



April 23, 2018

Madame Director Róisín Pillay  
Europe Regional Programme  
International Commission of Jurists  
Rue des Bains 33  
1205 Geneva, Switzerland

RE: The Immediate Release of American Pastor Andrew Brunson from Turkish Prison

Dear Madame:

The *American Center for Law and Justice*, on behalf of our client, Pastor Andrew Brunson, and well over half a million people from over 202 countries and territories who have signed a petition requesting his release, would like to draw your attention to the plight of Andrew Brunson, an innocent pastor and United States Citizen, who has been wrongfully imprisoned in Turkey since October of 2016. Not only has this emblematic case caught the world's attention, but also that of President Trump, who himself has demanded Pastor Brunson's release on several occasions. However, as indicated by President Erdoğan's demand to swap Pastor Brunson for Fethullah Gülen, it seems Pastor Brunson has become a political prisoner and bargaining chip for Turkey.

As you may know, Pastor Brunson had lived peacefully in Turkey for 23 years serving openly as pastor of the Izmir Resurrection Church, all without any incident with authorities, until his arrest on October 7, 2016. After 17 months of imprisonment, the court approved a 62 page indictment outlandishly charging him with Membership in an Armed Terrorist Organization and Military/Political Espionage, equating "Christianization" with terrorism. The indictment, which wholly lacks any merit, is replete with uncorroborated claims of "secret witnesses." On April 16, 2018, Pastor Brunson's first trial date, the prosecutor provided unfounded testimony of the secret witnesses via video link with their faces and voices disguised. After 13 hours, the trial was adjourned to resume on May 7, 2018 and Pastor Brunson was remanded back to prison. Since this is a time-sensitive case, an urgent appeal to the Turkish Government is necessary.

To further inform you of Pastor Brunson's ordeal, I have enclosed a Legal Memorandum with additional background information on Pastor Brunson, as well as a discussion of the international law relevant to his case. For decades, the ICJ has sought to promote the establishment of legal systems that protect individuals against violations of their human rights by "ensur[ing] that the administration of justice is carried out in full compliance with standards of international law." The Turkish legal system's treatment of Pastor Brunson threatens his human rights. The protections of due process, the right to an attorney with confidential preparation, and the right to call and confront witnesses must be offered to Pastor Brunson in order to safeguard the integrity of legal systems and individual human rights in Turkey and around the world. Because of the

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the human rights at stake, I am requesting that the ICJ conduct expert observation at Pastor Brunson's approaching trial. I respectfully ask that you attend the trial to determine whether or not the trial is being conducted in accordance with the international norms of prosecution the ICJ seeks to uphold, and compose a report detailing the processes and procedures implemented by Turkish authorities and their comparability to international norms of justice and prosecutorial best practices.

I remain at your disposal for any further information. Please accept the expression of my highest consideration.

Yours Sincerely,



CeCe Heil<sup>1</sup>  
Executive Senior Counsel  
American Center for Law & Justice

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## BACKGROUND

Andrew Craig Brunson is a United States citizen and pastor from North Carolina. For over 23 years, Pastor Brunson had lived peacefully in Turkey serving as pastor of the Izmir Resurrection Church, a small, Protestant Christian community, and raising his family without incident. After having openly and peacefully served the people of Turkey for 23 years, Pastor Brunson was summoned to the local Izmir police station on October 7, 2016. He believed he would be receiving a long awaited permanent residence card, however, upon arriving at the station he was informed he was being deported based on being a "threat to national security." But instead of being deported, he was transferred to the Harmandali Detention Centre and held with no charges for 63 days. During this time, he was denied access to an attorney and repeated requests by U.S. officials to visit Pastor Brunson were ignored, raising serious concerns about his treatment.

On December 9, 2016, more than two months after his arrest, Pastor Brunson was taken to court and falsely accused of "membership in an armed terrorist organization." Pastor Brunson was then transferred to a prison facility, despite no evidence having been presented to justify the accusations against him. Although he has been allowed legal representation since December 9, 2016, all discussions with his attorney are recorded, his legal file was sealed, and he could be held without any formal charges for up to seven years, completely destroying the ability to prepare an adequate defense, and obliterating all rights to due process.

Despite the fact that to this day no evidence has been presented to support the original accusation against Pastor Brunson, on August 24, 2017 the Turkish government decided to levy new and

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<sup>1</sup> Admitted in Virginia, California, Tennessee, Missouri, and U.S. Supreme Court.

additional accusations against him. These new alleged crimes were just as ludicrous as and even more disconcerting than the original and they included, Political or Military Espionage, Attempting to overthrow the Government, Attempting to overthrow the Turkish Grand National Assembly, and Attempting to overthrow the Constitutional Order. The last three alleged crimes not only carried aggravated life sentences, but require that the accused used force and violence. And once again, there was no evidence put forth to substantiate such ridiculous accusations

After imprisoning Pastor Brunson for 17 months, the Turkish government approved a 62-page indictment, dropping the 3 charges of overthrowing the government, but charging him with Membership in an Armed Terrorist Organization and Political/Military Espionage. The overwhelming majority of the evidence of these criminal charges cited by the indictment is the unsubstantiated claims by “secret witnesses.” Pastor Brunson’s trial began on April 16, 2018. It was attended in person by U.S. Senator Thom Tillis, and U.S. Ambassador at Large for International Religious Freedom Sam Brownback, as well as Charge d’Affaires Phil Kosnett. It lasted 13 hours, with Pastor Brunson having to present a response to each allegation in the indictment, which took almost 6 hours. The remainder of the trial consisted of video testimony from the secret witnesses, whose identities and voices were masked. When the trial was adjourned for the day, its continuation was postponed until May 7, 2018. In the interim, Pastor Brunson was ordered to be returned to prison.

Pastor Brunson has and continues to adamantly maintain his innocence and deny all accusations against him. He has reiterated that his sole purpose for being in Turkey for the past 23 years was “for one purpose only, “to tell about Jesus Christ.” He has further stated that he has “done this openly, in front of the government.” Despite his declarations of innocence, the fact that the legal requirements for detention have not been met, and multiple appeals regarding the decision of continued detention, his petitions for release have been denied.

## LAW

Turkey’s actions concerning Pastor Brunson violate Turkey’s own law, as well as numerous international laws, such as Article 100 and 101 of Turkey’s Criminal Procedure Code, Articles 10, 19, 24, and 36 of the Constitution of the Republic of Turkey, Articles 9, 14, 18, and likely 15 of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a signatory, as well as Articles 2, 7, 9, 10, and 11 of the Universal Declaration of Human Rights (UDHR), and Articles 5 and 6 of the European Convention on Human Rights (ECHR). The relevant portions of the above mentioned are listed below.

### Constitution of the Republic of Turkey<sup>2</sup>

Article 10: All individuals are equal without any discrimination before the law, irrespective of language, race, color, sex, political opinion, philosophical belief, religion and sect, or any such considerations. No privilege may be granted to any individual, family, group or class. State organs and administrative authorities shall act in compliance with the principle of equality before the law in all their proceedings.

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<sup>2</sup> CONST. OF THE REPUBLIC OF TURKEY art 10 (1995).

Article 19: Everyone has the right to personal liberty and security. . . . Individuals arrested or detained shall be promptly notified, in all cases in writing, or orally when the former is not possible, of the grounds for their arrest or detention and the charges against them.

Article 24: Everyone has the right to freedom of conscience, religious belief and conviction.

\*Article 36: Everyone has the right of litigation either as plaintiff or defendant before the courts through lawful means and procedure. No court may refuse to hear a case within its jurisdiction.

### Turkish Criminal Procedure Code

#### **Article 100:**

- (1) If *there are facts* that tend to show the existence of a strong suspicion of a crime and an existing “ground for arrest”, an arrest warrant against the suspect or accused may be rendered. There shall be no arrest warrant rendered if arrest is not proportionate to the importance of the case, expected punishment or security measure.
- (3) If strong grounds for suspicion are present, that the below mentioned crimes have been committed, then “the ground for arrest with a warrant” may be deemed as existing:

11. Crimes against the Constitutional order and crimes against the functioning of this system.

#### **Article 101(2) (as amended by law no. 6352):**

- (2) In decisions that pertain . . . continuation of detention, or a decision rejecting the request for release, *that concrete evidence showing*
  - (a) Strong suspicion of a crime,
  - (b) Existence of reasons for detention,
  - (c) that [use of] the measure of detention is commensurate,*be clearly shown to be supported by substantive facts.* The contents of the decisions shall be explained to the suspect or accused orally, additionally a written copy of the decision shall be handed out and this issue shall be mentioned in the decision.

According to the Turkish court and Article 101, a decision for detention must be supported by two simultaneously present conditions: First, there must exist “[c]oncrete evidence which shows a strong suspicion of a crime” and second, “the presence of a need for detention.” As discussed below, neither condition has been met in Pastor Brunson’s case. Thus, Turkish law has been violated with regard to Pastor Brunson.

### **Lack of Concrete Evidence Which Shows Strong Suspicion of a Crime**

Not only must concrete evidence that shows a strong suspicion of a crime exist, but that evidence must be *accessible* and *subject to discussion*. In Pastor Brunson’s case, Turkey has asserted that



evidence of a crime does exist. However, Pastor Brunson's file has been sealed, and neither he nor his attorneys have access to his file or the "evidence" against him. Therefore, the file is not accessible and subject to discussion, and a decision for detention and continued detention cannot be made based upon the alleged evidence, if it exists.

Even if the file was accessible and subject to discussion, there is an absence of the strong suspicion of a crime. Andrew Brunson is a United States citizen, and pastor. He and his family have resided peacefully and without incident in Turkey for over 23 years. His children were raised in Turkey, and educated in Turkish schools. The Brunson family have loved the people of Turkey and Turkish society. They have peacefully supported and served the people of Turkey, and have been exemplary in their harmonious and respectful behavior towards both the officials and those in the society at large. In fact, Pastor Brunson's willing and voluntary arrival at the police station prior to his detention is evidence of that respect for the Turkish law and authorities.

Pastor Brunson's purpose in Turkey was solely to serve the Turkish people as a pastor, and to share the good news of Jesus Christ with them. In fact, Pastor Brunson worked intentionally to keep political activities distant from himself and his church. Establishing political and financial relationships with governments or other groups is contrary to Pastor Brunson's religious beliefs, and he has always defended his viewpoint on that topic.

In Protestantism, pastors are religious workers who have a good knowledge of and ability to teach the Bible, who can lead the congregation's worship and care for their spiritual needs. They are the religious leaders of their congregations. Pastor Brunson is known and respected by his church, and other Christian congregations. This respect for Pastor Brunson evidences his work, activities, discourse, and even his personal life, being open and accessible to the public view.

When questioned, Pastor Brunson has repeatedly explained that his purpose in Turkey was for the sole purpose of sharing about Jesus, and he adamantly denies the alleged crimes against him. There is absolutely no evidence against Pastor Brunson that can be remotely considered as a "strong suspicion" of the crimes alleged against him.

### ECHR<sup>3</sup>

#### **Article 5:**

1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose

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<sup>3</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms (Nov. 4, 1950), 213 U.N.T.S. 221.

of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. **Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.**

The European Court of Human Rights (ECtHR) has held that “Article 5 of the Convention is . . . in the first rank of the fundamental rights that protect the physical security of an individual . . . and as such its importance is paramount.”<sup>4</sup> The primary purpose is “to prevent arbitrary or unjustified deprivations of liberty.”<sup>5</sup> When Article 5 states that the detention must be lawful, including the question of whether “a procedure prescribed by law” has been followed, the Convention requires conformation to the substantive and procedural rules of national law. This requires any arrest or detention to have a legal basis in domestic law, but also that “domestic law must itself be in conformity with the Convention, including the general principles expressed or implied in it, particularly the principle of the rule of law, which is expressly mentioned in the Preamble to the Convention.”<sup>6</sup> Specifically, the Court holds that the Convention “requires that any deprivation of liberty be compatible with the purpose of Article 5, namely, to protect the individual from arbitrariness.”<sup>7</sup> Thus, both the detention itself and the law purportedly authorizing it must be in conformity with Article 5.

Art. 5 §1(c) states that reasonable suspicion is required to detain on charges, and authorities must make a genuine inquiry into basic facts of the case to verify whether a complaint was well-founded.<sup>8</sup> In the case of *Rasul Jafarov v. Azerbaijan*, the applicant was a human rights activist who gave a human rights report to PACE.<sup>9</sup> The Azerbaijani authorities arrested the applicant on charges of multiple financial crimes, but the description of his charges consisted of a single page-long sentence.<sup>10</sup> An Azerbaijani court ordered his detention for a period of three months, justifying its decision by “[t]aking into account the gravity of the criminal offenses of which the applicant is

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<sup>4</sup> *McKay v. the United Kingdom*, § 30.

<sup>5</sup> *Id.*

<sup>6</sup> *Plesó v. Hungary*, § 59.

<sup>7</sup> *Medvedyev and Others v. France*, § 79.

<sup>8</sup> *Rasul Jafarov v. Azerbaijan* (no. 69981/14) (July 4, 2016).

<sup>9</sup> *Id.* ¶¶ 8; 13–15.

<sup>10</sup> *Id.* ¶ 16.

accused and the possibility of him disrupting the normal course of the investigation.”<sup>11</sup> The ECtHR observed that “the requirement that suspicion be based on reasonable grounds forms an essential part of the safeguard against arbitrary arrest and detention.”<sup>12</sup> The state must furnish “at least some facts or information capable of satisfying the Court that the arrested person was reasonably suspected of having committed the alleged offense.”<sup>13</sup> Additionally, the facts relied on must reasonably be considered to constitute criminal behavior under domestic law.<sup>14</sup> The ECtHR held that the state lacked reasonable suspicion to detain the applicant, and, therefore, violated Art. 5 §1(c). In this case, Brunson, like the applicant Rasul Jafarov, has been detained without reasonable suspicion. Brunson’s charges state no reasonable grounds for the suspicion that Brunson committed the alleged offenses. Additionally, like the applicant Rasul Jafarov, there were no facts given to constitute criminal behavior. Furthermore, in Pastor Brunson’s case, as discussed previously, all the facts show that Pastor Brunson has lived peacefully within Turkey for over 23 years, and has respected and obeyed Turkish law during the entirety of his stay. Therefore, just as the Court held that Azerbaijan violated Art. 5 §1(c), Turkey is in violation of Art. 5 §1(c) in its detainment of Brunson.

Additionally, in the case of *İkincisoy v. Turkey* the applicants were in police custody for eleven days on suspicion of aiding and abetting the PKK and being involved in the shooting of a police officer.<sup>15</sup> The Court held that the eleven-day detention violated Art. 5 § 3.<sup>16</sup> It explained that although “the investigation of terrorist offenses undoubtedly presents the authorities with special problems . . . [t]his does not mean . . . that the investigating authorities have carte blanche under Article 5 to arrest suspects for questioning . . .”<sup>17</sup> The Court therefore could not accept that it was necessary to detain the applicant for eleven days without judicial intervention.<sup>18</sup> Just as in *İkincisoy*, Brunson has been unnecessarily detained without judicial intervention. Therefore, Brunson’s detention is in violation of Art. 5 § 3.

In the case of *Döner v. Turkey*, the Court stated that “the purpose of Article 5 § 4 is to assure persons who are arrested and detained the right to actively seek judicial supervision of the lawfulness of the measure to which they are thereby subjected.”<sup>19</sup> In that case, the applicants were taken into police custody on suspicion of affiliation with the PKK, and they were detained for a period of almost four days.<sup>20</sup> During that time, the applicants had “no access to legal assistance or to their families during their detention in police custody, and [alleged] that the Istanbul State Security Court had used formulaic reasoning to dismiss their objections . . .”<sup>21</sup> The Court ultimately held that Turkey violated Art. 5 § 4, stating that “[a] remedy must be made available during a person’s detention to allow that person to obtain speedy judicial review of the lawfulness of the detention, capable of leading, where appropriate, to his or her release. The existence of the remedy

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<sup>11</sup> *Id.* ¶ 17.

<sup>12</sup> *Id.* ¶ 116.

<sup>13</sup> *Id.* ¶ 117.

<sup>14</sup> *Id.* ¶ 118.

<sup>15</sup> *İkincisoy v. Turkey* (no. 26144/95) (July 27, 2004).

<sup>16</sup> *Id.* ¶ 106.

<sup>17</sup> *Id.* ¶ 102.

<sup>18</sup> *Id.* ¶ 105.

<sup>19</sup> *Döner v. Turkey* (no. 29994/03) (June 7, 2017).

<sup>20</sup> *Id.* ¶¶ 13–19.

<sup>21</sup> *Id.* at ¶ 61.

required by Article 5 § 4 must be sufficiently certain, not only in theory but also in practice, failing which it will lack the accessibility and effectiveness required for the purposes of that provision.”<sup>22</sup> Where the applicants in *Döner* were detained for a period of 4 days without access to an attorney, Pastor Brunson was denied access to an attorney for 63 days, during which time repeated requests by U.S. officials to visit Pastor Brunson were ignored. In addition, while he has been brought before a court, that court has only provided vague and formulaic reasoning to justify Pastor Brunson’s continued detention. The denial of access to his file flies directly in the face of Art. 5 § 4, limiting any opportunity for Pastor Brunson to effectively prepare a defence which would lead to his release. Clearly, Art. 5 § 4 has been violated in Pastor Brunson’s case.

Moreover, in *Aleksanyan v. Russia*, no. 46468/06 paras. 179; 185, 22 December 2008, the ECtHR held that

[s]hifting the burden of proof to the detained person in matters of detention is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases. . . . The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions. **Arguments for and against release must not be “general and abstract”, but contain references to the specific facts and the applicant’s personal circumstances justifying his detention** (see *Panchenko v. Russia*, no. 45100/98, § 107, 8 February 2005) . . . . However, the Court has repeatedly held that the gravity of the charges cannot by itself serve to justify long periods of detention or to anticipate a custodial sentence.

In continuing Pastor Brunson’s detention, the Turkish court stated that the basis of its decision was “the contents of the file, [namely] minutes from debriefings, the report from the Provincial Security Directorate’s Office, the security research report, the minutes of the arrest and body searches, the examination minutes, the declarations of the secret witness and other evidence” which “show[ed] a strong suspicion of guilt that [the suspect] committed the crimes” alleged against him. However, in *Aleksanya v. Russia*, the ECtHR held that similar evidence, where the “domestic courts failed to explain what evidence they found,” was insufficient to justify continued detention.

The Court, in *Clooth v. Belgium*, further stated “that the seriousness of a charge may lead the judicial authorities to place and leave a suspect in detention on remand in order to prevent any attempts to commit further offences. It is however **necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned**”.

ECtHR case law also holds that the detainee has the right to take proceedings to challenge the lawfulness of one’s detention according to Art. 5 § 4, which includes the right to counsel or access

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<sup>22</sup> *Id.* at ¶ 63.



to the investigative file.<sup>23</sup> In the case of *Piechowicz v. Poland* the applicant repeatedly requested access to his investigative file; each time his request was denied on grounds that allowing him to access the file would impede the investigation.<sup>24</sup> In an attempt to satisfy the prosecutor's objections, the applicant requested access to only certain documents that were relevant to challenging the lawfulness of his detention, but was still denied without specific grounds<sup>25</sup>. The Court held that the detention proceedings violated § 4 because the principle of equality of arms was violated.<sup>26</sup> This principle requires that a detainee or his attorney have access to "those documents in the investigation file which are essential in order effectively to challenge the lawfulness of [the] detention."<sup>27</sup> The Court explained that any restrictions on a detainee's access to his investigative file must be "strictly necessary in light of a strong countervailing public interest."<sup>28</sup> Moreover, even when it is strictly necessary to withhold certain documents, the difficulties this causes the detainee must be "counterbalanced in a way that the individual still has a possibility effectively to challenge the allegations against him."<sup>29</sup> Because the state gave no consideration to any measures which could have counterbalanced the lack of disclosure, the procedure was in violation of § 4.<sup>30</sup> Just as in the case of *Piechowicz*, Pastor Brunson has not been given access to any of his investigative file, and Turkish officials have not given any reasons for this lack of disclosure. Therefore, this Turkish procedure in Pastor Brunson's case is in violation of Art. 5 § 4.

#### **\*Article 6:**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights: (a) **to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;** (b) **to have adequate time and facilities for the preparation of his defence;** (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) **to examine or have examined witnesses against him and to obtain the**

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<sup>23</sup> *Piechowicz v. Poland* (no. 20071/07) (July 17, 2012).

<sup>24</sup> *Id.* ¶ 40–46.

<sup>25</sup> *Id.* ¶¶ 47–48.

<sup>26</sup> *Id.* ¶ 203.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* ¶ 204.

**attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.**

Pastor Brunson has not been allowed a hearing, and it has been over a year since his detention. Additionally, Pastor Brunson does not understand the nature and cause of the accusations against him, and therefore has no way to prepare a defence, nor has he been allowed to examine the alleged secret witness. This is a violation of Article 6 §3(a) and (b).

Additionally, the Court in *Cyprus v. Turkey*<sup>31</sup> narrowed Article 6 §3(d) to protect a defendant against the evidence of secret witnesses through “its assessment of the evidence given by unidentified witnesses, adopt[ing] a cautious approach by ascertaining its evidential value with reference to the particular nature of each of the witnesses' testimony, and [requiring that] its findings [are] not based either solely or to a decisive extent on anonymous witness statements.”<sup>32</sup> Furthermore, the Turkish Supreme Court also held that secret witness testimonial evidence “cannot constitute the sole evidence for reaching a decision, [when] the decision was made based upon the declaration of this witness only. This was against article 9/8 of the 5726 numbered Law of Witness Protection, and therefore called for a quash...a decision to quash as stated in the notice (1. CD, 03.03.2010, 2009/4015, 2010/1277).”<sup>33</sup> Therefore, in our case, the secret witness testimonial evidence against Brunson is not adequate enough for a judge to issue a decision without violating Article 6 of the ECHR.

### ICCPR<sup>34</sup>

Article 9:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial . . . .
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

\*Article 14:

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<sup>31</sup> *Cyprus v. Turkey*, Application (no. 25781/94) (May 10, 2001).

<sup>32</sup> *Id.* ¶ 109.

<sup>33</sup> Dr. Cetin Arslan, *Intelligence In Criminal Procedure Law*, 6 ANKARA BAR REV. 49, 59 (2013).

<sup>34</sup> International Covenant on Civil and Political Rights, adopted Dec. 16, 1966, G.A. Res. 2200A (XXI), U.N. Doc. A/6316 (entered into force Mar. 23, 1976).

1. **All Persons shall be equal before the courts and tribunals.** In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) **To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;**
  - (b) **To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;**
  - (c) To be tried without undue delay;

Article 18: Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

According to the above articles of the ICCPR, 1) Pastor Brunson cannot be arbitrarily detained, 2) he cannot be treated differently because he is a United States citizen; 3) he has a right to know the grounds of his detention; 4) he has a right to a defence; and 5) he has a right to freedom of religion and belief. However, as has been stated previously, as indicated by President Erdoğan's recent demand to swap Pastor Brunson for Fethullah Gülen, it seems Pastor Brunson has become a political prisoner and bargaining chip for Turkey. Moreover, he has been provided with no evidence to justify his detention or support the allegations against him. He has no access to his file, and thus cannot prepare a defence to any of the allegations against him. All Pastor Brunson has done is to actively live out his faith by serving the people of Turkey for over 23 years teaching as a Christian pastor—which he has a right to do. Thus, his rights guaranteed under the above articles of the ICCPR are being violated.

### UDHR<sup>35</sup>

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

\*Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

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<sup>35</sup> Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.

These articles of the UDHR protect rights similar to those protected by the ICCPR. According to the UDHR, to which Turkey is a signatory, Pastor Brunson 1) is entitled to the equality before the law and equal protection of the law, 2) he cannot be arbitrarily detained, 3) he is entitled to a fair trial, and 4) he is entitled to have all the guarantees necessary for his defence. Turkey is in violation of these rights guaranteed to Pastor Brunson under the UDHR, as he has been given no reason justifying his detention, he is being denied access to his file and any information regarding the allegations against him that would allow him to prepared an adequate defence, and ensure a fair trial.