (2014), *supra* n. 19, § 40.

<sup>46</sup> ECtHR, *Kula v. Turkey*, 19 June 2018, no. 20233/06, § 38.

<sup>47</sup> *Ibid*, § 39.

#### IV. The Need to Reaffirm and More Fully Articulate the Express Recognition and Protection of Academic Freedom

It is submitted that the present case provides an opportunity for the Court to reaffirm and more fully articulate the express recognition and protection of academic freedom.

First, while academic freedom is grounded in the freedom of expression and the freedom to hold opinions under Article 10, and the right to education, as enshrined in Article 2 of Protocol Number 1, and notwithstanding the importance of Article 10 to the Court's jurisprudence relating to academic freedom, it must be recognised that infringements of academic freedom frequently manifest themselves as violations of other rights under the Convention,<sup>48</sup> including *inter alia*: right to liberty;<sup>49</sup> the prohibition of torture;<sup>50</sup> freedom of movement;<sup>51</sup> freedom of assembly and association.<sup>52</sup> Violations of such rights which are intended to suppress or retaliate for the exercise of academic freedom (such as the freedom of movement in the present cases) should thus be treated as such, with due consideration for the academic freedom aspects of the case (also see section V).

Second, while academic freedom has both an individual and an institutional dimension,<sup>53</sup> the Court's case law has hitherto failed to explicitly recognise the latter aspect. It is submitted, that institutional autonomy and individual academic freedom must be recognised to be mutually dependent.<sup>54</sup> Institutional autonomy serves to insulate higher education from politicisation and ideological manipulation, reinforcing a view of the higher education space as "off-limits" to violent or coercive force.<sup>55</sup> We thus invite the Court to affirm the importance of institutional autonomy and acknowledge its interdependent relationship with academic freedom. Such recognition is particularly relevant for the Turkish context, as individual infringements of academic freedom, such as those at issue in the present cases, have to be considered against the background of widespread attacks on institutional autonomy (e.g. ideological closures of universities and mass dismissals) and cannot be considered in isolation therefrom.

Third, it is argued that the importance of academic freedom is analogous to the importance of journalistic freedom recognised by the Court. The Court has consistently recognised the role of journalists as purveyors of information and "public watchdogs" in a democratic society.<sup>56</sup> It has further extended such "public watchdog" recognition to non-governmental organisations ("NGOs").<sup>57</sup> This special recognition is grounded in the capacity of journalists and NGOs to disseminate information and scrutinise States for issues engaging public concern,<sup>58</sup> thereby making a valuable contribution to the functioning of a democratic society. What holds true for journalists and NGOs applies to

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<sup>48</sup> Quinn, R. and Levine, R., (2014), *supra* n. 13, pp. 905-912.

<sup>49</sup> Article 5, ECHR.

<sup>50</sup> Article 3, ECHR.

<sup>51</sup> Article 2 of Protocol No. 4, ECHR.

<sup>52</sup> Article 11, ECHR.

<sup>53</sup> Council of Europe: Parliamentary Assembly (2006), *supra* n. 20, § 4.1-4.2.

<sup>54</sup> *Ibid*, § 4.2; Committee on Economic, Social and Cultural Rights (1999), *supra* n. 25, § 40.

<sup>55</sup> Global Coalition to Protect Education from Attack, *Institutional Autonomy and the Protection of Higher Education from Attack* (2013) available at [https://www.scholarsatrisk.org/wp-content/uploads/2016/05/Institutional\\_Autonomy\\_and\\_Protection.pdf](https://www.scholarsatrisk.org/wp-content/uploads/2016/05/Institutional_Autonomy_and_Protection.pdf) [Accessed on 25th February 2019]

<sup>56</sup> ECtHR, *Barthold v. Germany*, 25 March 1985, no. 8734/79, § 58; ECtHR, *Lingens v. Austria*, 8 July 1986, no. 9815/82, § 44.

<sup>57</sup> ECtHR (Grand Chamber), *Magyar Helsinki Bizottság v. Hungary*, 8 November 2016, no. 18030/11, § 166; ECtHR (Grand Chamber), *Animal Defenders International v. the United Kingdom*, 22 April 2013, no. 48876/08, § 103.

<sup>58</sup> ECtHR, *Magyar Helsinki Bizottság v. Hungary* (2016), *supra* n. 57, § 167.

academics and the higher education space as well. While journalists and civil society play an important investigatory and explanatory role, they are frequently limited by time and resources in their ability to conduct deep analyses of the most complex and technical problems in modern life. It is the core function of the higher education sector to devote substantial (often public) resources—time, money and human capital—to the examination of complex questions *and to communicate their findings to the public* for the widest public good. Indeed, on any number of pressing public issues—climate change, global pandemics and health crises, long-term health studies, food and water security, information technology, peace and security, etc.—the ability of journalists and NGOs to play the “public watchdog” role depends on the exchange of information with academics and the higher education sector. Academics also routinely disseminate essential information directly to the public. Higher education institutions regularly serve “the function of creating various platforms for public debate” by organizing public events and through mass market publications and appearances in mass media. Moreover, beyond the content of ideas generated and disseminated, the higher education sector plays an essential structural function by modelling and training members of society in the process of critical inquiry and evidence-based discourse. Higher education trains people to be self-informing, critically-thinking members of democratically legitimate societies, and as such the sector—and the academic freedom on which it depends—should be considered “an essential element of informed public debate.”<sup>59</sup> <sup>60</sup> Consequently, academics and universities serve a function that is similar and in certain respects more fundamental than that of the journalistic and civil society spaces, and equally important to the effective functioning of a democratic society. For this reason, the Court is invited to recognize that academics similarly exercise the role of “public watchdog” in the meaning of the Court’s case law, especially when they “[draw] attention to matters of public interest.”<sup>61</sup>

It must be emphasized that the Peace Petition indeed contributes to a debate on matters of the public interest (i.e. questions of peace and security, public health, criminal justice, social cohesion, and democratic legitimacy in Turkey and especially in Turkey’s southeast region). The situation thus evokes the Parliamentary Assembly’s warning that “high costs and losses [...] could also ensue if universities moved towards the isolation of an ‘ivory tower’” and for this reason “universities need to be close enough to society to be able to contribute to solving fundamental problems.”<sup>62</sup>

Finally, it must be recognised that the apparent purpose, and the unquestionable impact, of mass state actions targeting the university space (including dismissals, university closures, arrests, expulsions, and passport revocations) is to greatly infringe upon the higher education space as a whole.<sup>63</sup> This is true whether the scholars targeted are communicating with professional colleagues, with the public in their areas of expertise, or as non-experts communicating with the same. In this context, the Court invokes the notion of a “chilling effect” where state action interfering with the Article 10 rights of an individual applicant also has the purpose or likely effect to induce self-censorship among individuals belonging to the same professional category (e.g. journalists, lawyers, judges ...)<sup>64</sup> as the affected applicant; moreover recognizing that this effect “works to the detriment of society as a whole.”<sup>65</sup>

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<sup>59</sup> *Ibid.*

<sup>60</sup> E.g. Council of Europe: Parliamentary Assembly (2006), *supra* n. 20, § 7

<sup>61</sup> ECtHR, *Magyar Helsinki Bizottság v. Hungary* (2016), *supra* n. 57, § 166.

<sup>62</sup> Council of Europe: Parliamentary Assembly (2006), *supra* n. 20, § 4.4.

<sup>63</sup> *Scholars at Risk, Free to think: Report of the Scholars at Risk Academic Freedom Monitoring Project* (2018), available at: <https://www.scholarsatrisk.org/resources/free-to-think-2018/> [accessed 28 January 2019].

<sup>64</sup> E.g. ECtHR (Grand Chamber), *Cumpana and Mazare v. Romania*, 17 December 2004, no. 3348/96, § 114 (journalists); ECtHR (Grand Chamber), *Kyprianou v. Cyprus*, 15 December 2005, no. 73797/07, § 175 (lawyers); and ECtHR (Grand Chamber), *Baka v. Hungary*, 23 June 2016, no. 20261/12, § 168 and 173 (judges).

<sup>65</sup> E.g. ECtHR, *Cumpana and Mazare v. Romania* (2004), *supra* n. 64, § 114.

According to the Court, such “chilling effect” is a weighty factor to be taken into account when determining the justification of the interference concerned.<sup>66</sup> In the present cases, the Court is respectfully invited to not only recognize the impact on the academic freedom of those individuals who are the direct targets of state action – in particular on their “right to freely express their views as academics” in the sense of the *Kula v. Turkey* judgment, discussed above – but also the pervasive “chilling effect” impacting the Turkish higher education sector as a whole.

We therefore invite the Court to acknowledge the detrimental impact on academic freedom involved in the crackdown on the signatories of the Peace Petition, including the pervasive “chilling effect” affecting Turkey’s higher education sector as a whole; to affirm that academic freedom constitutes a cross-cutting human rights issue; to recognise the importance of institutional autonomy and its interdependent relation with individual academic freedom; and to extend “public watchdog” recognition to academics under Article 10.

## V. Recognising the Article 10 dimension of the case

In this Section, it will be argued that the Court should take into account the Article 10 dimension of the cases under consideration. In this respect, it must first be recalled that the Court has repeatedly held that it is not bound by the characterisation given by the applicants and that it is solely competent to decide,<sup>67</sup> taking into account the facts, under which provisions of the Convention it should examine the case.<sup>68</sup> The Court, being master of characterisation to be given in law to the facts of the case, could thus decide to instead examine the case from the viewpoint of Article 10 in isolation. Alternatively, by way of analogy to the case law in which it has considered complaints under Article 11 “in the light of Article 10”,<sup>69</sup> it could similarly decide to “consider” Article 2 Protocol 1 and Article 8, raised by the applicants in their application, “in the light of Article 10”.

The reasons why the Court should take into account the Article 10 dimension of the case include that the applicants were subject to criminal charges, dismissed from their positions, and their passports were cancelled, apparently as a means to punish them for having signed the Academics for Peace Petition. The signing of a petition can be considered as expressive conduct which falls within the scope of the freedom of expression, as has explicitly been recognised by the Inter-American Court in the case of *San Miguel Sosa and Others v. Venezuela*.<sup>70</sup> The crux of the present cases thus centres on the restriction of the applicants’ freedom of expression, in general, and the academic freedom aspect of their rights under Article 10 in particular.

For this reason, we respectfully submit that the cancellation of the applicants’ passports, against the backdrop of the criminal charges brought against them and their dismissals, should be considered as an interference with Article 10 of the Convention within the meaning of the Court’s case law.

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<sup>66</sup> *Ibid.*

<sup>67</sup> ECtHR, *Aksu v. Turkey* (2012), *supra* n. 44, § 43; ECtHR (Grand Chamber), *Bouyid v. Belgium*, 28 September 2015, no. 23380/09, § 33.

<sup>68</sup> ECtHR (Grand Chamber), *Garib v. The Netherlands*, 6 November 2017, no. 43494/09, § 98; ECtHR (Grand Chamber), *Molla Sali v. Greece*, 19 December 2018, no. 20452/14, § 85.

<sup>69</sup> See for example, ECtHR (Grand Chamber), *Navalnyy v. Russia*, 15 November 2018, nos. 29580/12 and 4 others, § 101-102.

<sup>70</sup> IACtHR, *San Miguel Sosa and Others v. Venezuela*, 8 February 2018, Series C No. 348, § 156-157.

The Court itself has never defined the concept of an “interference” under Article 10 in the abstract – however referring to “formalities, conditions, restrictions or penalties,” mentioned in Article 10 § 2, by way of example.<sup>71</sup> It transpires from the case law, however, that any sanction or detriment imposed in order to repress, prevent or otherwise “chill”<sup>72</sup> the exercise of freedom of expression can be deemed as an “interference” with Article 10. Thus, the cancellation of a passport in order to repress the applicants from exercising their freedom of expression/academic freedom, in combination with the “chilling effect” created by such measures, clearly constitutes such an “interference.” This is in line with the judgment of *Cox v. Turkey*, in which the Court, after having examined the sequence of events in their entirety, concluded that a travel ban imposed on an academic, in retaliation for her having discussed Turkey’s history with respect to the Kurdish and Armenian populations, amounted to an interference under Article 10:

*The applicant is precluded from re-entering on grounds of her previous expressed opinions and as a result, is no longer able to impart information and ideas within that country. [...] The travel ban was designed to repress the exercise of her freedom of expression and stifle the spreading of ideas.*<sup>73</sup>

#### **IV. Conclusion**

This intervention urges the Court to go beyond the provisions of the Convention raised by the applicants in their application, by also taking into account the important Article 10 dimensions of the present cases. We urge the Court to take the opportunity presented by these cases to reaffirm and more fully articulate its prior statements in the area of academic freedom protection. In particular, we respectfully invite the Court to explicitly recognise the importance of academic freedom in all its dimensions, including by extending “public watchdog” recognition to academics consistent with the Court’s previous rulings. A strong statement reaffirming and clarifying protections for academic freedom at this time is important not only given the recent widespread and systemic violations in Turkey, but also given worrisome indications from within other Member States.

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<sup>71</sup> See also, ECtHR (Grand Chamber), *Wille v. Liechtenstein*, 28 October 1999, no. 28396/95, § 43; ECtHR, *Baka v. Hungary* (2016), *supra* n. 64, § 140-143.

<sup>72</sup> See for example, ECtHR, *Altuğ Taner Akçam v. Turkey*, 25 October 2011, no. 27520/07, § 68.

<sup>73</sup> ECtHR, *Cox v. Turkey*, 20 May 2010, no. 2933/03, § 31.