

# Legal Opinion About the Case of Mustafa Çabuk



ტილანანტიის და  
მრავალფეროვნების  
ინსტიტუტი



**Legal Opinion  
About the Case of Mustafa abuk**

Mr. Giorgi Margvelashvili  
President of Georgia

Mr. Irakli Kobakhidze  
Chair of the Parliament of Georgia

Mr. Giorgi Kvirikashvili  
Prime Minister of Georgia

Ms. Thea Tsulukiani  
Minister of Justice of Georgia

Mr. Sozar Zubari  
Minister of IDPs, Accommodation and Refugees of Georgia

Mr. Irakli Shotadze  
General Prosecutor of Georgia

On behalf of the following signatory organizations – the European Human Rights and Monitoring Center (EMC), the Transparency International – Georgia, the Tolerance and Diversity Institute (TDI), the Georgian Young Lawyers' Association (GYLA), the Georgian Democratic Initiative (GDI), the Human Rights House of Tbilisi (HRHT), the International Society for Fair Elections and Democracy (ISFED), the UN Association of Georgia (UNAG), Media Development Fund (MDF), the Georgian Reforms Association (GRASS) - we have the honor to address you about the potential extradition of Mustafa Emre Çabuk, a Turkish national and urge all relevant state authorities not to extradite him to Turkey where he is at risk of political prosecution, torture/inhuman treatment and punishment and deprivation of access to a fair justice.

#### **Factual circumstances related to the case<sup>1</sup>**

##### **Background**

Mustafa Emre Çabuk has been working in the field of education in Georgia since 2002. In 2002-2007, he worked as a teacher at Şahin lyceum in Batumi, and in 2012-2016 he served as a deputy chair of the supervisory board of Chaglar Educational Institutions. On May 24, 2017, he was arrested by Georgian authorities based on a request from Turkey for his alleged links with the Fethullah Gülen organization, and subsequently placed under an extradition arrest.

As an individual accused by the Turkish authorities of masterminding the coup attempt in Turkey on July 15, 2016, him and everyone linked to him are persecuted by the President of Turkey, Recep Tayyip Erdoğan and the Turkish Government in gross violation of human rights.

It has been suspected that following the Spring 2016 developments in Turkey educational institutions in Georgia that Turkey believes have links with the Gülen movement face problems as a result of the Turkish government's request. On February 3, the Ministry of Education of Georgia revoked authorization for Şahin Lyceum citing certain irregularities detected by the Ministry. Here we must also note that revocation of the lyceum's authority coincided with the visit of the Prime Minister of Georgia in Turkey. According to the wife of Mustafa Emre Çabuk, it is peculiar that her husband's arrest occurred shortly after the official visit of the Turkish side in Georgia.

##### **Factual circumstances related to Mustafa Emre Çabuk's arrest**

On May 25, 2017, as a restraining measure Tbilisi City Court placed an employee of a private Demirel College and a representative of its founders - Mustafa Emre Çabuk in a three-month extradition arrest based on a motion of the prosecution. The motion of the prosecution was based on an extradition request from Turkey

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<sup>1</sup> Note: analysis of the factual circumstances is based on the official criminal case files and materials.

who wants to try Mustafa Çabuk under terrorism-related criminal charges (he is accused of being part of a terrorist organization – the crime envisaged by Article 314/2 of the Criminal Code of the Republic of Turkey). According to the information provided by the Republic of Turkey, Mustafa Emre Çabuk has links with the Gülen founded organization FETÖ/PDY viewed as a terrorist organization following the July 15, 2016 developments in Turkey, and is alleged to have assisted a shareholder of the private Demirel College to sell his shares to the Metropolitan Education and Consulting Services LLC, a company registered in the U.S., for advancing the interests of the said organization. According to the criminal case files, after the process of selling of the shares was suspended for certain reasons, private Demirel College entrusted Mustafa Çabuk with an authority to represent the college to complete the sale.

Prior to the extradition, the Office of the Prosecutor of Georgia requested use of an extradition arrest as a restraining measure, citing abstract arguments about the risk of evading punishment in view of gravity of the crime and the risk of future criminal activity to justify the request. Of note is the fact that the documents provided by the Republic of Turkey to Georgia mostly describe Fethullah Gülen's activity in Turkey and do not provide any concrete arguments as to why the private Demirel College or a company registered in the United States is considered as a terrorist organization and why Mustafa Çabuk's representation of the college can be viewed as being part of a terrorist organization.

### **Extradition procedures and grounds for prohibiting extradition under the Georgian legislation**

Under para.1 of Article 18 of the Law of Georgia on International Cooperation in Criminal Matters, a person is extradited to a foreign state for such crimes that both under the legislation of Georgia and that of the foreign state concerned are punishable by at least imprisonment for one year or by a stricter punishment. In addition, the law allows using an extradition arrest or any other restraining measure pending the extradition.

After the extradition procedures are completed, in compliance with para.4 of Article 34 of the Law of Georgia on International Cooperation in Criminal Matters, the Ministry of Justice of Georgia should immediately transfer the documents provided by the foreign state to the Office of the General Prosecutor of Georgia. The extradition materials are then communicated to the extraditable person, and under para.6 of the said Article, the duly authorized prosecutor must apply to court for a decision on permissibility of extradition. Permissibility of extradition is reviewed during a court hearing. Following the hearing a judge will find the extradition permissible or impermissible. If the judge decides in favor of the extradition, under para.14 of Article 34 of the Law, the Minister of Justice issues an order granting or rejecting the extradition request.

Under para.11 of Article 34 of the Law of Georgia on International Cooperation in Criminal Matters, decision of the first instance court can be appealed in the Supreme Court of Georgia within the period of 7 days by way of cassation appeal (first hearing must be scheduled within five days), and under para.13 of the said Article, if the final decision of the court finds extradition impermissible, the Minister of Justice must issue an order denying the request for extradition. The law sets out circumstances when extradition is prohibited. Here we must especially note that Articles 19 and 20 of the Law of Georgia on International Cooperation in Criminal Matters prohibits extradition if the crime concerned is considered a political or a related crime and a military crime. Under Article 28 of the Law, extradition can be refused if the crime concerned has been fully or partially committed on the territory of Georgia. We must also note that para.1 of Article 29 of the Law prohibits extradition if there is a reasonable doubt that the extradition is requested to prosecute or punish the person concerned on account of his/her race, nationality, ethnic origin, religion or political opinions or other similar reasons, and para.3 of Article 29 prohibits extradition if there is a reasonable doubt that in the state that has requested the extradition the person concerned will be subjected to torture or cruel, inhuman or degrading treatment or punishment involving torture, or cruel, inhuman or degrading treatment of a person.

### **Grounds for prohibiting extradition in the case in question**

#### **Risks of torture and inhuman treatment and punishment in Turkey**

In their reports authoritative human rights NGOs, including the Human Rights Watch<sup>2</sup> and the Amnesty International<sup>3</sup> discuss the human rights situation in Turkey following the so-called military coup attempt. They

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<sup>2</sup> <https://www.hrw.org/world-report/2017/country-chapters/turkey>

<sup>3</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/>

state that cases of ill-treatment and torture (beating, stripping, use of prolonged stress positions, threats of rape) have increased, while the regulations that have been adopted recently in Turkey have weakened safeguards against torture in detention.<sup>4</sup> Media outlets have published evidence of torture.<sup>5</sup> The human rights NGOs also highlight the lack of guarantees for a fair trial in the criminal proceedings instituted in connection to the military coup attempt. Many detainees including public officials, teachers, judges (at least 2200 judges) are placed in pretrial detention despite a lack of evidence of a crime. Over 100,000 civil servants that have been dismissed in Turkey include around 28,000 teachers alleged to be Gülen supporters and therefore, members of a terrorist organization.<sup>6</sup>

The practices of torture in Turkey were evaluated and criticized by the European Commission, the UN Committee against Torture (CAT), the UN special rapporteur on Torture, and the CoE Commissioner for Human Rights.<sup>7</sup> Turkey did not allow publishing of a report about findings of the European Committee for the Prevention of Torture (CPT) from visits in Turkey in 2016.<sup>8</sup>

The European Commission specifies that punitive measures taken in the wake of the military coup, including acts of torture continue against individuals linked with the Gülen movement. According to the Commission, Turkey has reached out to a number of EU Member States concerning the closing of schools and other institutions allegedly linked to the Gülen movement. The Commission specifically notes the vagueness of the criteria and evidence used for determining alleged links to the Gülen movement and establishing individual liability, applied in a non-transparent and indiscriminate manner, which in view of the Commission leads to a perception of 'guilt by association'.<sup>9</sup> Here we must also note that the Turkish government accused Amnesty International and Human Rights Watch of supporting activities of **FETÖ terrorist organization** after a report<sup>10</sup> about practices of torture in Turkey was released.<sup>11</sup>

There have been 12.450 applications filed with the European Court of Human Rights concerning violation of human rights as a result of measures taken by the Turkish authorities following the attempted coup d'état in July 2016, as also noted by the President of the Court at his annual conference.<sup>12</sup> Arbitrary detentions on suspicion of belonging to a criminal organization took place in Turkey even before the 2016 coup. In 2016, in *Mergen and others v. Turkey* concerning arrest of members of an association that awards grants to students with the aim of promoting education for girls on a baseless suspicion of belonging to a terrorist organization, the Court found violation of human rights.<sup>13</sup>

**The European Court has found that removal of an individual to a country where s/he would face the risk of torture as a result of political persecution amounts to violation of Article 3 of the Convention.<sup>14</sup> According to the Court, even within the context of terrorist threats, States have an undeniable obligation not to expel a person to a different country if substantial grounds have been shown for believing that the person in question, if expelled, would face a risk of being subjected to ill-treatment in that country.<sup>15</sup>**

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<sup>4</sup> [http://www.ecoi.net/file\\_upload/1226\\_1481885250\\_58529e5b4.pdf](http://www.ecoi.net/file_upload/1226_1481885250_58529e5b4.pdf) pp.84-88

<sup>5</sup> <http://www.independent.co.uk/news/world/europe/turkey-coup-attempt-photo-turkish-soldiers-president-erdogan-crackdown-a7142126.html>

<sup>6</sup> <https://www.hrw.org/world-report/2017/country-chapters/turkey>

<sup>7</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf), p.29, 70;  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20977>;  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20976&LangID=E>;  
<http://www.refworld.org/country,,CAT,,TUR,,57a98fe64,0.html>;

[http://www.ecoi.net/file\\_upload/1226\\_1481885250\\_58529e5b4.pdf](http://www.ecoi.net/file_upload/1226_1481885250_58529e5b4.pdf) p.84;

<sup>8</sup> <http://stockholmcf.org/cpt-head-gnatovsky-says-ankara-does-not-allow-report-on-turkey-to-be-published/>

<sup>9</sup> [https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key\\_documents/2016/20161109\\_report\\_turkey.pdf](https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf), p.9;

<sup>10</sup> <https://www.amnesty.org/en/documents/eur44/5012/2016/en/>;

<sup>11</sup> <https://www.amnesty.org/en/countries/europe-and-central-asia/turkey/report-turkey/#endnote-5>;

<sup>12</sup> [http://www.echr.coe.int/Documents/CP\\_Turkey\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Turkey_ENG.pdf);

<sup>13</sup> [http://hudoc.echr.coe.int/eng-press#{"itemid":\["003-5390762-6739725"\]](http://hudoc.echr.coe.int/eng-press#{);

<sup>14</sup> Chamber Judgment Y.P and L.P. v. France 02.09.2010

<sup>15</sup> *Chahal v. the United Kingdom*, §§ 73-74; *Soering v. the United Kingdom*, §§ 88-91; *Shamayev and 12 Others v. Georgia and Russia*, §§ 355;

As documented by international and non-governmental organizations, large-scale punitive measures taken by Turkey following the military coup that entailed torture as well, are carried out against public servants including teachers, and determination of alleged links to the Gülen movement recognized as a terrorist organization is based on ambiguous criteria as stated by the European Commission.

Of a special note is the fact that out of 399 extradition requests made by Turkey to European countries, only 11 have been granted including 9 by EU Member States. Despite Turkey's requests for extradition of 59 members of FETO following the coup attempt on July 15, 2016, no extraditions have been made so far. Germany has refused to remove 22 individuals linked with Gülen.<sup>16</sup> Civil society protest<sup>17</sup> in Greece about Turkey's extradition request led to the Supreme Court's decision against the extradition.<sup>18</sup>

### **Issues of jurisdiction and Georgia's obligation to investigate**

Under para.1 of Article 4 of the Criminal Code of Georgia, criminal liability for a crime committed on the territory of Georgia is determined under the Georgian legislation. Under para.2 of the Article, a crime is deemed to have been perpetrated on the territory of Georgia if it began, continued, terminated or ended on the territory of Georgia. In Mustafa Çabuk's case, materials available in the case prove that transfer of shares between the private Demirel College and a company registered in the U.S., with participation of Mustafa Emre Çabuk, which Turkey views to be an action carried out for advancing goals of a terrorist organization, took place on the Georgian territory. Therefore, if the action described by the Republic of Turkey contains signs of a crime, it falls under the Georgian jurisdiction. Here we must also note that under Article 28 of the Law of Georgia on International Cooperation in Criminal Matters, Georgia has the right to refuse an extradition if the crime concerned has been fully or partially committed in the territory of Georgia.

It is also important to consider that the Treaty between Georgia and the Republic of Turkey on mutual legal assistance in civil, trade and criminal matters, Article 35, prohibits transfer of an individual if the crime concerned has been committed in the state where the person to be transferred is.

In light of the above legislative norms and factual circumstances, if Georgia finds that the action viewed as a crime by the Republic of Turkey has in fact been committed, it will be subjected to Georgian jurisdiction, meaning that the Georgian authorities will be obligated to investigate the case; under these circumstances, transferring the individual to another country is unjustified.

### **Conclusion**

**In light of the foregoing circumstances, we believe that extradition of Mustafa Emre Çabuk to Turkey substantially violates fundamental human rights and rule of law standards and is damaging to the process of democratic development of the country.**

**The signatory organizations would like to also express their solidarity with Mustafa Emre Çabuk who has been engaged in pedagogical and educational activities in Georgia for many years, and with his family and associates. We will work to help protect their rights in Georgia, within the scope of our mandate.**

**In light of the above assessments, the signatory organizations urge:**

#### **the Georgian Government**

- to refuse to extradite Mustafa Emre Çabuk in view of the clear and apparent risks of torture, inhuman treatment and/or punishment on Turkish territory, as a result of political prosecution;
- to take all possible measures to ensure legal and safe life and work for Mustafa Emre Çabuk and members of his family on the Georgian territory, including by giving a political asylum to Mr. Çabuk,

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<sup>16</sup> <http://aa.com.tr/en/europe/germany-falling-short-on-turkish-extradition-requests/687077>;  
<http://greece.greekreporter.com/2017/01/31/turkish-propaganda-targets-greece-eu-for-not-responding-to-extradition-requests/>;

<sup>17</sup> <https://www.solidaritynow.org/en/oxto-tourkoi/>;

<sup>18</sup> <https://www.theguardian.com/world/2017/jan/26/greek-court-turns-down-extradition-request-eight-turkish-officers-ankara-failed-coup>;

his family and associates as they may face similar risks;

**the Parliament of Georgia**

- to exercise effective parliamentary control over the practice of possible illegal extradition of Turkish nationals and possible oppression of Turkish schools in Georgia that are considered to be linked with the Fethullah Gülen movement, and to take all possible measures in this regard.

Sincerely,  
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