



CROSSBORDER JURISTS ASSOCIATION

**TURKISH JUDICIARY IN INTERNATIONAL
REPORTS AFTER THE 17/25 DECEMBER
INVESTIGATIONS**

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ABBREVIATIONS

A.D.	: Access Date
AKP	: Justice and Development Party
EU	: European Union
ECHR	: European Court of Human Rights
UN	: United Nations
CHP	: Republican People's Party
ENJC	: European Network of Judicial Councils
FETO	: Fethullahist Terrorist Organisation ¹
HSK	: Council of Judges and Prosecutors ²
HSYK	: High Council of Judges and Prosecutors
KHK	: Decree Law
NSC	: National Security Council
MIT	: National Intelligence Organization
OHAL	: State of Emergency
PDY	: Parallel State Structure
TL	: Turkish Lira
YARSAV	: Association of Judges and Prosecutors
YBD	: Association for Unity in the Judiciary
YBD	: Judicial Unity Platform

¹ The civil society organisation known by the public as the Gülen Movement or Hizmet Movement was recognised and declared as a terrorist organisation by the government after 15 July 2016, and this determination was subsequently accepted by the judiciary. The term "FETO" is a hate speech attributed to the Movement by the government, which is not used or accepted by the Gülen Movement in any of its verbal or written statements.

² With the Law no. 6771 dated 21/1/2017, the word "High" was removed from the name of the HSYK and the name of the institution was adopted as the Council of Judges and Prosecutors (HSK).

PREFACE

The Turkish judiciary has never been perfect. An independent and impartial judicial system that can fully protect human rights, that is both fair and appears fair, has never existed in Turkey. At certain periods, there have been attempts to create a judicial system that tries to achieve the above-mentioned minimum goals, but these attempts have always ended in failure. After the 2010 constitutional referendum, the HSYK was recognised by many international organisations as an important step towards ensuring the independence and impartiality of the judiciary. The political power wanted to get rid of judicial oversight in order to realise its longterm plans, and therefore chose to change this system, which was considered to be a good system by all neutral and impartial parties, after a short period of time. Undoubtedly, another reason that led the government in this direction was that it did not want a judicial system that could potentially eliminate the corruption system in which its members were involved. Thus, the attempt to create a slightly better judicial system was incomplete.

17/25 December 2013 is a milestone for the Turkish judiciary. The date 17/25 December 2013³ is the milestone of the transition of the Turkish judiciary, which was never good, to the stage that it had never been this bad. After this date, the Turkish judiciary went through a period of conquest, and after 15 July 2016, it entered a period of collapse with the great purge in the judiciary. In the words of many people, the judiciary has been worse in this period than in any other period. Especially with the purging of members of the judiciary who wanted the judiciary to act within its own dynamics and who were not immersed in corruption, the judicial system has completely lost its independence and turned into a branch of political power.

³ <https://ahvalnews.com/tr/yargi/yargi-hicbir-donem-bu-kadar-siyasetin-kilici-haline-gelmedi-ertugrul-gunay> and <https://www.evrensel.net/haber/474775/tanrikulu-12-eylul-fasist-darbesindeki-yargilamalar-bile-su-andakijudgements-not-like-judgements>, <https://t24.com.tr/yazarlar/mehmet-y-yilmaz/yasadiklarimizin-12-eylul-den-nefarki-var,41483>

In this report, an external view of the Turkish judiciary was attempted to be portrayed based on 17/25 December 2013. In doing so, open source information was utilised. Reports written by international individuals and organisations were taken into consideration in the preparation of the report. In addition to these, evaluations of the Turkish judiciary in foreign media organs were also analysed in the report. In this way, it was aimed to take a picture of the Turkish judiciary considering the milestone of 17/25 December.

INTRODUCTION

Human rights are the rights that the individual is born with, simply because he/she is a human being, and that everyone can enjoy equally without discrimination based on race, colour, sex, language or nationality. A state that protects these rights both in legislation and in practice, ensures equality of opportunity, enables the individual to develop his/her personality and eliminates the material and moral obstacles that prevent this, recognises that everyone is equal before the law, and is fair in the most general terms is called a state of law.⁴ The most important and indispensable duty of the state, especially the state of law, is to establish a state mechanism in which individual freedoms are secured, social security and social justice are ensured, and people are judged before a natural judge within a legal system whose rules are determined in advance. Criminal procedure has an important place in the establishment and maintenance of this mechanism.

Criminal Procedure Law is the branch of law that regulates the methods related to the judicial activities of the organs representing the judicial power of the State, whether an offence has been committed, and if so, which criminal norm will be applied. The roles of the persons participating in the judgement activity are determined by the criminal procedure laws.⁵ In this context, criminal procedure is a legal process that directly affects the rights of the individual in line with the principle of fair trial. Criminal proceedings can only be fair and impartial in the context of the Constitution and international law when they are carried out by independent and impartial judges.

A power that possesses all three of these powers will be an absolute power. For this reason, it is aimed to minimise the danger by dividing this power, which has the danger of being

⁴ Bahri ÖZTÜRK, M. Ruhan ERDEM, *Uygulamalı Ceza Muhakemesi Hukuku*, Seçkin Yayıncılık, Ankara, 2007: 21.

⁵ Derya Kurt. *Tanıklık in Ceza Muhakemesi Hukukunda Tanıklık*, Niğde University Institute of Social Sciences Master's Thesis, 2013.

destructive, into three.⁶ What the historical process shows us is that human rights struggles are fought against the limitation of absolute power.

As a result of the developments in England and France in the historical process, bourgeois revolutions took place and the first written human rights documents and constitutional documents emerged. Especially in England, with the Magna Carta Libertatum of 1215, followed by the Petition of Rights of 1628, the Habeas Corpus Act of 1679, the Bill of Rights of 1689 and the Act of Settlement of 1701, the limits of freedoms were gradually expanded and the power of the monarch was tried to be limited by these rights⁷.

At the end of two devastating world wars in the twentieth century, the understanding of human rights in the international community gained a universal character. The establishment of the United Nations in 1945 and the Universal Declaration of Human Rights adopted and proclaimed by the UN General Assembly on 10 December 1948 gave an international dimension to human rights and brought them within the scope of international law. In this way, human rights have ceased to be national issues of states, and have gained a new dimension that imposes an external limitation on state powers⁸.

The understanding of restricting the authority to use the power of the State against the rights of the individual, which started with Magna Carta Libertatum in England in 1215 and has continued to expand and develop until today, is the road map of the evolution of the development of the rule of law.

While the Republic of Turkey has achieved many positive and globally accepted developments in its ninety-year history in terms of reaching the level of modern civilization, it has unfortunately followed the opposite path in the last decade. This path is of course being taken in line with the preferences and actions of the political power.

It is clearly stated in the reports prepared by many international institutions and organisations that the Republic of Turkey is rapidly moving away from the rule of law. It is

⁶ Deniz ACARAY, The Limitation of State Power for the Protection of Human Rights and the Effect of Political Participation on This, <https://dergipark.org.tr/tr/download/article-file/1358739>

⁷ ACARAY, <https://dergipark.org.tr/tr/download/article-file/1358739>

⁸ ACARAY, <https://dergipark.org.tr/tr/download/article-file/1358739>

important to reveal in the form of a report why the political power has felt the need to make such a change of course, why it has chosen to reset the accumulation of a century and the distance travelled, which institutions and public officials it has used and how it has used them on this dark path, in order to shed light on the events of the last ten years.

This study outlines how the above-mentioned worldwide development of the rule of law began to undergo a reverse evolution in Turkey at the end of 2013, how and why Turkey made the transition from a rule of law to an authoritarian and tyrannical state, and how the Leviathan, in Thomas Hobbes' expression, was transformed into a monster by using the judicial power, in the light of the reports prepared by international independent organisations.

AFTER THE 17-25 DECEMBER INVESTIGATIONS TURKISH JUDICIARY IN INTERNATIONAL REPORTS

I. 17/25 DECEMBER INVESTIGATIONS AND CHANGES IN THE JUDICIARY

A. 17/25 December Investigations and Their Effects on the Judicial System

1. Turkish society woke up on the morning of 17 December 2013 to the breaking news on all news channels about the "Corruption and Bribery Operation", which was carried out in the context of an investigation conducted by the Istanbul Chief Public Prosecutor's Office and the decisions of prosecutors and judges. In the written and visual media, the search, detention and various precautionary measures taken in the context of this investigation were described as the biggest corruption investigations in the history of the Republic. In fact, what makes this case great is the fact that it was carried out against a "criminal organisation" in which those accused of corruption included members of the AKP government, which was in power at the time. 49 people were detained in the 17 December investigation. Among those detained were the children of three cabinet ministers. On the same day, Prime Minister Erdoğan, who was in Konya for the Şeb-i Aruz ceremonies, was informed about the operation very shortly afterwards, but did not interrupt his routine programme. Prime Minister Erdoğan chose to follow the developments in Konya by saying "It would not be right for me to say anything before the judicial process is finalised" in response to a question posed to him by journalists. When journalists asked Cemil Çiçek, the Speaker of the Parliament, about the investigation, Çiçek expressed his support for the judicial process by saying "I don't know about the operation because it is a judicial matter carried out under the supervision of the prosecutor's office and the investigation is confidential". Opposition party leaders also pointed to the judicial process and expressed that they wanted the investigation to

continue until the end. Since the public prosecutors in charge of the investigation and the security forces fulfilling the requirements of the investigative instructions they received, carried out an extremely meticulous work and collected the evidence in a proper manner due to the extension of the investigation to members of the government, the investigation has revealed the possibility of reaching many more people other than those who were detained after a short period of time.⁹

2. Although at the beginning of the investigation the government and AKP representatives stated that what was being carried out was the work of the judiciary and should be respected, this did not last long and the discourse soon changed. It was not possible for the government and its representatives not to have been aware of the alleged corruption transactions that were the subject of the investigation. As a matter of fact, as it was understood from the audio recordings that emerged later on, the investigation was actually pointing to a corruption of billions of dollars. Undoubtedly, it was not possible for corruption of this magnitude to take place without the knowledge of members of the government. For these reasons, the corruption investigation, which was initially described as a judicial process, started to be described as a coup d'état against the government by using the press that the government controlled. On 18 December 2013, Prime Minister Erdoğan took a new position against this investigation. With his statements, he started to imply that the investigation was not a normal judicial process. The print and visual media, which are mostly under the control of the government, started to manipulate the society by following the Prime Minister's statements.
3. On 18 December 2013, while the investigation was ongoing, the Minister of Justice, who is the chairman of the Council of Judges and Prosecutors (Supreme) Council, started to openly intervene in the judicial process. In this context, as a first step to take the investigation out of the hands of the prosecutors conducting the investigation and give it

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https://www.bbc.com/turkce/haberler/2014/12/141212_17_25_aralik_operasyonu_neler_oldu_10_soruda

to prosecutors who can be influenced and manipulated by the government, it was stated that the investigation was comprehensive and the number of investigation prosecutors was increased by adding new prosecutors to the prosecutors conducting the investigation. However, the investigating prosecutor had no complaint that the file was extensive and that he was therefore unable to carry out the investigation, and he did not report this to the chief prosecutor in the same department of justice. Step by step, the road to the closure of the investigation was paved. On the same day, some of the police chiefs who were conducting the investigation as judicial police officers were dismissed. On 19 December, the Istanbul Provincial Police Chief, who was in charge of the investigation, was dismissed and replaced by a police chief whose closeness to the government was not in doubt.

4. The political power has continued to make moves to get rid of the corruption investigation in which it knows it is involved by using all the power it has.
5. While the 17 December investigation was dominating the Turkish agenda, the Turkish public was shaken by the news of a second investigation on 25 December. The investigating prosecutor summoned the Prime Minister's son to testify on corruption allegations, but this order of the prosecutor could not be fulfilled by the judicial law enforcement officers reporting to him due to the orders given by the government in a way that cannot be seen in any state of law.
6. On the same day, at the request of the Prime Minister, Minister of Justice Sadullah Ergin was dismissed and Bekir Bozdağ was appointed as Minister of Justice in order to control the prosecutors in charge of the investigation process. Upon the expansion of the corruption investigation, the investigation prosecutor was dismissed on 26 December 2013 upon the instruction of Bekir Bozdağ, Minister of Justice and at the same time the President of the High Council of Judges and Prosecutors (HSYK).
7. The government, which took a stance against the investigative measures taken within the framework of the two investigation files carried out by the Istanbul Chief Public Prosecutor's Office, which were briefly explained above, started activities to break the perception of corruption both at home and abroad in a short time. Within this framework,

while creating information to manipulate domestic and foreign public opinion through the media organs it directly or indirectly controlled, it also made attempts to render the investigations inconclusive. In this context, first of all, appointments and authorisations were made to neutralise the security officers working under the Ministry of Interior and in charge of the investigation. Subsequently, various provisions of the Regulation that would directly affect judicial investigations were amended. Again, by utilising its numerical majority in the Grand National Assembly of Turkey, it has resorted to making various legal arrangements. In parallel, a series of decisions were taken through the Minister of Justice, the Undersecretary of Justice and members of the HSYK with close ties to the government to put pressure on and neutralize the prosecutors conducting the investigation and the judges signing the decisions within the framework of the investigation. Firstly, on 17 December 2013, the Regulation on Judicial Police was amended by adding provisions that would undermine the rule of law.¹⁰ The Regulation abolished the principle of confidentiality of investigations, which is guaranteed and protected by law. With the added article, the obligation to inform the governor or district governor, who is the provincial administrative authority, about the investigations carried out has been introduced. On the other hand, with the explicit intervention of the Minister of Justice and the High Council of Judges and Prosecutors, Istanbul Chief Public Prosecutor Turan Çolakkadı wrote to the prosecutors conducting the investigation and requested that all actions to be taken and decisions to be taken be reported to him first. Thus, the possibility of an independent and confidential investigation was eliminated. The amendment to the regulation stipulates that such a request must first be submitted to the chief prosecutor in order to prevent similar evidence obtained through the detection of communication, which has an important place in the files of the 17/25 December investigations. Although it is known that the amendments to the regulation are clearly contrary to the Constitution and legal legislation, the relevant Ministries in the AKP government did not hesitate to take these decisions. Indeed, after the government

¹⁰ <https://www.hurriyet.com.tr/gundem/adli-kolluk-yonetmeligi-ndeki-degisiklikler-iptal-27765210>

successfully survived the investigations, the Council of State decided to suspend the execution of the provisions of these amendments.

8. The government, which partially relaxed and secured itself with the amendments to the Regulation, has made arrangements to intervene in the functioning and structure of the High Council of Judges and Prosecutors (HSYK), which is at an important point, in order to prevent the continuation of ongoing investigations and to prevent the opening of new ones. The High Council of Judges and Prosecutors, which is the sole authority in the appointment, authorisation and disciplinary proceedings of judges and prosecutors and whose independence is guaranteed by the Constitution, has become an open target of the government.¹¹ In this context, on January 7, 2014, despite the fact that it was clearly unconstitutional, Law No. 6524 attempted to make important amendments to the HSK law that would eliminate the independence of the HSK, increase the influence of the Minister of Justice on the board, and change its working systematics. Due to its numerical majority in the Turkish Grand National Assembly, the government, despite the opposition's opposition, nonparticipation in the commission work and significant criticism, passed this amendment to the law and ensured its enactment.
9. The CHP, the main opposition party, stated that the amendment was unconstitutional and that it would go to the Constitutional Court. With the said amendment, all secretariat employees, except for the members, were dismissed and the Ministry was granted significant powers in new appointments. The HSYK was intended to be turned into a subsidiary unit of the Ministry of Justice. While the General Assembly used to decide on the departments in which the HSYK members would work, the amendment paves the way for the Minister of Justice to decide. The HSYK Secretary General and approximately 600 judges, prosecutors and employees working at the HSYK and the Justice Academy were dismissed. The HSK Inspection Board has been subordinated to the Minister of Justice and the President and Deputy Presidents of the Inspection Board have been appointed by the Minister of Justice. In summary, it was aimed to completely subordinate

¹¹ <https://www.resmigazete.gov.tr/eskiler/2014/02/20140227M1-1.htm>

the bureaucracy to the Ministry of Justice and to turn the HSYK into a symbolic institution. During this period, although it was clear that the law was unconstitutional and this was expressed by all impartial jurists except those who were pro-government, the calls for the President of the Republic not to approve the law and send it back to the parliament were in vain and President Abdullah Gül approved the law and sent it to the parliament to be published in the Official Gazette.

10. The main opposition Republican People's Party brought these amendments to the Constitutional Court with a request for the cancellation of the law. Undoubtedly, there was a fundamental problem, which was that even if the Constitutional Court issued an annulment decision after the law was published and entered into force, the annulment decisions were not retroactive. For this reason, the main opposition party filed an application to the Constitutional Court requesting an injunction. The Constitutional Court was under pressure from the political power during this period and rejected the request for an injunction. All of them were realised in the meantime. As a matter of fact, on 11 April 2014, the Constitutional Court annulled the amendments to the law in question, stating that the amendments mentioned above were unconstitutional¹².¹² However, as stated above, since the political power had already made the desired amendments in the meantime, the annulment decision did not prevent the interventions aimed at depriving the country of the rule of law.
11. Reactions from the European Union and the Council of Europe to the amendment, which deeply affected the independence and impartiality of the judiciary, were not delayed and they expressed serious concerns as follows.
12. "Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, of which Turkey is a founding member, said that the proposed HSYK law is against the independence of the judiciary in Turkey. Expressing his reaction on his official Twitter account, Muiznieks said: "The proposed law to curtail the powers of the High Council of

¹² <https://www.resmigazete.gov.tr/eskiler/2014/05/20140514-21.pdf>

Judges and Prosecutors constitutes a serious obstacle to the independence of the judiciary in Turkey."¹³

13. "Stefan Füle, EU High Commissioner for Enlargement; ...Turkey should adhere to the EU acquis in its regulation on the CJP... I told Çavuşoğlu that any new regulation on the CJP should be in line with the Copenhagen political criteria and I asked him to convey this message to Ankara. The Venice Commission in its declaration of 20 June 2015 stated that "On 15 February 2014, the HSYK Law was amended to strengthen the powers of the Minister of Justice in the High Council. This step reversed the positive gains of the reform following the 2010 referendum."¹⁴
14. On 24 June 2014, Prime Minister Erdoğan said: "Some of the legal arrangements we have made are now before the President. When they are approved by him, rapid steps will be taken.", "Just as they filed hundreds of lawsuits against us, we will file hundreds and thousands of lawsuits against them. Then things will be different. ... We are developing a project. When that is completed, the process will accelerate"¹⁵. This project was the legal arrangements envisaging the "establishment of criminal judgeships of peace". With the legal amendment no. 6545, which was adopted by the Turkish Grand National Assembly on 18 June 2014 and entered into force on 28 June 2014, the criminal courts of peace that previously existed throughout Turkey were closed down¹⁶. With this law, a (limited number of) "criminal judgeships of peace" were established to decide on protection measures such as search, seizure, arrest, detection of communication, appointment of a trustee and seizure of assets. In the same law, criminal judgeships of peace are established on a closed circuit working system. The authority to review the objections to the decisions of criminal judges of peace is also envisaged as another criminal judge of peace. Previously, the objection against the decision of a criminal court of peace was examined by a higher court, the criminal court of first instance. With this

¹³ <https://www.hurriyet.com.tr/dunya/hsyk-yasa-degisikligine-avrupa-konseyinden-tepki-25526033>

¹⁴ <http://www.hurriyet.com.tr/dunya/25573679.asp>

¹⁵ <https://www.milliyet.com.tr/siyaset/bu-is-burada-bitmeyecek-1901671>

¹⁶ <https://www.resmigazete.gov.tr/eskiler/2014/06/20140628-9.htm>

amendment, the appointments of specially authorised prosecutors, who are selected and authorised according to the government's criteria, and criminal judgeships of peace, which will make crucial decisions in the context of investigations, have been made by the HSK, which is under the influence and control of the Ministry of Justice. These appointments and authorisations paved the way for a series of political operations disguised as judicial operations.

15. Upon the introduction of the criminal judgeship of peace, many concerns were expressed on international platforms.
16. In all reports of the European Commission after 2014, and in particular in the 2018 Turkey Report, it is stated that "No changes have been made to the institution of criminal judges of peace. The perception of executive influence over the decisions, jurisdiction and practices of criminal judges of peace continues to cause serious concern. These concerns relate in particular to their wide-ranging powers to issue search warrants, detain, block access to websites and seize property, which can have serious financial implications, and the fact that appeals against their decisions are not reviewed by a higher judicial authority but by another single-judge structure. The decisions of criminal judgeships of peace are increasingly moving away from the jurisprudence of the European Court of Human Rights and rarely provide sufficiently personalised justification."¹⁷

B. Turkish Judiciary after 15 July 2016

17. In the aftermath of the 17/25 December investigations, the government attempted to close the corruption investigations involving members of the government, but the government has now entered a new phase after important legislative changes were made in the judiciary. In October 2014, the HSYK elections led to significant changes in the judicial organisation. The members of the HCJP, who were elected with the support of the

¹⁷ <https://ihd.org.tr/en/wp-content/uploads/2019/11/Turkey-Justice-Reform-Strat-Advocacy-Analysis-brief-2019-TUR.pdf>

members of the Judicial Unity Platform¹⁸ (Association)¹⁸, founded by members of the judiciary who promised to work "in harmony with the government", started to work in accordance with this promise. In this context, chief prosecutors and commission presidents in almost all judicial organisations were replaced and judges and prosecutors who were members of the Association for Unity in the Judiciary were appointed as chief prosecutors and commission presidents.

18. On 15 July 2016, a suspicious coup attempt took place, the full extent of which has not yet been fully revealed. Within hours of the coup attempt, a committee, including representatives of the Ministry, members of the High Council of Judges and Prosecutors (HSYK), the Ankara Chief Prosecutor and prosecutors, police and intelligence officers, convened at the Ankara Judges' House and took important decisions. The most important of these decisions was the dismissal of 2745 judges and prosecutors. In the context of the execution of the decisions taken, the Ankara Chief Public Prosecutor's Office immediately started an investigation against these individuals and issued detention and arrest warrants. Serdar Coşkun, who was appointed as the prosecutor in charge of the investigation, requested the courts to detain and arrest the judges and prosecutors who were illegally labelled with lists that were no doubt prepared beforehand. Thus, in the first hours of July 16, 2745 judges and prosecutors, against whom there was no concrete evidence of a coup, were investigated for attempting to overthrow the constitutional order and overthrow the government, and detention and arrest warrants were issued.
19. Shortly afterwards, the CJP suspended 2745 judges and prosecutors on the grounds that they were under investigation. At the same time, 5 members of the CJP were also suspended on the same charges. These illegal suspensions of judges and prosecutors included 140 members of the Court of Cassation, 48 members of the Council of State and 2 members of the Constitutional Court. On 24.08.2016, 2847 judges and prosecutors, including members of the Court of Cassation and the Council of State, were dismissed

¹⁸ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/>

from their jobs by the General Assembly of the HCJP¹⁹. In the ongoing process, the number of dismissed members of the judiciary has approached five thousand.

20. On 09.08.2016, 2 members of the Constitutional Court were dismissed from their jobs by the General Assembly of the Constitutional Court²⁰.
21. As a result, according to the information obtained from open sources; 4579 judges and prosecutors from the Constitutional Court, Court of Cassation, Council of State, Court of First Instance, Judicial and Administrative Judiciary, 118 judges and prosecutors from the Court of Accounts, 259 judges and prosecutors from the Military Judiciary were dismissed.
22. Judges and prosecutors, members of the Court of Cassation, members of the Council of State and members of the Constitutional Court were first detained and then arrested in their provinces in accordance with the instructions of the Ankara Prosecutor. The investigation processes were completely outside the rules of law. The judiciary, although seemingly functioning within its own dynamics, has acted within the limits set by the political power.
23. The unlawfulness of the arrests was established years later by the ECtHR's Turan and others v. Turkey judgement²¹
24. On the other hand, in the first hours of July 16, all of the judges and prosecutors who were ordered to be detained and arrested for their alleged involvement in the coup were given non-prosecution decisions by the relevant Chief Public Prosecutors' Offices for the crime of 'violating the Constitution' as defined in Article 309 of the Turkish Penal Code. Thus, it has been revealed that this accusation was fabricated to remove the constitutional guarantees of judges and prosecutors.

¹⁹ <https://www.hsk.gov.tr/h-kimler-ve-savcilar-yuksek-kurulu-genel-kurulunun-24082016-tarihli-ve-2016426-sayilidecision-ile-occupation-dismissals-relevant-required-decision-and-list>

²⁰ <https://www.anayasa.gov.tr/tr/duyurular/anayasa-mahkemesi-uyeleri-alparslan-altan-ve-erdal-tercan-inpress-announcement-of-the-required-decision-regarding-removal-from-profession/>

²¹ <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-214840&filename=CASE%20OF%20TURAN%20v.%20TURKEY%20>

25. The judiciary continued its operations against judges and prosecutors in line with the instructions received from the political power, and as a result, judicial investigations were carried out against nearly five thousand judges and prosecutors, and according to the information obtained from open sources, since the ministry did not share clear figures, a total of 2433 judges and prosecutors were arrested, including 2286 judges and prosecutors working in the judicial and administrative judiciary, 104 members of the Court of Cassation, 41 members of the Council of State, 2 members of the Constitutional Court.
26. These investigations against judges and prosecutors were carried out voluntarily by government supporters within the judicial community and/or members of the Association for Unity in the Judiciary. Thus, the AKP government has crossed an important threshold in its operation to completely take over the judiciary, which started on 17/25 December 2013.
27. However, despite all its efforts, the government did not feel secure. Since it could not predict what kind of problems the fragmented organisation of the Association for Unity in the Judiciary would cause in the long term, it made constitutional amendments that came into force as a result of the referendum of 24 April 2017, which abolished the procedure for the election of the members of the CJP. As a result of these amendments, not only the election procedure for the members of the CJP, but also the governance system of the country was changed. The new Constitution completely changed the election procedure of the CJP. From this point on, the majority of the members of the CJP have been determined by the President of the Republic and the political party that holds the majority in the Parliament. Thus, the AKP government has succeeded in bringing the judiciary completely under its control/influence. After this stage, a process in which universal rules of law were completely excluded from the Turkish judiciary began. This has also been documented by international reports.

28. The ECtHR has found in many judgements that the Turkish judiciary has committed grave violations. Indeed, in the *Yüksel Yalçinkaya*²² judgement, the ECtHR ruled that systematic violations of rights had been committed by the Turkish judiciary due to decisions that violated the right to a fair trial and the principle of no crime and punishment without law. In its judgement, the ECtHR stated that it had approximately 8500 cases similar to the rights violations suffered by Mr Yalçinkaya before it and that it expected to receive at least 100,000 new applications. The Court asked the Turkish state to find a solution to this systematic problem. The process of the Turkish judiciary after 17/25 December 2013 is best illustrated by Turkey's position in the Rule of Law Index. According to the index prepared by WJP, Turkey ranked 59th in the Rule of Law Index in 2014. In terms of 2014, since the results of the intervention in the judiciary have not yet been fully reflected on the judicial organisation, Turkey did not seem to be in a relatively worse situation compared to the following years.
29. Since 2015, Turkey has been ranked 80th among 102 countries due to the change in the structure of the HSYK, the appointments made by the HSYK, the judges and prosecutors appointed to replace the dismissed judges and prosecutors, whose merit and impartiality are in serious doubt, and their decisions contrary to the Constitution and laws, etc. Turkey's decline continued in 2016 and this time it ranked 99th out of 113 countries.
30. In the 2017 and 2018 Rule of Law Index, Turkey continued its decline after the unlawful changes in the judiciary after 2016 and ranked 101st among 113 countries this time.
31. After the 2016 suspicious coup attempt, Turkey's decline in the rule of law index accelerated following the complete takeover of the judiciary by the political power as mentioned above. As a matter of fact, in 2019, Turkey ranked 109th out of 126 countries. In 2020, it ranked 107th among 123 countries. In 2021, Turkey's decline accelerated as the number of countries under scrutiny increased, and it ranked 117th out of 139 countries

²²<https://hudoc.echr.coe.int/tur#%7B%22fulltext%22:%5B%22CASE%20OF%20Y%20C%20CKSEL%20YAL%20C%2087INKAYA%20v.%20T%20C%20CRK%20-%20%20Turkish%20Translation%20by%20Stichting>

that year. In 2022, although its score in the rule of law index remained the same compared to the previous year, it dropped one place and ranked 116th out of 140 countries.²³

32. As can be seen, after the 17/25 December 2013 corruption investigations carried out by the Istanbul Chief Public Prosecutor's Office, the Turkish judiciary rapidly came under the influence of the political power, while at the same time it regressed in the rule of law indices.

II. INDEPENDENCE AND IMPARTIALITY OF THE TURKISH JUDICIARY

33. In the researches and reports published in recent years, it is particularly emphasised that the trust in the judiciary and the independence of the judiciary have seriously declined. What is noteworthy in these reports is that the trust in the judiciary has been declining more and more every year. For example, in the Turkey Trends Research conducted by Kadir Has University, it was found that the rate of trust in the judiciary was 49.4 per cent in 2017, this rate decreased to 42.4 per cent in 2018 and further decreased to 41.9 per cent in 2019.²⁴ According to the "Survey on Judicial Independence and Trust in the Judiciary" conducted by the Social Democracy Foundation (SODEV) in 2019²⁴, the level of trust in the judiciary is 38 per cent. In the same research report, it was determined that the rate of those who think that the judiciary is impartial is 37.7 percent, and that the majority of citizens believe that the principle of equality before the judiciary is not applied.²⁵
34. Furthermore, in the Rule of Law Index of the World Justice Project, it is observed that Turkey's index score has decreased over the years. Turkey ranked 59th in 2014, 80th in

²³ <https://www.crossborderjurists.org/tr/hukukun-ustunlugu-endekslerinde-turk-yargisinin-durumu-2014-2021/>

²⁴ Kadir Has University, Turkey Trends-2019 (https://www.khas.edu.tr/sites/khas.edu.tr/files/inline-files/TE2019_TUR_BASIN_15.01.20%20WEB%20version%20powerpoint_0.pdf).

²⁵ SODEV, Research Report on Judicial Independence and Trust in the Judiciary (<http://sodev.org.tr/yargi-bagimsizligi.pdf>).

2015, 99th in 2016, 109th in 2019, 117th in 2021 and 116th in 2022.²⁶ According to the indices, there is a serious and worrying backsliding. For example, in the statistic on the lack of executive influence on the criminal justice system, the country's score in 2021 was only 0.07. In 2019, it was 0.06. This means that Turkey scored almost nothing in this area.²⁷

A. Principle of Independence and Impartiality of the Judiciary

35. According to Article 9 of the Constitution, judicial power is exercised by independent and impartial courts on behalf of the Turkish Nation. Article 138 of the Constitution states that "Judges shall be independent in their duties; they shall judge according to their conscientious convictions in accordance with the Constitution, the law and the legislation. No body, office, authority or person shall give orders and instructions, send circulars, give advice or suggestion to courts and judges in the exercise of judicial power. No question may be asked, debate or make any statement regarding the exercise of judicial power in the Legislative Assembly on a pending case. The legislative and executive organs and the administration are obliged to obey court decisions; these organs and the administration cannot change court decisions in any way and cannot delay their execution."
36. The independence of the judiciary means that it is not subject to any state organ, especially the executive. The independence of the judiciary is considered to be the most important condition for the rule of law. The concept of judicial independence is divided into two as the independence of the judge and the independence of the judicial power. The independence of the judiciary means that the judge is not influenced by external pressures when making a decision and bases his/her decision only on the dispute before him/her and the law. What is meant by impartiality is that the judge should not be prejudiced and

²⁶ <https://oad.org.tr/blog/2022-hukukun-ustunlugu-endeksi-wjp/>

²⁷ <https://www.crossborderjurists.org/tr/hukukun-ustunlugu-endekslerinde-turk-yargisinin-durumu-2014-2021/>

should be at an equal distance to the parties. According to Türmen, in a country where the judiciary is not independent, one cannot speak of impartiality.²⁸

B. Findings of the Reports on the Independence and Impartiality of the Turkish Judiciary

37. Upon the request of the Chairmanship of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE), the Venice Commission prepared a 48-page report on the compliance of State of Emergency Decree Laws No. 667-676 with Council of Europe Standards. This report was published on 12 December 2016. In the said report; The Constitutional Court dismissed 2 of its own members on 4 August 2016 on the basis of subjective opinion without any evidence, the HSYK dismissed thousands of judges and prosecutors without evidence to support the allegations against them, judges are special public servants, their independence is guaranteed at Constitutional and international level, thus weakening the entire judicial system, It has been determined that these dismissals have a "cooling effect" within the judicial system, forcing other judges to be reluctant to overturn the measures announced under the State of Emergency Decree Laws for fear of being subjected to such measures themselves, that this situation affects the independence of the judiciary, and that if the dismissed persons seek their rights within the Turkish Judicial System, their chances of success are very weak.²⁹
38. In its report on Turkey dated 12.10.2022, the European Commission made important observations on the independence and impartiality of the Turkish judiciary. It stated that Turkey was at an initial level in the implementation of the EU acquis and European standards in the field of the rule of law and human rights, that serious backsliding continued during the reporting period, that the main issues identified in previous reports, in particular the systemic lack of judicial independence and the urgent need to improve the human rights situation, remained unaddressed, that undue pressure exerted by the

²⁸ <https://www.milliyet.com.tr/yazarlar/riza-turmen/yarginin-bagimsizligi-ve-tarafsizligi-1126693>

²⁹ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-tur](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-tur)

authorities on judges and prosecutors continued to have a negative impact on the independence and quality of the judiciary. Furthermore, the refusal to implement judgments of the European Court of Human Rights raises concerns about the judiciary's adherence to international and European standards, and the lack of objective, merit-based, uniform and predetermined criteria for the recruitment and promotion of judges and prosecutors is a cause for concern. It was underlined that concerns persist regarding the composition of the Council of Judges and Prosecutors, its lack of independence from the executive and the appointment process of its members, and that the procedure for the selection of the members of the CJP raises questions in the public opinion regarding political influence and networks of favoritism in the judiciary. It also highlighted that the CJP's participation in the European Network of Judicial Boards has been suspended since December 2016 due to its lack of independence; that despite the principle of independence of the judiciary being enshrined in the Constitution, serious concerns remain about political influence on the judicial system, in particular from the executive branch; and that the shortcomings identified by the Venice Commission in December 2016 regarding minimum standards for the dismissal of judges and legal safeguards for the transfer of judges and prosecutors have still not been addressed. It also mentioned that appeals against such reassignments were often unsuccessful, that the independence of the judiciary was further undermined by public statements by representatives of the executive and legislative branches, including the President of the Republic, about ongoing trials, and that some public officials made public statements showing their disregard for the rule of law and human rights. Subsequently, the report also highlighted that representatives of the executive and legislative branches continued to publicly criticize and openly reject the jurisprudence of the ECtHR and the Constitutional Court, that judges and prosecutors continued to be selected and recruited through a non-transparent process, that the Ministry of Justice continued to control the boards selecting new judges and prosecutors, and that pre-service and in-service training of prospective judges and prosecutors continued to be provided by the Turkish Justice Academy, whose lack of independence remains a cause for concern. The report further noted that, although the independence of the Academy is

regulated by law, its management is entrusted to the president appointed by the President of the Republic; the lack of independence of the Academy affects its capacity to organize training programs that comply with the requirements of openness, competence and impartiality; and the European Judicial Training Network suspended the Academy's observer status as of 2017.³⁰

39. In a special report on Turkey prepared by the German Foreign Ministry, it is stated that the Turkish judiciary is largely "dysfunctionalised and politically manipulated" and that judges and prosecutors who take decisions that the government does not like are punished individually, while some other judges and prosecutors do what the government wants and "turn the situation into an opportunity" for their own careers.³¹
40. Dunja Mijatović, Council of Europe Commissioner for Human Rights, and his team visited Turkey from 1 to 5 July 2019. During her visit, the Commissioner held meetings with the Turkish authorities, members of the judiciary, national human rights bodies and civil society. The Commissioner's report dated 19 February 2020 contains alarming findings on the independence and impartiality of the judiciary. In this context, the report states The powers of the CJP to regulate and supervise judges and prosecutors are broader than in many European countries, and that these powers have been interpreted and used in a highly controversial and political manner in such a way as to exert an extraordinary influence on the prosecution and the fundamental powers of the judiciary, The new structure of the CJP allows all members of the CJP to be appointed either by the President or the Parliament without a procedure guaranteeing the participation of all political parties and interests, which is in clear contradiction with European standards, and the recent legislative changes regarding the independence of judges and judges have created a general atmosphere of anxiety and fear among members of the judiciary, The dismissals made by the HCJP, especially during the State of Emergency period, do not comply with

³⁰ https://www.ab.gov.tr/siteimages/birimler/kpb/2022_turkiye_report_tr_27.11.2022_22.05.pdf

³¹ <https://www.spiegel.de/ausland/tuerkei-meinungsfreiheit-weitgehend-ausgehebelt-a-0ae592f9-a085-445b-91fee47e2ccfcc91>

the standards that should be applied in the dismissal of judicial personnel, and the fact that the inauguration ceremonies of judges and prosecutors and the opening of the judicial year are now held at the Presidential Complex has created public opinion, the perception that the judiciary is politicized and that the executive exercises control over the judiciary, that judges are arbitrarily appointed after issuing controversial rulings that protect the human rights of defendants, that politically sensitive cases are assigned to judges known to be biased, or that such cases are assigned to courts with a high probability of issuing certain types of rulings, this practice lends more credibility to allegations that the judiciary and the CJP are biased, particularly in terms of political interests, and that members of the executive and legislature in Turkey have criticized the courts and publicly engaged in ongoing cases, that they continue to make comments disregarding the presumption of innocence and raising doubts about respect for the due process of law, that such statements have an impact on the way the judiciary handles cases, for example, in an environment where the guarantees for the independence and professional security of judges and prosecutors are being eroded both de jure and de facto, that international human rights standards and even the case-law of the national supreme judiciary, in disregard of international human rights standards, had a serious impact; that the speeches made by a high-ranking official about a detainee and the relationship between those speeches and the indictment of the detainee corroborated the allegation that the detention of the applicant was intended to silence him, that confidential information in case files was deliberately leaked to the media when even the defense did not have access to the file, that there are numerous indications that the Turkish judiciary is influenced by the political conjuncture, and that the Turkish judiciary appears to be issuing increasingly uniform and partisan decisions that strongly imply a political purpose.³²

41. Peace and Justice Platform 01.03. In its 2018 report, the Peace and Justice Platform comprehensively addressed the independence and impartiality of the Turkish judiciary,

³² <https://rm.coe.int/avrupa-konseyi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>

noting that an impartial judiciary plays a vital role in the development of democracy and the rule of law, but that this has disappeared as the judiciary in Turkey has become increasingly pro-government and influences all segments of society, and that all four levels of courts in Turkey are not independent and impartial and do not comply with the provisions of the European Convention on Human Rights, and that the European Court of Human Rights or the European Court of Human Rights cannot determine the independence and impartiality of the judiciary. He stated that there is no effective remedy that can be exhausted in domestic law, such as the courts before the United Nations Human Rights Council, which is necessary for international intervention.³³

42. Platform Peace and Justice in its report dated 01.03. 2018 dated report, in particular; AKP and the Ministry of Justice have influence in the election of HSYK members, they campaigned for pro-government members in 2014, five pro-government members of the HSYK were unjustly dismissed within 12 hours after the July 15 coup attempt, 10 days later the memberships of the Court of Cassation and Council of State were canceled and new members were elected by the HSYK, and with the April 2017 Referendum, the election of HSYK members was completely transferred to the executive and legislature, judges who were involved in corruption investigations or whose decisions were not in line with the government's wishes were dismissed; the judiciary was not protected against external pressures; special courts authorized to deal with terrorism and political crimes, which had been abolished due to the failure to ensure fair trials, were re-established in 2015 by administrative decision instead of law; 2 members of the Constitutional Court were unlawfully detained following the coup attempt in July 2016, thousands of judges and prosecutors serving in other high courts and courts of first instance have been unlawfully arrested and dismissed, and the remaining judges are no longer able to make favorable decisions for fear of being subjected to the same practice, and judges are also faced with external pressures and government interference, It has been determined that the state of emergency decrees issued after the coup attempt in July 2016 abolished the

³³ <http://www.platformpj.org/2917-2/>

guarantees regarding the independence of the judiciary and the tenure of judges, that the Government and the Ministry of Justice closely monitored every stage of political investigations and prosecutions, that this situation was communicated to all judges and prosecutors and that it was implied that there would be repercussions if they challenged the political will, and it has been emphasized that these determinations are based on concrete evidence.³⁴

43. The Turkey Tribunal's report "Judicial Independence and Access to Justice in Contemporary Turkey" of February 2021 summarises; 2013 was an irreversible turning point for the protection of human rights in the Turkish judiciary; in December 2013, when some prosecutors began investigating the secrets of a Government corruption scandal, the Executive decided within days to destroy the independence of the High Council of Judges and Prosecutors (HSYK) and reassert political control over the judiciary; and the coup attempt of July 2016 was an invaluable opportunity for the Government to launch a large-scale purge of the independent judiciary, the opposition and critical voices.³⁵

III. RIGHT TO A FAIR TRIAL AND FUNDAMENTAL HUMAN RIGHTS

A. Right to a Fair Trial

44. The right to a fair trial is a critically important concept in the protection of law and human rights, enshrined in our Constitution and international conventions to which we are a party. The right to a fair trial is a fundamental human right and guarantees the rule of law, the independence of the courts and the fair and honest operation of the judicial process. The basic elements of the right to a fair trial are as follows:

³⁴ <http://www.platformpj.org/2917-2/>

³⁵ <https://www.crossborderjurists.org/tr/yargi-bagimsizligi-ve-adalete-erisim/>

45. Independent and Impartial Courts: The judicial process must be conducted by independent and impartial courts. It is important that court judgements are not subject to political or other external influences.
46. Right to a Hearing: Everyone has the right to be informed about his/her case and the right to defence. The claims of the person must be heard by the court.
47. Right to Defence: Persons have the right to defend themselves against accusations. This can be done through lawyers or by making one's own defence.
48. Legal Aid: If a person cannot afford a lawyer for economic reasons, he/she is entitled to legal aid provided by the state.
49. Prohibition of Discrimination: There must be no discrimination in the judicial process. Discrimination based on race, sex, religion, language or other personal characteristics must be prevented.
50. The right to a fair trial is recognised as the foundation of a democratic society and ensures that people are protected by the integrity and fairness of court decisions. Violation of the right to a fair trial means that individuals' fundamental rights and freedoms are severely restricted. People may be arbitrarily detained, falsely accused and denied the right to a fair defence by the courts. This can lead to the punishment of innocent people and the disregard of the presumption of innocence. Violations of the right to a fair trial also have a negative impact on societies. Public confidence is undermined, faith in the law is damaged and a sense of justice is lost. This, in turn, may undermine the rule of law and democracy.

B. Fundamental Human Rights

51. Fundamental human rights are rights that all human beings are born with and that states are obliged to protect. These rights aim to protect human dignity and freedom. These rights form the basis of democratic societies and are indispensable for the protection of human rights and the achievement of justice.
52. Violations of fundamental human rights are a serious problem in Turkey. Combating these violations is important for the protection of human rights and the promotion of democratic

values. It is important to remember that the equal protection of fundamental human rights for all guarantees people's right to life, liberty and dignity and is the basis for peace and stability. Violations of human rights are a matter of concern not only for the individuals and communities affected, but also for the international community. International human rights organisations and States are making efforts to identify and end these violations. In this context, it believes that those responsible for human rights violations should be prosecuted and held accountable.

C. The Status of the Turkish Judiciary on 'The Right to a Fair Trial and Fundamental Human Rights'

53. Since 2014, the Turkish judiciary has been frequently criticised in international reports on fair trial and fundamental human rights. Many international human rights organisations, reports and media outlets drew attention to the erosion of judicial independence in Turkey, frequent violations of the principle of fair trial and increased violations of fundamental human rights.
54. These criticisms have been triggered by the government's increasing influence over the judiciary, particularly in the aftermath of the shadowy coup attempt of 15 July 2016. Many members of the judiciary, journalists, civil society activists and opposition figures have been sentenced or detained following unfair trials. The state of the Turkish judiciary has also led to tensions in Turkey's international relations. The European Court of Human Rights and United Nations human rights mechanisms have repeatedly called on Turkey to review its policies in these matters and have drawn attention to rights violations. This is reflected in international reports on "fair trial and human rights violations".

D. The Right to a Fair Trial and Respect for Fundamental Human Rights as Expressed in the Reports

a. EU Commission's 2022 Turkey Report³⁶

55. Regarding "Fair Trial and Respect for Fundamental Human Rights" in the "Judiciary and Fundamental Rights" section of the "Rule of Law and Fundamental Rights" chapter of the report topics below had been discussed;
56. "respect for fundamental rights in legislation and practice", "an effective (independent, quality and efficient) judicial system", "the independence and quality of the judiciary", "the issue of the judiciary's adherence to international and European standards", "the state of human rights", "the damage caused to fundamental rights by the state of emergency", "violence against women and gender discrimination", "the functioning of the judiciary", "the presumption of innocence", "political influence on the judicial system", "supremacy of the rule of law", "jurisprudence of the ECtHR and the Constitutional Court", "pre-trial detention", "state of emergency", "quality of the judiciary", "lack of legal grounds and concrete evidence", "quality of judicial decisions and indictments", "judges interrupting the testimony of defendants or ruling without hearing the testimony of the defendant", "right of defence", "forced interrogation", "access of lawyers to their clients' files", "system of confidentiality of decisions", "quality of justice", "rights of the accused", "fundamental rights", "human rights", "respect for human rights, democracy and the rule of law", "independent and impartial judicial authority", "presumption of innocence", "individual criminal responsibility", "legal certainty", "principle of equality of arms", "right to effective appeal", "right to a fair trial", "effective remedy", "international human rights mechanisms", "freedom of expression", "right to liberty and security", "protection of property", "right to free choice", "respect for private and family life", "right to life", "human rights action plan", "human rights institutions", "human rights defenders", "arbitrary detention and ill-treatment", "legal assistance", "right to life", "credible and effective investigation", "cases of abduction and enforced disappearance", "torture and ill

³⁶ https://www.ab.gov.tr/siteimages/birimler/kpb/2022_turkiye_report_tr_27.11.2022_22.05.pdf

treatment", "prison system", "living conditions in prisons", "arbitrary restrictions on the rights of detainees", "denial of access to medical care", "restriction of open meetings", "solitary confinement", "strip searches and discriminatory treatment", "forensic medical institution reports", "medical care services for sick prisoners", "protection of personal data", "harmonisation of criminal legislation with European standards", "intimidation of journalists", "anti-terror legislation", "freedom of expression and press", "participation in press releases or trade union activities", "exercise of constitutional rights", "selective and arbitrary application of legislation", "criticising the government", "insulting the President", "State of Emergency Commission", "open and free internet environment", "freedom of assembly and association", "demonstrations", "property rights", "antidiscrimination", "gender equality", "children's rights", "hate speech and hate crimes based on sexual orientation or gender identity", "procedural rights", "minorities".

b. Data in Reports on Human Rights Violations

1. EU Commission's 2022 Turkey Report

57. The "Judiciary and Fundamental Rights" section of the "Rule of Law and Fundamental Rights" chapter of the report contains the following data on human rights violations:
58. "(Rule of law and respect for human rights): Turkey is at an initial level of implementation of the acquis and European standards in this area. Significant backsliding continued during the reporting period. The main issues identified in previous reports, in particular the systemic lack of judicial independence and the urgent need to improve the human rights situation, remain unaddressed."
59. "The human rights situation continued to deteriorate. The wide-ranging restrictions on the activities of journalists, writers, lawyers, academics, human rights defenders and critical voices continued to adversely affect their freedoms. The damage to fundamental rights caused by the state of emergency and the relevant legislation adopted has not been rectified."
60. "(Functioning of the judiciary): Turkey is at an initial level of harmonisation in this area. Significant backsliding occurred during the reporting period and structural deficiencies

in the judicial system were not addressed. The undue pressure exerted by the authorities on judges and prosecutors continued to have a negative impact on the independence and quality of the judiciary. Concerns about the judiciary's adherence to international and European standards increased, in particular with regard to the nonimplementation of judgements of the European Court of Human Rights. The judiciary continued to initiate legal proceedings against opposition politicians."

61. "The independence of the judiciary is enshrined in the Constitution and relevant legislation, but serious concerns remain about political influence on the judicial system, particularly from the executive."
62. "Since the 2016 coup attempt, 3,985 judges and prosecutors have been dismissed for alleged links to the Gülen movement, of whom only 515 have been reinstated. During the reporting period, a further 17 judges and prosecutors were dismissed."
63. "The independence of the judiciary has been further undermined by public statements by representatives of the executive and legislative branches, including the President of the Republic, on ongoing trials. Some public officials have also made public statements showing their disregard for the rule of law and human rights. Representatives of the executive and legislature continued to publicly criticise and openly reject the case-law of the ECtHR and the Constitutional Court."
64. "While pre-trial detention is frequently resorted to, European standards envisage it as a last resort that should be applied for the shortest period of time. The Law on emergency powers, which allowed detention for up to 12 days for collective offences, was repealed in July 2022... The ECtHR concluded in a number of cases, including the judgments concerning Selahattin Demirtaş and Osman Kavala, that the decision taken by the judicial authorities to extend the period of detention was not sufficiently justified. In November 2021, the ECtHR issued a judgement on the pre-trial detention of 426 applicants on suspicion of membership of the Gülen movement and found their detention to be unlawful."
65. "Concerns remain about the quality of judicial decisions and indictments due to a lack of legal justification and concrete evidence. Monitoring reports on civil society cases reveal

violations of defence rights in some politically sensitive cases, with judges interrupting the testimony of defendants or ruling without hearing the defendant's testimony. The practice of compelling testimony from secret witnesses who cannot be properly cross examined or from a single witness without supporting evidence, particularly in terrorism related cases, needs to be addressed. The system of secrecy of judgments, which in many cases is still used to limit lawyers' access to their clients' files and thus violate the right to defence, should be reviewed. The deployment of newly appointed judges and prosecutors with less experience in criminal courts, as well as the frequent reassignment of judges and prosecutors, continue to have a negative impact on the quality of justice. "

66. "The deterioration of human rights has continued and there has been no progress on last year's recommendations. Many of the measures introduced during the state of emergency are still in force and continue to have a serious and devastating impact on the population in Turkey. The legal framework contains general guarantees of respect for human rights and fundamental freedoms, but legislation and its implementation need to be brought in line with the European Convention on Human Rights (ECHR) and the case law of the European Court of Human Rights (ECtHR)."
67. "The Human Rights Action Plan adopted in 2021, which promised reforms in many areas, continued to be implemented but did not address critical issues and did not contribute to improving the overall human rights situation. Scores of journalists, writers, lawyers, academics, human rights defenders and critical voices have been convicted or tried for alleged membership of terrorist organizations."
68. "Turkey should in particular: bring the Turkish Penal Code and the Anti-Terrorism Law and the manner in which they are applied into line with European standards, the ECHR, the case-law of the ECtHR and the recommendations of the Venice Commission; ensure that criminal allegations ensure that criminal allegations are examined in accordance with the law, by an independent and impartial judiciary, on the basis of concrete evidence and in fully transparent procedures, and in full respect of the right to a fair trial and related procedural rights, in particular the presumption of innocence, individual criminal responsibility, legal certainty, the right of defence, the principle of equality of arms and

the right to effective appeal; ensure that the State of Emergency Inquiry Commission is an effective domestic remedy."

69. "Turkey is party to most international human rights mechanisms; however, in practice the human rights situation has continued to deteriorate."
70. "During the reporting period, the European Court of Human Rights (ECtHR) delivered 621 judgements and found violations of the European Convention on Human Rights (ECHR) in 70 cases, mostly concerning freedom of expression, right to liberty and security, protection of property, right to a fair trial, right to free choice, respect for private and family life and right to life. During the reporting period, the relevant chambers of the ECtHR received 9,856 new applications. During the reporting period, the relevant chambers of the ECtHR received 9,856 new applications. In June 2022, the total number of applications concerning Turkey pending before the Court is 17,006. There are currently 188 cases against Turkey under the extended supervision of the Committee of Ministers."
71. "Human rights defenders faced severe repression through judicial investigations, lawsuits, threats, surveillance, prolonged arbitrary detention and ill-treatment, which had a general chilling effect on independent civil society. Smear campaigns and targeting of human rights defenders by pro-government media outlets, as well as aggressive rhetoric by elected and appointed officials, further narrowed the space for critical views. Lawyers providing legal assistance to human rights defenders and civil and political activists faced obstacles in carrying out their work and faced arrest, detention and prosecution."
72. "Overcrowding in the prison system is of serious concern. As of August 2022, the prison population exceeded 320,000, the highest in Europe. In this respect, Turkey remains the member of the Council of Europe with the highest overcrowding rate
73. "Freedom of expression: Turkey is still at an early stage of harmonisation in this area and the serious backsliding observed in recent years has continued. The application of criminal laws related to national security and counter-terrorism continued to contradict the ECHR and other international standards and to move away from the case-law of the ECtHR. The dissemination of dissenting voices and freedom of expression were adversely affected by increased repression and restrictive measures. Criminal cases and

convictions against journalists, human rights defenders, lawyers, writers, opposition politicians, students, artists and social media users continued."

74. "The ECtHR has received numerous applications alleging violations of freedom of expression. The legislation in force does not adequately guarantee freedom of expression in accordance with the ECHR and the case-law of the ECtHR and allows the judiciary to make restrictive interpretations. In 2021, the Committee of Ministers of the Council of Europe adopted an interim resolution on a number of long-standing freedom of expression cases against Turkey and called on the Turkish authorities to make further amendments to the Turkish Penal Code and the Anti-Terror Law in light of the case-law of the European Court of Human Rights."
75. "The intimidation, prosecution and imprisonment of critical journalists and media organisations continued, with extensive charges of terrorism, insulting public officials and/or alleged crimes against the state and the government. The indictments and charges lack a direct and reliable link between the alleged offence and the action. The exercise of constitutional rights, such as participation in press statements or trade union activities, continued to be criminalised and used as grounds for indictments. The disproportionality in the interpretation and application of existing legal provisions by courts and prosecutors, leading to violations of freedom of expression, and the selective and arbitrary application of legislation continued to cause concern."
76. "Anti-discrimination legislation is still not in line with European standards and is not fully implemented in practice. Serious concerns remained regarding the implementation of the Law of April 2021 on security investigations and archive searches. Public officials continued to be dismissed without objective criteria. In employment, discrimination against public servants and reports of labelling continued on open legal grounds. There were numerous reports of discrimination and hate crimes based on ethnic, religious and gender identity, including sexual orientation."
77. "As regards procedural rights, the legislation is not in line with the European acquis or European standards. The ECtHR continued to issue judgements condemning Turkey for

violating the right to a fair trial and the presumption of innocence by failing to respect procedural rules."

2. Euronews News Channel's Article Dated 01.10.2020 with the Title "A Special Report on Turkey Prepared by the German Foreign Ministry Leaked to the Press"

78. The following data on human rights violations are included in the news report:
79. "The report draws attention to Turkey's situation in terms of freedoms, law and rights."
80. "The report published in Der Spiegel states that there is a 'serious crackdown' on the right to assembly, freedom of opinion and freedom of the press, and that the print and broadcast media in Turkey are almost 'completely aligned' and 'synchronised', while pluralism is 'non-existent'"
81. "According to the report, there are massive 'violations' of fundamental rights. The democratic rights enshrined in the constitution have taken a 'severe blow' and now exist only in 'written' form."
82. "The report specifically mentions that anyone associated with the Gülen group is subjected to some form of legal action in Turkey. It is stated that subscribing to a certain newspaper, depositing money in a certain bank, using a certain phone application are considered 'sufficient' to be associated with this movement."
83. "The report points out that Turkey is also monitoring and tracking other dissidents abroad, such as the PKK and the Gülen organisation. In particular, it draws attention to the close monitoring of activities carried out under the umbrella of associations and foundations."

3. Article titled "Freedom of Expression in Turkish Courts Still Worth Fighting for" by Nate Schenkan, Senior Research Director for Countering Authoritarianism, Freedom House, 16 January 2020

84. The article contains the following data on human rights violations:
85. "The judicial system in Turkey today is at odds with itself on how and whether to protect fundamental rights and freedoms, including freedom of expression. The centralisation of

political and constitutional authority over the last seven years has made the courts wary of issuing rulings that might offend the President".

4.Amnesty International Turkey 2021 Report dated 29 March 2022

86. The report contains the following data on human rights violations;
87. "In April 2021, the ECtHR ruled that journalist Ahmet Altan's rights to freedom of expression, liberty and security had been violated. In December 2021, the ECtHR ruled that Nazlı Ilıcak's rights to freedom of expression, liberty and security were also violated."
88. "In October, in its landmark Vedat Şorli v Turkey judgment, the ECtHR ruled that Article 299 of the Turkish Penal Code, which criminalises insulting the President, is incompatible with the right to freedom of expression. The ECtHR called on the government to harmonise the legislation with Article 10 of the European Convention on Human Rights."
89. "In December, Garibe Gezer, detained on terrorism-related charges, was found dead in Kandıra Prison. She was said to have committed suicide while in solitary confinement. Garibe Gezer had previously reported systematic torture and sexual assault by prison staff. The prosecutor's office had refused to investigate her allegations."
90. "Hüseyin Galip Küçüközyiğit, who had been missing for nine months in September 2021, turned out to be in Ankara prison. Authorities had denied that the former legal adviser to the prime minister, accused of links to the Fethullah Gülen movement, was in custody. Even at the end of the year, no details about his whereabouts and what had happened to him during that time were known until he came to light. The fate and whereabouts of Yusuf Bilge Tunç, who has been missing since August 2019, were unknown at the end of 2021."

5. Article by Simone Gaboriau dated 06/13/2017 and titled "There is no justice left in Turkey"

91. The article contains the following data on human rights violations;

92. "The principle of the rule of law, the promotion and protection of human rights and fundamental freedoms can only be ensured by relying on a strong and independent judiciary. In this respect, the history of justice in Turkey is certainly far from exemplary."
93. "NGOs Human Rights Watch and Amnesty International, as well as the United Nations (UN), have reported torture and ill-treatment. However, decrees issued under the state of emergency included a provision granting police immunity for offences committed during this troubled period. The text reads as follows: 'The legal, financial or criminal liability of persons who take actions and decisions in the exercise of their duties under this Decree does not come into play.' This organised impunity was condemned by the Venice Commission in its opinion of 12 December 2016."

6. Report dated 19 February 2020, following the visit of the Council of Europe Commissioner for Human Rights Dunja Mijatović 1/5 July 2019 to Turkey

94. The report contains the following data on human rights violations;
95. "The Commissioner notes that the disregard by the Turkish judiciary of the most basic guarantees of a fair trial, in particular in cases relating to terrorism and organised crime, and the indiscriminate application of criminal law to lawful acts, have reached a level of legal insecurity and arbitrariness that jeopardises the very essence of the rule of law. While fully aware of the extraordinary difficulties Turkey faces in fighting multiple terrorist organisations at the same time, the Commissioner stresses that the failure to protect human rights in this process will only undermine this fight in the long term.",
96. "The exercise of the right to an effective remedy is another problem... The Commissioner is concerned about recent developments that jeopardise the effectiveness of the individual application to the Constitutional Court as a domestic remedy for human rights violations. This is mainly due to the systematic resistance of prosecutors and lower courts to the spirit of the Constitutional Court's judgements and its consistent jurisprudence."
97. "The Commissioner is concerned about the increasingly negative and destructive political discourse targeting and labelling human rights defenders as terrorists. The Commissioner

notes a widespread pattern of judicial proceedings targeting human rights defenders, including the abuse of criminal proceedings to discourage and silence civil society."

98. "The Commissioner also draws attention to a number of issues of particular concern to lawyers, who have been particularly affected by these negative developments, both as human rights defenders and as an essential part of the judicial process guaranteeing the right to a fair trial. In addition to the restrictions that make it difficult to fulfil their tasks, a large number of cases and judicial proceedings directly target them. The Commissioner calls on the authorities to recognise the danger posed by this situation and to address the underlying problems."
99. "The functioning of the justice system has been a major focus of the Commissioner's work in Turkey. The Turkish judiciary has long been at the centre of human rights violations in Turkey, either by failing to remedy violations committed by the Turkish authorities or by directly causing them. In particular, the Commissioner notes that, as at the end of 2018, the ECtHR had handed down 3148 judgements concerning Turkey in which at least one violation of the European Convention on Human Rights was found. Of these, 919 concerned, in particular, violations of the right to a fair trial, 755 related to the right to liberty and security of the person, 603 to the duration of proceedings and 279 to the right to an effective remedy."
100. "The Commissioner notes that the already worrying situation regarding the independence of judges and prosecutors deteriorated substantially during the state of emergency declared after the attempted coup in July 2016. Almost a third of the judiciary, around 4,000 judges and prosecutors, were dismissed during this period on the basis of the extraordinary powers granted to the HSYK and the higher courts. This was despite warnings by the Commissioner's predecessor that the HSYK's decisions did not comply with the standards that should apply to the dismissal of members of the judiciary. In particular, the Commissioner notes that the judgments of these decisions consisted of a generic, stereotyped, unspecialised reasoning, supplemented by lists of 2845 and 543 names."

101. "One of the main reasons for the problem of overly broad interpretation of the law in Turkey is the prevailing attitude in the Turkish judiciary to prioritize the presumed interests of the state over the human rights of individuals. One manifestation of this attitude is the persistent problem of impunity and the lack of effective investigations into alleged human rights violations by security forces. This is a problem that has been repeatedly highlighted by the Commissioner's Office and has led the ECtHR to issue several rights violation judgments against Turkey. Another situation is the use of the Turkish Penal Code and anti-terrorism legislation to punish acts and statements that the judicial authorities consider to be in line with the aims or presumed instructions of a terrorist organization, in the absence of material evidence to prove membership of the organization."
102. "The increase in legal insecurity is not limited to the area of freedom of expression. The state of emergency and criminal proceedings concerning FETÖ/PDY membership appear to have left a particularly negative legacy in this respect. In the majority of cases, membership of FETÖ/PDY was essentially established by actions such as the use of the smartphone application "ByLock", deposits in Bank Asya and use of or association with hospitals or school services associated with Fethullah Gülen. In this regard, the Commissioner draws attention to the opinion adopted on 26 March 2019 on an individual application under the Optional Protocol to the International Covenant on Civil and Political Rights. The UN Human Rights Committee concluded that detention based solely on the use of ByLock and deposits in Bank Asya as evidence violated the International Covenant on Civil and Political Rights."
103. "Although many persistent problems concerning the application of criminal law provisions remain, the situation has deteriorated considerably in recent years. As a result, the Commissioner observes that unlawful interferences with the rights and freedoms guaranteed in the ECHR have increased in both scope and scale. The judicial disregard of the most fundamental principles of law, such as the presumption of innocence, the nonretroactivity of offences, the inability to be tried twice for the same offence, as well as the security of the law and the foreseeability of criminal acts, which are essential for

the rule of law, has reached such a level that it is almost impossible to predict in good faith and objectively whether a dissenting comment or criticism of political authority will be interpreted by Turkish prosecutors and courts as criminal activity."

104. "The Commissioner would like to draw attention to some problematic practices that continue to cause concern despite various legislative amendments to the criminal procedure. These include (i) prosecutors' lack of caution in bringing cases, including baseless cases; (ii) the arrest of suspects at very early stages of investigations, resulting in very long pretrial detention even before indictment; (iii) the well-established practice among Turkish prosecutors of going from the arrest of suspects to evidence, rather than first gathering evidence to establish well-founded suspicions; (iv) the lack of adequate justification of arrest decisions and, in particular, the automaticity of decisions to continue detention; (v) the failure to resort to alternative measures to detention; (vi) excessively long periods of detention, amounting to 'imprisonment without sentence'."
105. "Criminal proceedings in Turkey, together with certain limitations on the right of defence, raise numerous problems relating to the principle of adversarial proceedings and equality of arms. One of the issues raised by the Commissioner on investigations (e.g. in his intervention in a case before the Court as a third party) is the restriction of access to the file by the defence counsel, a problem that has become more acute and widespread in recent years. The Commissioner reiterates that in Turkey, the principle of equality of arms is routinely violated by such restrictions, which seriously impair the ability to challenge detention, not least where there is no objective reason to justify such a denial of access. The Commissioner observes that decisions restricting access to the investigative file (for example, so as to prevent the reliability of vital witness statements from being called into question) are now almost routinely taken on the basis of trite formulae, without a clear justification balancing the human rights of the suspect against the interests of the integrity of the proceedings."
106. "During the state of emergency, dozens of amendments were made to relevant laws, in particular to the Criminal Procedure Code, by emergency decrees issued by the executive, bypassing the ordinary legislative process. The Commissioner observes that many of

these amendments severely restrict the rights of suspects and defendants at all stages of the criminal proceedings and undermine the fundamental guarantees of a fair and adversarial trial."

107. "The Commissioner has on several occasions expressed particular concern about the decisions and functioning of criminal judgeships of peace, a judicial organisation established in June 2014.⁴³ Although the criminal judgeships of peace were intended to improve the protection of human rights in criminal proceedings by intensifying knowledge and expertise on ECtHR standards, the Commissioner observes that the practical result has been the opposite. The decisions of these judges have been at the root of the most flagrant violations of human rights, in particular the right to liberty and security and freedom of expression. In 2017, the Commissioner's predecessor examined this structure and concluded that, in terms of freedom of expression, they were 'at the centre of the most problematic decisions', including arrests, media bans, the appointment of trustees for seized media companies and internet blocking. The Commissioner's predecessor observed that one of the reasons for this unfavourable outcome was that these courts operate in a closed circuit, as the decision of one criminal judge of peace can only be challenged before another criminal judge of peace."
108. "As the Venice Commission has stated, 'there are countless cases in which magistrates do not adequately justify their decisions which have a fundamental impact on the human rights of individuals.' The Commissioner considers that the decisions of the criminal judges of peace that are of importance to him, such as decisions on arrest, continued detention and internet blocking, are characterised by the absence of individualised assessments and justifications that take into account the standards established in the Court's case-law in relation to Articles 5 and 10. The judgements are, for the most part, stereotyped formulae limited to the enumeration of the provisions of the law and the judge's final judgement, which renders them interchangeable from one case to the next.",
109. "In the Commissioner's view, the deficient grounds and the closed circuit system, which are the hallmarks of criminal judgeships of peace in all matters falling within their jurisdiction, raise questions of compliance with ECHR standards in relation to the rights

to a fair trial and to an effective remedy, the two main guarantees of the protection of human rights in domestic law and the cornerstones of the rule of law.",

110. "The Commissioner is of the view that questions of access to justice in Turkey have become more urgent in recent years for a number of reasons. Firstly, the State of Emergency decrees issued by the Turkish government explicitly exclude the measures they introduce from any judicial review. Secondly, a number of recent developments have raised questions about the effectiveness of the Turkish Constitutional Court as a remedy for human rights violations.",
111. "During the state of emergency declared in July 2016, which remained in force for two years, the Turkish government enacted numerous measures using a series of emergency decrees. These executive decrees amended many laws, including provisions of the penal code, and introduced far-reaching measures affecting civil society, municipalities, private schools, universities, health organisations, lawyers, media, business and finance, as well as family members of individuals considered to be sympathisers of Fethullah Gülen and many others. Among the most visible measures are the immediate dismissal of large numbers of public employees and the liquidation and confiscation of assets of nongovernmental organisations or other private entities (such as media, schools, hospitals, etc.), either by adding their names to lists annexed to these decrees or as a result of decisions taken by administrative authorities with special authorisation through simplified procedures. The Commissioner recalls that, in general, these procedures will remain in force until July 2021, in accordance with Law 7145 of July 2018.",
112. "The Commissioner has much more fundamental concerns about some of the automatic consequences of dismissals, which go far beyond public sector employment and which States cannot expect to have the same discretion under the Convention system. Since the inception of the State of Emergency, the Commissioner's predecessor had pointed out that some consequences of dismissals could be considered as additional, automatic sanctions: These included lifetime disqualification from public office (including the legal profession) and private security companies, passport cancellation, eviction from housing and termination of lease agreements between these persons and public or semi-public

organisations. The previous commissioner also pointed to the stigma of being linked to a terrorist organization, which, according to the government itself, is a stigma attached to these individuals and their families, which greatly jeopardizes their potential to find work elsewhere. Many interlocutors subsequently argued that these dismissals amounted to "civilian deaths". The Commissioner was informed that people in this situation sometimes even had difficulty setting up private businesses, as the authorities refused to grant them the necessary permits on the grounds that they were members of the emergency decree. The Commissioner reiterates that these secondary, indirect sanctions are strictly criminal in nature, due to the severity of the penalties imposed, which blurs the boundary between administrative and criminal proceedings. Therefore, with regard to these secondary effects, it is all the more vital that the principles of the presumption of innocence, the security of the law, no punishment without law, the individuality of offences and punishments and a fair trial are upheld. To date, however, the authorities have so far ignored the call to eliminate or counteract these effects.",

113. "The Commissioner considers that there are currently four interlinked issues that cast doubt on the effectiveness of the individual application procedure to the Constitutional Court as a remedy for human rights violations in Turkey. The Constitutional Court's tardiness in redressing serious human rights violations, the highly problematic attitude of the lower courts towards the case-law of the Constitutional Court, the extraordinary burden on the Constitutional Court arising from the general situation and, lastly, the recent judgements of the Constitutional Court, which appear to depart from its approach in accordance with the Convention.",
114. "The ECtHR confirmed that the delay (16 months and 24 days) in the Constitutional Court's judgement on Osman Kavala's detention was excessively long and could not be considered "expeditious", thus leading to a violation of Article 5(4) of the Convention. This finding is a first as it concerns the Turkish Constitutional Court. The Commissioner also expressed serious concerns about the non-implementation of the judgements of the Constitutional Court. For example, the Commissioner notes that Mehmet Altan was

- released more than five months after the Constitutional Court's judgement, as the lower courts refused to comply with its judgement, in apparent defiance of its authority.",
115. "In the Commissioner's view, the situation concerning the independence and impartiality of the judiciary, analysed in the main part of this report, poses an existential threat to the rule of law in Turkey and, consequently, to respect for human rights guaranteed by the ECHR. The seriousness of this situation has been confirmed by the violations of Article 18 ECHR found by the ECtHR for the first time in Turkey's history within the Convention system, which the ECtHR has assessed as an abuse of judicial process.",
116. "Overly broad laws defining terrorism and membership of a criminal organisation, and the tendency of the judiciary to broaden them further, are not new problems in Turkey. On the other hand, the Turkish judiciary is now, in a large number of cases, displaying an unprecedented level of indifference to the most fundamental principles of law, such as the presumption of innocence, no punishment without guilt, the non-retroactivity of offences, and the inability to retry for the same offence. According to the Commissioner, this has reached a level of legal insecurity and arbitrariness that threatens the very essence of the rule of law. Criminal judges of peace, with their lack of justification in their judgements, contribute greatly to this situation. At the same time, procedural safeguards such as adversarial proceedings, equality of arms and the right to counsel have been seriously and permanently eroded during the state of emergency.",
117. "The Commissioner notes with concern that the Turkish authorities, including at the highest level, regularly target human rights defenders and rights-based NGOs, often labelling them as terrorists and enemies of the people. There have been several such attacks targeting civil society activists and their legitimate activities. In particular, by implying that disclosure and reporting of alleged human rights violations by the authorities serves the aims of terrorist organisations and is therefore an attack on the Turkish state.",
118. "The Commissioner considers that judicial proceedings targeting civil society and human rights defenders in Turkey are the most worrying element of the sustained and orchestrated repression of human rights defenders in a deliberate attempt to silence them

and prevent them from reporting on ongoing human rights violations in Turkey. The chilling effect of these cases is palpable in Turkey.",

119. "The Commissioner is concerned by numerous indications that the Turkish authorities and judiciary are adopting an increasingly sceptical and hostile attitude towards lawyers who play an active role as human rights defenders, whether by bringing cases alleging human rights violations or defending the human rights of terrorism suspects. Combined with the many procedural and practical obstacles to the practice of the profession, this results in a situation that seriously undermines the ability of lawyers to fulfil their critical role as a pillar of the criminal justice system, which is essential to ensuring the right to a fair trial. The sheer number of cases targeting lawyers in particular and, even more worryingly, their professional activities, has a clear chilling effect on the profession as a whole."

IV. PROBLEMS AND THREATS WITHIN THE JUDICIAL SYSTEM

A. Problems in the Judicial System

120. With the 2010 constitutional referendum, some amendments were made to the 1982 Constitution and the most important part of these amendments is the amendments related to the judiciary. With this referendum, especially the structures of the High Council of Judges and Prosecutors (HSYK) and the Constitutional Court have undergone significant changes in a positive sense, the Individual Application to the Constitutional Court has been opened, the personal rights of judges and prosecutors have been improved and their professional supervision has been transferred from the Ministry of Justice to the HSYK. Not only has the structure of the HSYK been changed and the number of its members increased, but also the method of election of HSYK members has been changed and it has been stipulated that half of the members will be elected democratically from among judges and prosecutors for a period of 4 years. With this provision, the HCJP has become democratised in terms of its structure and has ceased to be a monopoly of the high judiciary. This is because a member of the HCJP could return to the bench after 4 years,

and judges and prosecutors could become members of the HCJP in the following period. Although the Minister of Justice and the Undersecretary of Justice are natural members of the Council and criticisms continue to be made that this may create political pressure on the judiciary, a very big step has been taken to create the most democratic high judicial council in recent history. In addition, an important innovation was introduced to minimize human rights violations before the ECtHR by opening the Individual Application procedure. Citizens could now bring human rights violations to the Constitutional Court without the need for a long and difficult process such as the ECtHR. As such, judges and prosecutors would have to pay more attention to human rights and fair trial during their judicial activities. These constitutional amendments, which were of great importance in this respect, were put into practice and within a few years there have been visible improvements in the Turkish judiciary.

121. Thanks to the judiciary's fulfilment of its constitutional and legal powers and responsibilities and the relative independence of the judiciary, important investigations have started in the country. Some segments, especially the political power, were not satisfied with some of the investigations launched against individuals and organisations close to the political power and within the bureaucracy. Recently, constitutional amendments were adopted by popular vote, strengthening the separation of powers and making the judiciary independent, even if not completely so. Therefore, interference in the judiciary was no longer as easy as before. However, when the biggest corruption investigation in the history of the country, involving some members of the political power and ministers, started on 17-25 December 2013, things suddenly changed. Now, the political power and the circles close to it have started to work by using all the power of the state to influence the judiciary and make it biased and dependent, let alone supporting issues such as judicial independence and separation of powers.
122. The Turkish judiciary, which had problems even in its best period, entered a period in which the problems started to increase rapidly as of 2014. Both in Turkey and abroad, many evaluations have been made in academic and legal circles regarding the situation of the Turkish judiciary in this process, and numerous reports have been organised and

news reports have been made. In this context, especially in the light of the reports organised within the scope of the European Union and the United Nations, the main problems of the Turkish judiciary can be listed as follows:

B. Independence and Impartiality

123. The first and indispensable rule for the judiciary to fulfill its function is to be independent and impartial. The ability of the judiciary to make fair decisions depends firstly on its being shaped independently and secondly on the independent judicial employees performing their duties impartially. Unfortunately, in Turkey, especially as of 2014, these conditions have started to be abolished, a dependent and biased judiciary has started to be created and this goal has been achieved over time. Following the 17-25 December investigations, Criminal Judgeships of Peace were first established, and by changing the members of the HSYK departments, pressure was exerted on judges and prosecutors, and certain judges and prosecutors were assigned to certain cases, and the judgements to be rendered began to be decided on extra-legal grounds and instructions were given to judges and prosecutors accordingly. This situation was later used to pressure and intimidate judges and prosecutors with arguments such as opening administrative investigations and imposing penalties on judges and prosecutors without complying with the procedure, change of duty location, change of authorisation, removal of title, and finally the independence of judges and prosecutors was influenced and made biased. Those who showed an attitude in favour of being impartial were either suspended from the profession or appointed to the most passive positions by taking advantage of the state of emergency.
124. In the Council of Europe's 2015 progress report on Turkey, this issue was evaluated under the title of rule of law and independence of the judiciary and the following statements were made "The independence and impartiality of the judiciary is regulated by the Constitution and laws. Under the current legislation, cases are allocated to courts and judges through an electronic system, although not entirely randomly. However, there are numerous reports of discriminatory justice and political interference in cases. Representatives of the executive continued to publicly undermine the credibility of the

judiciary as a whole. The strong role of representatives of the executive in the HSYK raises concerns about its independence. Decisions to initiate disciplinary proceedings against judges and prosecutors, as well as routine annual inspection programmes, are subject to the approval of the Minister of Justice, who, in his capacity as *ex officio* Chairman of the Board, supervises the Inspection Board. The authority of the Minister of Justice to appoint the personnel of the secretariat of the Board, also *ex officio* in his capacity as the Chairman of the Board, undermines the independence of the Board. There are significant limitations on the principle that judges cannot be replaced against their will. Accusations of conspiracy by the executive branch in the fight against the "parallel structure" have led to the involuntary transfer of many judges in the past two years. With the exception of dismissal from the profession, the HSYK's decisions, such as the involuntary transfer of judges, are not open to judicial review. Procedure was not followed in a number of disciplinary and criminal cases against judges and prosecutors, some of which were brought because of judicial decisions taken by judges and prosecutors. This contradicted the fundamental principles of the rule of law and significantly undermined the independence of the judiciary."

125. On the same issue, Dunja Mijatović, Council of Europe Commissioner for Human Rights, in her 2019 report following her visit to Turkey, stated: "The crucial role of this body, which was transformed into the Council of Judges and Prosecutors in 2017, is due to the fact that, as the Venice Commission has observed: "Not only are the HSYK's powers of regulation and supervision of judges and prosecutors broader than in many European countries, but these powers have long been interpreted and used in a highly controversial, political manner, exerting an extraordinary influence on the prosecution and the fundamental powers of the judiciary".³⁷
126. After the 2014 HSYK elections, the political power, which used state power to ensure that judges and prosecutors close to itself were elected to the HSYK, not only appointed biased

³⁷ <https://rm.coe.int/avrupa-konseyi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>

judges and prosecutors who would follow its instructions to all important cases without wasting any time, but also designed the High Judiciary in an unconstitutional manner by taking advantage of the State of Emergency in order to prevent a decision contrary to its wishes in case of a possible appeal and appeal. Even the high judges no longer have the constitutional guarantee of judgeship and are now under the control of the HSYK, which is completely under the control of politics. However, the political power has calculated that it may not be able to control the judiciary in the future if people who do not share its views are elected to the HCJP, and that these major changes will not be enough; in 2017, it amended the Constitution again, which it had previously amended, to completely abolish the elections for the HCJP and to amend it so that the members to be appointed will be elected by the President and the parties according to their majority in the parliament. With this amendment, the independence of the judiciary, whose impartiality had already been abolished, was also completely abolished.

127. Dunja Mijatović, the Council of Europe Commissioner for Human Rights, made the following remarks on this issue in her report "The Commissioner considers that, as a result of the new constitutional amendments of 2017, other, much more serious problems have taken precedence over all these problems. The Commissioner recognises that the new structure of the CJP allows all members of the CJP to be appointed by either the President or the Parliament without a procedure guaranteeing the participation of all political parties and interests. This means that no member of the CJP is elected by his or her peers, which is in clear contradiction with European standards which stipulate that at least half of the members of such judicial bodies, which are responsible for overseeing the professional conduct and behaviour of judges and prosecutors (including their appointment, promotion, transfer, disciplinary action and dismissal), should be elected by judges at all levels of the judiciary, from among their peers, in a manner that respects pluralism within the judiciary."
128. Regarding the same issue, the European Commission's 2018 Report on Turkey includes the following statements on the independence of the judiciary "Although the amended Constitution enshrines the principles of independence and impartiality, the CJP continued

to carry out large-scale suspensions and involuntary transfers of judges and prosecutors. Legal and constitutional safeguards are needed to prevent the involuntary transfer of judges and prosecutors, except in cases of court restructuring. Since the coup attempt, a total of 4,399 judges and prosecutors have been suspended, 454 of whom were reinstated by the CJP. There are currently more than 4,000 judges and prosecutors against whom legal action has been taken (dismissal or suspension). Judges and prosecutors in pre-trial detention have not been indicted for at least one year on average."³⁸

a. Rule of Law, Fundamental Human Rights and Fair Trial

129. The rule of law and fundamental human rights are the most fundamental building blocks of democratic societies. The rule of law implies the establishment of a system in which no one is above the law and rules and in which the law is universally and fairly applied equally to all. It also means the limitation of state authority and the independence of the judicial system. Fundamental human rights, on the other hand, refer to the inherent rights of every individual, which must never be violated. Rights such as freedom of expression, fair trial, right to life, freedom of assembly and association, freedom from torture and ill treatment must be guaranteed for all. The rule of law and fundamental human rights are indispensable for democracy and the protection of human rights, and respect for these principles is essential for the administration of justice and the protection of freedom.
130. In Turkey, the view of human rights and the rule of law began to change in 2014 and almost all fundamental rights were suspended with the declaration of the State of Emergency in 2016. The State of Emergency period was continued for two years in violation of the Constitution, despite the disappearance of the stated grounds, and during this period, dozens of State of Emergency laws were enacted unrelated to the declaration of the State of Emergency and the threats alleged to exist, and people were deprived of their most fundamental rights, especially freedom of expression. Those who opposed this policy were punished by the judiciary, which was turned into an institution of politics,

³⁸ https://www.ab.gov.tr/siteimages/pub/komisyon_ulke_raporlari/2018_turkiye_raporu_tr.pdf

with arguments such as prolonged and unjustified detention, presumption of guilt, deprivation of the right to a fair trial and an effective domestic remedy. With the judiciary completely under the control of the political power and especially within the scope of terrorist investigations and prosecutions initiated against certain groups and opponents, which emerged with political will, the rule of law and human rights have been completely violated and the same attitude is still being maintained.

131. When the judiciary in the country started to deviate from the line of justice and law, and the principle of separation of powers was destroyed by being connected to politics, people started to criticize this situation and speak in line with the law. However, statements, comments, news and social media posts made against both this order that was tried to be established by the judiciary and the political power were harshly punished and people were not allowed to voice their opinions on this issue. Especially taking advantage of the State of Emergency declared in 2016, many journalists, commentators and dissidents were either arrested or punished by being detained for long periods of time. Events have reached such a level that even children as young as 18 years old have been detained and arrested for criticizing the President on social media. Students who made a statement were detained by the police. With these attitudes and behaviours, the government has clearly stated that there is no freedom of expression in the country anymore.
132. The Council of Europe, which closely monitors this situation in the country, made the following statements in its report, which also assessed the legal situation in Turkey as a result of the research it conducted after the coup attempt in 2016 "There has been a serious deterioration in freedom of expression in Turkey. The authorities have taken further steps to restrict freedom of expression. Measures taken against media representatives, in particular in connection with the attempted coup, have raised concerns. In addition, measures taken under decree-laws issued under the state of emergency were extended to include dissenting views and pro-Kurdish organisations. After 15 July, the arrest of a large number of journalists is of concern. Prior to the 15 July coup attempt, the number of journalists in prison was 36, many of whom were charged with offences under the Anti-Terror Law. In the aftermath of the coup attempt, by the end of October, nearly 90

journalists had been arrested, many of them facing charges under Article 6 of the Anti-Terror Law, bringing the total number of detainees to more than 130..."³⁹

133. Again, the European Commission's Turkey Report published in 2022 included the following statements on the subject: "The human rights situation continued to deteriorate. Wide-ranging restrictions on the activities of journalists, writers, lawyers, academics, human rights defenders and critical voices continued to adversely affect their freedoms. The damage to fundamental rights caused by the state of emergency and related legislation adopted has not been rectified."
134. "...Turkey is still at an early stage of compliance in the area of freedom of expression and the serious backsliding observed in recent years has continued..... Criminal cases and convictions against journalists, human rights defenders, lawyers, writers, opposition politicians, students, artists and social media users continued."
135. In its 2014 report on Turkey, Human Rights Watch made the following statements regarding freedom of expression and the rule of law "Turkey is experiencing an alarming decline in human rights. The ruling Justice and Development Party (AKP), which has been in office for twelve years under the leadership of Recep Tayyip Erdoğan, who was elected president in August 2014, has shown increasing intolerance of political opposition, public protests and critical media. Over the past nine months, the AKP government has sought to limit the independence of the judiciary and weaken the rule of law in an attempt to suppress corruption investigations. The erosion of human rights through restrictions on media freedom, suppression of protests and a further loss of confidence in Turkey's politicised criminal justice system has deepened political polarisation in the country."⁴⁰
136. After the intervention of individuals, interventions in institutions have also started, especially during the State of Emergency period, many newspapers, magazines, foundations, associations, NGOs have been closed down without any justification, their

³⁹ https://www.ab.gov.tr/files/pub/2016_ilerleme_raporu_tr.pdf

⁴⁰ <https://www.hrw.org/tr/world-report/2014/country-chapters/260002>

employees have been dismissed, or they have been silenced by imposing large fines. All efforts were made to prevent people from voicing the unlawfulness, from criticising the government by remaining silent, and to prevent this situation from affecting the public. However, these actions were not limited to these. During and after the state of emergency, people started to be ill-treated and even tortured while in detention. There were people who were not heard from for a long time. During the detention period, which was increased to 28 days during the SoE, many people were banned from seeing their lawyers and were prevented from receiving legal assistance. Many of the files have been confidentialized and people have been sent to prison without even knowing what evidence they are accused of.

137. Although these incidents can be voiced very weakly in the country due to judicial pressure, everything has been clearly expressed in international public opinion and international reports. In the European Commission's 2016 report on Turkey, the following points were mentioned: "The government continued to take over media organisations. Trustees changed the editorial policy of these organisations and many journalists were dismissed. One of these media groups was closed five months after the appointment of trustees. Following the coup attempt, the government issued decrees ordering the closure of TV channels and radio stations, mainly for alleged links to the Gülen movement. However, the closure and suspension orders were extended to several Kurdish-language channels, an Alevi channel and some opposition channels. By the end of October, 46 television channels and radio stations, five news agencies, 55 newspapers and 18 magazines had been closed down, arrest warrants issued for around 90 journalists, access to more than 20 news websites blocked and the licences of 29 printing houses cancelled. Among these, 23 out of 39 Kurdish-language television and radio channels and several Kurdish-language newspapers were closed down. The proportionality of these restrictive measures, including during periods of state of emergency, and their compliance with international standards are questionable... "
138. On a similar issue, the European Commission, in its 2019 report on Turkey, stated. "After two years of rapid human rights deterioration, the state of emergency in Turkey finally

ended on 18 July 2018. However, no concrete steps have been taken to improve human rights in the country since then. In contrast, many of the measures introduced during the state of emergency are still in force and continue to have a serious and devastating impact on Turkish citizens. ... Serious backsliding continued in the areas of freedom of expression, freedom of assembly, freedom of association, procedural rights and property rights. Far-reaching restrictions on the activities of journalists, academics, human rights defenders and critical voices adversely affect the exercise of these freedoms, leading to self-censorship. Legislation introduced immediately after the lifting of the state of emergency removed important safeguards protecting detainees from ill-treatment, increasing the risk of impunity for those who commit ill-treatment. The implementation of rights is hampered by the fragmentation and limited independence of public institutions responsible for the protection of human rights and freedoms and the lack of independence of the judiciary."

139. Dunja Mijatović, the Council of Europe Commissioner for Human Rights, stated in her 2019 report on Turkey that "considers that the measures taken by the authorities following the state of emergency have had devastating consequences for the independence and impartiality of the judiciary and threaten the rule of law and human rights in Turkey. Numerous long-standing problems, such as the abuse of detention, have been exacerbated and exacerbated by new shortcomings. It is concerned that the Turkish judiciary has shown an unprecedented disregard for even the most basic principles of law, such as the presumption of innocence, no punishment without guilt and the nonretroactivity of offences, particularly in terrorism-related cases."

b. Threats to Judicial Independence

140. Judicial independence refers to the principle that judicial bodies, in particular courts, should deliver justice independently of political influence, external pressures and other factors. In a country where judges and prosecutors are appointed solely on the basis of merit, where they are able to make decisions based solely on evidence and their conscientious convictions within the framework of laws and international norms, where

they are free from any fear, pressure or fear of criminal sanctions due to their decisions, where the decisions rendered and finalised are implemented without exception, and where all these conditions are guaranteed by the Constitution, which is the highest norm, we can speak of judicial independence. In addition to these, for an independent judiciary, judges and prosecutors should not be in an administrative hierarchical order. In other words, it means that they should not have a hierarchical order in which they are supervised by their superiors or subordinates, far from the mentality of civil servants related to their duties. They should also not be present in the hierarchical order. In other words, they should not have a hierarchical order in which they are supervised by their superiors or subordinates, far from the mentality of civil servants. The only supervision for judges and prosecutors is personal offenses other than the re-examination of the decisions rendered by the higher judiciary upon objection or appeal.

141. Unfortunately, the judiciary has never been fully independent in Turkey. However, an improvement process that started with the EU harmonisation process in the 2000s was brought to such a high level after many years with the changes in the structures of the HSYK and the Constitutional Courts with the Constitutional referendum in 2010. However, even in this period, the fact that the Minister of Justice and the Undersecretary of Justice are natural members of the HSYK has injured the independence of the judiciary and put it under the threat of political influence. But unfortunately, even this situation did not last long, and in just a few years, the downward trend started. The efforts of politics to design the judiciary for its own interests first started in 2014 and are still continuing. Medel's 2017 assessment of the Turkish judiciary on the subject reads as follows: "The assessment of the state of the justice system in Turkey makes it clear that the independence of the judiciary has been abolished. It is urgent to return to the rule of law and restore the fundamental rights of the Turkish people from which they have been deprived."⁴¹

⁴¹ <https://medelnet.eu/>

142. The steps that have destroyed the independence of the judiciary in Turkey in the last 10 years can be listed as follows:
- The change in the members of the First Chamber of the HSYK and the new chamber's changes in the place of duty, authorisation and title of many judges and prosecutors.
 - Establishment of criminal judgeships of peace, and the creation of a closed-circuit and unregulated system in which objections are heard by another criminal judge of peace, not by a higher court.
 - Establishment of the JBD for the new HSYK elections, organisation of an unfair election with political support by designing judges and prosecutors according to their political views, and as a natural consequence of this, the newly elected HSYK will be politically dependent.
 - Despite their constitutional guarantees, judges and prosecutors were dismissed and arrested without any evidence and without following any procedure and law, under the pretext of the State of Emergency.
 - Redesigning the high judiciary, stripping it of its independence and giving its control to the politically-orientated HSK and appointing new members without considering merit in order to ensure the majority.
 - Changes in the exams for the recruitment of judges and prosecutors, reducing the effect of the success scores in the appointment, making the interview effective and making changes in the structure of the Justice Academy where the appointed judge and prosecutor candidates are trained.
 - Complete abolition of HSYK elections and the appointment of members by the President and political parties.
 - Changing the structure of the Constitutional Court.
143. With these steps, starting from the appointment of judges and prosecutors, from the very beginning of an investigation, including the individual application to the Constitutional Court of a decision that will be finalised after the Court of Cassation, a study has been

carried out on all stages, independence has been prevented in every situation and condition, and the judiciary has been tied to the political power in every aspect, and it has become an institution of the executive branch instead of being a power. This situation is now known to everyone all over the world and these developments are clearly reflected in the reports of many authorised institutions, especially the EU and the UN.

144. In the EU Commission's 2022 report on Turkey, the following criticisms were made under the heading of judicial independence "Judges and prosecutors continued to be selected and recruited through a non-transparent process. The control of the Ministry of Justice over the boards selecting new judges and prosecutors continued. The Council of Judges and Prosecutors (CJP) has no role in the selection boards as the Minister of Justice manages the process. The CJP also conducts annual evaluations of judges and prosecutors. The law exam introduced in October 2019 for prospective judges, lawyers or notaries has not yet been held. In the EU Commission's 2022 report on Turkey, the following criticisms were made under the heading of judicial independence "Judges and prosecutors continued to be selected and recruited through a non-transparent process. The Ministry of Justice maintained control over the boards selecting new judges and prosecutors. The Council of Judges and Prosecutors (CJP) has no role in the selection boards as the Minister of Justice manages the process. The CJP also conducts annual evaluations of judges and prosecutors. The law exam introduced in October 2009 for prospective judges, lawyers or notaries has not yet been held..... Pre-service training and in-service training of prospective judges and prosecutors continued to be provided by the Turkish Justice Academy, whose lack of independence remains a matter of concern. Although the independence of the Academy is regulated by law, its management is entrusted to the president appointed by the President. The Academy's lack of independence affects its capacity to organize training programs that meet the requirements of openness, competence and impartiality. The European Judicial Training Network suspended the Academy's observer status from 2017."⁴²

⁴² https://www.ab.gov.tr/siteimages/birimler/kpb/2022_turkiye_report_tr_27.11.2022_22.05.pdf

145. Writing about Turkey in 2017, Simone Gaboriau, a French former judge, said: "The arrest and dismissal of judges, clearly unrelated to the uprising of a section of the military, reveals the executive's desire to accelerate and complete the process of the takeover of justice that has been underway in Turkey for several years."
146. Again, in the EU Commission's 2016 report on Turkey, this issue was addressed and the following statements were made "During the reporting period, strong political pressure on judges and prosecutors continued. Representatives of the executive and legislative branches made a habit of commenting on pending cases, inter alia by questioning decisions taken by the Constitutional Court. The HSYK continued with large-scale suspensions and involuntary transfers of judges and prosecutors and dismissed 13 judges and prosecutors in early July. In response to direct criticism from the executive, the HCJP initiated a series of cases against judges and prosecutors who had presided over high profile trials. Such decisions, in particular those against judges and prosecutors involved in these cases, have raised suspicions that the HCJP is interfering in their judicial functions. Self-censorship appears to have become widespread among judges and prosecutors, who believe that decisions contradicting the interests of the executive may adversely affect their careers. Further safeguards should be provided to prevent the HSYK from interfering in judicial proceedings. Legal and constitutional safeguards are still needed to prevent the involuntary transfer of judges and prosecutors, except in cases of court restructuring...
147. ...The changes in the Supreme Judiciary have undermined the principle that judges should not be replaced against their will, as well as the independence of the judiciary and legal certainty. The changes are not in line with European standards, in particular with regard to the situation of the members of the Court of Cassation and the Council of State whose term of office has expired, the timing of the selection of new members for both institutions and the role of the President of the Republic in this selection process. The sweeping changes to the Court of Cassation and the Council of State are of serious concern as they reinforce the perception that the higher courts have become instruments of the executive."

148. In its 2020 report on Turkey, the Council of Europe Commissioner for Human Rights made the following statements on the independence of the judiciary "Turkey's judicial system is at a preparatory stage. Since 2016, the serious deterioration observed continued during the reporting period. In particular, concerns persisted about the systematic lack of independence of the judiciary and excessive pressure on judges and prosecutors. Concerns about the judiciary's adherence to international and European standards increased, in particular in connection with the refusal to implement judgements of the European Court of Human Rights. Implementation of the 2021 human rights action plan and the 2019 judicial reform strategy continued. However, both documents failed to address significant shortcomings in the Turkish judiciary and there were no plans for significant improvements in the overall functioning of the country's judicial system. Only 515 of the judges or prosecutors dismissed after the coup attempt were reinstated, many of whom were acquitted. The lack of objective, merit-based, standardised and predetermined criteria for the recruitment and promotion of judges and prosecutors remains a matter of concern."⁴³

V. OPINIONS AND ANALYSES OF INTERNATIONAL AUTHORITIES

A. General Evaluation of the International Reports Analysed

149. Turkey has a deep-rooted history and is a country that attracts attention with its geographical location and cultural diversity. However, since 2014, human rights violations in Turkey have become an important topic of discussion and evaluation at both national and international level. International organisations have published reports

⁴³ <https://rm.coe.int/avrupa-konseyyi-insan-haklari-komiseri-dunja-mijatovic-1-5-temmuz-2019-/16809c5187>

containing their assessments and recommendations on Turkey's human rights situation and democratic system.

150. The views and analyses of international authorities are of great importance. These opinions and analyses, based on both academic and applied research, provide a broad perspective, enabling diversity and differences to be taken into account. In this way, decisions can be made in a more fair, inclusive and effective manner. For this reason, the opinions and analyses of international authorities are considered a reliable source for societies.
151. In these reports, international organisations have expressed concern about civil liberties, freedom of the press and independence of the judiciary, particularly in recent years. Human rights defenders and international organisations criticised the events in Turkey and called for reforms.

a. Rule of Law and Judicial Independence

152. The rule of law and the independence of the judiciary are vital for ensuring justice in a country and fulfilling the basic principles of democracy. The principle of the rule of law states that all individuals are subject to the rule of law and that no one is above the law. This principle is necessary to ensure that all people are judged equally and their rights are protected. Judicial independence, on the other hand, is a principle that ensures that judicial bodies can make their decisions without being subject to political and external influences. An independent judicial system ensures justice by protecting values such as impartiality, fair trial and legal security.
153. The rule of law and judicial independence constitute the foundation of a democratic society. Adherence to these principles ensures legal security and the legality of the state and contributes to the protection of human rights. To summarise, the rule of law and judicial independence play a critical role in ensuring justice and establishing a democratic system in a country. Compliance with these principles ensures public confidence and ensures the effective application of the law.

154. The independence of the judiciary in Turkey is an area frequently criticised by international organisations. The basis for criticism is the lack of confidence in the rule of law, the presence of political influence in the judiciary and inadequacies in judicial reforms. After 2016, Turkey has been subject to frequent international criticism on issues related to judicial independence, the rule of law and the right to a fair trial. Changes and practices on the legal system in Turkey have attracted the attention of the international community and led to criticism.
155. Many international human rights organisations have expressed concern about the independence of the judiciary in Turkey, stating that the rule of law has been weakened. These criticisms are based on worrying instances of Turkish government interference in the judiciary, the dismissal of members of the judiciary and the influence of political authorities on judicial processes.
156. Various international organisations have stated that such interventions violate the right to a fair trial and undermine the rule of law.
157. Furthermore, the state of emergency declared after the attempted coup d'état in Turkey in 2016 has further undermined the right to a fair trial. Measures taken under the state of emergency led to the dismissal of hundreds of judges and prosecutors, the arrest of thousands of people and the closure of media outlets. International organisations and human rights defenders have sharply criticised this situation.
158. These developments in Turkey were closely followed by the international press and were frequently covered in the news.

b. Civil Society and Human Rights Defenders

159. Civil society organisations and human rights defenders have recently had to operate in an increasingly difficult environment in Turkey. The Ministry of Interior's controls on civil society organisations and restrictions on foreign funding have reduced the influence of civil society. This situation has been criticised and monitored by international organisations. The increasing repression of human rights defenders in Turkey is seen as a serious concern. Following the 2016 coup attempt, many human rights defenders and civil

society leaders were either arrested or detained. This situation prevents human rights defenders from continuing their independent work and suppresses their critical voices. The closure or suspension of some human rights organisations, particularly on antiterrorism grounds, has been criticised by the international community.

c. Counter Terrorism

160. Since 2016, Turkey has been the target of criticism by international organisations and the media on the fight against terrorism. The criticisms and reports cover Turkey's counterterrorism policies, approach to human rights and security measures. The criticisms generally cover issues such as Turkey's counter-terrorism methods, human rights violations, its approach to press freedom and the priority it gives to democratic values.
161. Turkey's preferred counter-terrorism strategies have been described by some human rights organisations as excessive use of force. Concerns were expressed about the erosion of democratic values and the weakening of the rule of law as counter-terrorism operations in Turkey increased. The limitation of democratic institutions has been the target of criticism, particularly during the state of emergency declared after the attempted coup in 2016.
162. International reactions to Turkey's counter-terrorism policies have led to debates on the international platform. Some countries and organisations called on Turkey to respect human rights and implement democratic reforms.
163. However, Turkey claims that it is conducting the fight against terrorism to ensure national security and that it is responding to these criticisms.

B. Recommendations of International Organisations

164. After 2016, international organisations have made recommendations to Turkey on fundamental rights and freedoms in different periods and on different issues. These recommendations generally cover issues such as human rights, freedom of expression, the right to assembly and association, and judicial independence. Below are the important recommendations of international organisations in their reports on Turkey.

a. Council of Europe

165. In its reports on Turkey, the Council of Europe makes recommendations on the principles of human rights, democracy and the rule of law. These recommendations are formulated in accordance with the principles of the European Court of Human Rights and other international human rights organisations. The following paragraph sets out some of the Council of Europe's specific recommendations to Turkey on the rule of law and the judicial process.
166. Fundamental rights, as laid down in the ECHR and related protocols, must be respected. Judicial authorities must be independent and free from political influence. Judicial authorities must be independent and immune from political influence. Judges must be protected against external pressure and interference. The appointment and promotion of judges should be transparent and objective. The right to a trial must be recognised equally for all. Trials must be open to all, conducted in an appropriate manner and within an acceptable time limit. The right of defence must be protected. The criminal justice system needs to be reformed and reorganised. In this way, arbitrary arrests can be prevented and detainees can be given a fair trial. Turkey needs to enhance respect for human rights and strengthen its democratic institutions. The Council of Europe emphasises the importance of balancing Turkey's counter-terrorism activities with human rights. It is important to ensure that counterterrorism laws and practices respect human rights.

b. United Nations Human Rights Council

167. The United Nations (UN) Human Rights Council is a body established to protect human rights worldwide. The Council is responsible for analysing and making recommendations on human rights violations in member states. The UN Human Rights Council has made several recommendations regarding the independence and impartiality of the judiciary in Turkey. The problems of judicial independence and impartiality in Turkey have become more pronounced, particularly following the attempted coup d'état in 2016. The government attempted to make fundamental changes to the judiciary in order to suppress the coup attempt. However, these changes have been recognised by the international

community as a threat to the independence and impartiality of the judiciary. The UN Human Rights Council has made a series of recommendations on the problems of judicial independence and impartiality in Turkey.

168. The Council accused the Turkish government of interfering in the judiciary and emphasised that the judiciary should be independent of political pressure. It warned that the appointment of judges and prosecutors in Turkey should be carried out in a transparent and impartial manner. It also stated that the appointment process should be free from political influence. It stated that politically motivated arrests are contrary to human rights and that due process of law must be respected. It emphasised that the right to a fair trial in Turkey must be protected and that arbitrary arrests must end.
169. In conclusion, the problems of judicial independence and impartiality in Turkey have been seriously addressed by the UN Human Rights Council and clarified in a series of recommendations. The implementation of these recommendations is critical to the protection of human rights and the strengthening of democratic institutions in Turkey. Turkey should take steps towards judicial independence and impartiality, taking into account the concerns of the international community.

c. Amnesty International

170. Amnesty International is an independent non-governmental organisation that defends human rights worldwide. Founded in 1961, this organisation works to draw attention to human rights violations and to end these violations. It informs the world public opinion by publishing reports on human rights in many countries including Turkey. Amnesty International has published several reports on judicial independence in Turkey and has made some important recommendations to the Turkish government. The organisation has called on the Turkish government to stop interfering in the judiciary. It emphasised that political interference must be prevented to ensure judicial independence. It demanded an end to the detention of journalists and other defenders of freedom of expression and the protection of freedom of expression. It emphasised the need for full respect for the principles of fair trials and monitored the compliance of judicial proceedings with the

principles of impartiality and fairness. It called on the Turkish government to support the work of civil society organisations and stressed the importance of civil society's role in documenting and informing the public about human rights violations. Amnesty International has raised concerns about the independence of the judiciary in Turkey and has made several recommendations to the Turkish government. These recommendations aim to take important steps to prevent human rights violations and ensure the independence of the judiciary. The international community is closely monitoring Turkey's compliance with these recommendations to strengthen respect for human rights and the rule of law.

d. Organisation for Security and Cooperation in Europe

171. The Organization for Security and Cooperation in Europe (OSCE) is present in member and partner countries in its role of promoting and monitoring democracy, human rights and the rule of law. Turkey is a member state of the OSCE. However, the OSCE has expressed concern about fundamental rights and freedoms in Turkey. The OSCE has expressed concern about the independence of the judiciary in Turkey and has made some important recommendations to the Turkish government. The OSCE recommended that the Turkish government end political interference in the judiciary and ensure the independence of the judiciary. This is a critical step to ensure that the judiciary operates based on the principle of impartiality. It demanded full respect for the principles of a fair trial in Turkey. It stressed respect for freedom of expression in Turkey and an end to the crackdown on journalists. The OSCE called on the Turkish government to support the human rights work of civil society organizations. It stressed the importance of the role of civil society in documenting human rights violations and informing the public.
172. OSCE recommendations to Turkey on judicial independence play an important role in protecting human rights and strengthening democratic principles. Turkey's steps to follow these recommendations to strengthen the independence of the judiciary, act in line with democratic norms and protect human rights are closely monitored. The OSCE's

recommendations can help Turkey to pursue a more just and democratic path on human rights and the rule of law.

CONCLUSION and RECOMMENDATIONS

As can be seen, in all of the analysed reports, it is emphasised that the lack of full independence of the Council of Judges and Prosecutors in Turkey and the manner in which its members are elected have a significant impact on the political power to put the judiciary under pressure. Moreover, making the CJP a fully independent body and subordinating the inspectors to the CJP are considered as the first and most important step to be taken in order to ensure the independence of the judiciary. These reports also underlined that it is not possible to talk about the independence of the judiciary and, as the most important consequence of this, the rule of law in a country where judges fear that they will be penalised by the political power for their decisions.

As emphasised in the European Commission report, steps should be taken urgently to ensure the independence of the judiciary, including by preventing frequent transfers of judges, providing geographical guarantees for judges and prosecutors, reviewing the system of discipline and promotion of judges and prosecutors and introducing an improved inspection system based on objective criteria.

According to the reports of the European Commission in particular, as partially mentioned above, the steps to be taken to ensure the independence and impartiality of the judiciary are more or less clear. According to the report of the European Commission;

Create a political and legal environment enabling the judiciary to perform its tasks independently and impartially in compliance with European standards; strengthen the judicial responsibilities of the executive and the legislature, provided that the principle of separation of powers is fully respected; and ensure that the decisions of the Constitutional Court, which must rule in accordance with the case law of the ECtHR, are respected by the lower courts.

The structure of the Council of Judges and Prosecutors and the selection process for its members should be changed to limit the role and influence of the executive and safeguards should be introduced against interference by the CJP or senior officials in judicial proceedings.

Provide effective safeguards to ensure that judges are not replaced without their consent.

In line with the independence of the judiciary guaranteed under the Constitution, measures must be taken to limit the suspension of judges to cases where there is a well-founded suspicion of serious misconduct and to compensate for the damage caused by dismissals in breach of procedural safeguards.

The system of disciplinary proceedings must be revised to be based on objective criteria without undue interference by the executive.

With regard to administrative and judicial measures taken against individuals, it must be ensured that allegations of misconduct or criminal offenses are subject to due process of law, based on concrete evidence and fully transparent procedures within the scope of an independent judiciary.

All judicial proceedings must ensure full respect for fundamental rights, including procedural safeguards, in particular the presumption of innocence, individual criminal responsibility, legal certainty, the right to a defense, the right to a fair trial, equality of arms and the right to effective appeal.

14.03. 2019 dated 14.03.2019 and numbered 30714 in the Official Gazette; In the "Declaration on Turkish Judicial Ethics" adopted by the General Assembly of Judges and Prosecutors on March 6, 2019; "Judges and public prosecutors are 'judges, intellectuals, observers, observers, sure, sure, mekîn, mekîn and metîn' who, while fulfilling their duties, make sure that justice is distributed in the most sensitive and correct way, act in a professionally responsible manner, are aware that they will affect human and social life in all their actions, decisions and behaviors, and that the protection of their reputation in the eyes of the society will also raise the reputation of the Turkish judiciary. Within the framework of the authority they receive from the Constitution and laws, they carry out their duties independently and impartially by adopting universal values as their motto with their free conscience. They sincerely embrace the ethical principles set forth in this declaration and pledge on their honor and conscience to act in line with these principles in both their professional and social lives."⁴⁴ However, it is not possible to say that

⁴⁴ <https://www.resmigazete.gov.tr/eskiler/2019/03/20190314-4.pdf>

these principles and criteria have been reflected in practice so far, considering the current judgments and decisions.

In order to restore confidence in the judiciary, it is obvious that improvement works should be started urgently, taking into consideration the recommendations and solutions offered by international organisations and non-governmental organisations working in this field.

SOURCE

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