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Judicial Independence and Impartiality in Türkiye

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EXECUTIVE SUMMARY

This shadow report addresses the ongoing issue of judicial independence in Turkey, focusing particularly on the process of losing judicial independence and impartiality, which began after the 17/25 December Investigations and escalated following July 15, 2016. It emphasizes that Turkey is not complying with its international human rights obligations, especially those under the International Covenant on Civil and Political Rights (ICCPR) and other relevant international documents. Despite repeated calls by international bodies, including the United Nations Human Rights Committee (HRC) and the European Court of Human Rights (ECtHR), Judicial Independence in Turkey remains the most fundamental problem.

The report begins by presenting concrete examples of how the independence of the judiciary was lost in the period starting with the December 17/25 investigations until July 15, 2016 and beyond. The role of the organization that played the most important role in the process of bringing the judiciary under the control of the political power after the 17/25 December investigations, previously known as the Platform for Judicial Unity and later as the Association of Judicial Unity, is revealed with numerical data.

The United Nations Human Rights Committee (UNHRC) will hold its 142nd session in Geneva from October 14 to November 8, 2024 and will conduct its second periodic review of Turkey.

The report also critically analyzes Turkey's Second Periodic Report to the Human Rights Committee, drawing attention to significant inaccuracies and misrepresentations. Underlining Turkey's lack of genuine engagement with international monitoring mechanisms, the report points out that responses to questions from international bodies are often cursory and lacking in substance. The report also reveals that Turkey has taken no serious steps to realize the independence of the judiciary, despite repeated recommendations by international bodies.

In particular, the report provides examples of how the judiciary, having lost its independence, has been used to design politics and restrict freedom of expression, especially following the increasing number of European Court of Human Rights and UN rulings in recent years, which Türkiye has avoided implementing. By illustrating these points, the report offers concrete responses to the Turkish government's false statements in international presentations. It emphasizes the urgent need for Türkiye to lift the political pressure on the judiciary and carry out reforms to achieve judicial independence and impartiality.

The methodology adopted in this report includes a comprehensive review of both international and national legal frameworks. Within this framework, Turkey's obligations under the ICCPR and relevant European human rights instruments are analyzed. In addition, the report provides concrete examples of what exactly corresponds to Judicial Independence in Turkey.

The report concludes by emphasizing the need for stronger international scrutiny of Turkey's actions and calling on the Turkish government to take meaningful steps to bring its practices in line with international standards.

1. Section : Taking December 17/25, 2013 investigations as a milestone in the process of eliminating judicial independence and impartiality in Turkey

1- The Government officially denies the allegations of lack of independence and impartiality of the judiciary, stating that the structure of the High Council of Judges and Prosecutors (HSK) is organized in a way that aims to ensure the independence and impartiality of the judiciary, that judges and prosecutors who were dismissed from their jobs after 15 July 2016 had files related to complaints before 15 July 2016, so that investigations were not initiated against them overnight, and that suspensions were carried out quickly in this way.

2 - The steps that 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 change of duty, authority and title for many judges and prosecutors.
- Establishment of criminal judgeships of peace, creating a closed-circuit and unregulated system in which objections are heard not by a higher court but by another criminal judge of peace.
- The establishment of the Association for the Unity of the Judiciary (YBD) for the elections of the new HSYK led to the natural consequence that the newly elected HSYK became politically dependent.
- Despite their constitutional guarantees, judges and prosecutors were dismissed and arrested without any evidence and without following any procedure or law, under the pretext of the State of Emergency.
- Redesigning the high judiciary, stripping them of their independence and giving control to the politically-oriented HSK and appointing new members without regard to merit in order to ensure majority.
- Changes in the exams for the recruitment of judges and prosecutors, reducing the effect of success scores in appointment, making the interview more effective and changing 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 Court¹.

3- During the 17/25 December investigations, the stance of the Minister of Justice, who also served as the President of the Council of Judges and Prosecutors (HSK), was significant in terms of its impact on judicial independence. On December 18, 2013, while the investigation was ongoing, the Minister of Justice, who held the title of President of the Council of Judges and Prosecutors, openly began to interfere in the judicial process. As part of this interference, the first step was to claim that the investigation was extensive and, as a result, add new prosecutors to the team, increasing the number of prosecutors involved in the investigation. This move led to the investigation being transferred from the prosecutors originally handling it to others who could be influenced and directed by the government. However, the prosecutor handling the case had not expressed any complaints about the scope of the investigation or any difficulties in managing it, nor had he reported such concerns to the chief prosecutor in the same judicial department.

¹ <https://www.crossborderjurists.org/turkish-judiciary-in-the-international-arena-reports-after-17-25-december-investigations-report-published/>

4- On December 25, 2013, upon the start of a second investigation, Minister of Justice Sadullah Ergin was dismissed and Bekir Bozdağ was appointed Minister of Justice at the request of the Prime Minister in order to control the prosecutors leading the investigation process. On December 26, 2013, upon the expansion of the corruption investigation, the investigating prosecutor was dismissed on the instructions of Bekir Bozdağ, who is also the Minister of Justice and the President of the High Council of Judges and Prosecutors (HSYK).

5- In order to prevent ongoing investigations, the High Council of Judges and Prosecutors, which has the sole authority to appoint, authorise and discipline judges and prosecutors and whose independence is guaranteed by the Constitution, has become an open target of the government. In this context, on 7 January 2014, the government amended the HSK Law with Law No. 6524², despite the opposition's absence from the commission work and significant criticism. Although it is clearly contrary to the Constitution, it was enacted into law.

6- With this amendment, all secretariat employees, except for the members, were dismissed and the Ministry was granted significant powers to make 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 which departments the members of the HSK would work in, the amendment paves the way for the Minister of Justice to decide. The Secretary General of the HSK and approximately 600 judges, prosecutors and employees working at the HSK and the Justice Academy were dismissed. The HSK Inspection Board has been subordinated to the Minister of Justice and the Chairman and Deputy Chairman of the Inspection Board have been appointed by the Minister of Justice.

7- The main opposition Republican People's Party took these amendments to the Constitutional Court. There was a fundamental problem: even if the Constitutional Court decided to annul the law after it had been published and enacted, annulment decisions are not retroactive. For this reason, the CHP applied to the Constitutional Court for an injunction. Under pressure from the political power, the Constitutional Court rejected the request for an injunction. On 11 April 2014, the AYM annulled the amendment on the grounds that it was unconstitutional. As the political power had already made the changes it wanted in the meantime, the annulment did not prevent the country from ceasing to be a state of law, as the annulment decision did not apply retroactively.

8- 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 follows³ :

9- "Nils Muiznieks, Commissioner for Human Rights at the Council of Europe, of which Turkey is a founding member, said the proposed law on the High Council of Judges and Prosecutors (HSK) is a serious obstacle to 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 Judges and Prosecutors is a serious obstacle to judicial independence in Turkey."

10- "EU Commissioner for Enlargement, Stefan Füle, stated: 'While making arrangements regarding the HSK, Türkiye must adhere to EU acquis... I told Çavuşoğlu that any new arrangement related to the HSK must be in line with the Copenhagen political criteria, and I asked him to convey this message to Ankara. I also emphasized that the investigation into

² <https://www.resmigazete.gov.tr/eskiler/2014/02/20140227M1-1.htm>

³ <https://www.hurriyet.com.tr/dunya/hsyk-yasa-degisikligine-avrupa-konseyinden-teпки-25526033>

corruption allegations must be conducted independently and impartially.' The Venice Commission, in its declaration dated June 20, 2015, noted: 'On February 15, 2014, the HSK Law was amended in a way that strengthened the powers of the Minister of Justice within the High Council. This step has reversed the positive achievements of the reform carried out following the 2010 referendum'⁴.

2. Section : The Role of the Association of Judicial Unity (YBD) in the process of eliminating judicial independence and impartiality in Turkey

11- The Association of Judicial Unity is a government-organized non-governmental organization (GONGO⁵), that is, it is not an organization independent from the state. It would be appropriate to explain this point with concrete data. The YBD emerged under the name of the Platform for Judicial Unity (YBP) under the coordination of the government prior to the HSK elections held in October 2014. The then Minister of Justice Bekir Bozdağ stated in front of cameras in public places that they had founded the YBD⁶. Birol Erdem, the former Undersecretary of the Ministry of Justice, stated clearly and unequivocally that the YBD was established on the initiative of the government. Birol Erdem's statements are included in detail in the court minutes. Birol Erdem clearly and explicitly explained how the decision to establish the YBP/YBD was taken, how the candidates were selected, when and where the meetings were held, which politicians were met and when and where⁷. President Erdoğan and the AKP mobilized all means for the YBP/YBD to win the election for the HSK. Fahri Kasırga, then Secretary General of the Presidency, and Kenan İpek, former Undersecretary to the Minister of Justice, personally visited courthouses and made election propaganda⁸. Among the candidates of the YBD are Deputy Undersecretaries of the Minister of Justice. The report published by Crossborder Jurists in December 2023 titled "Shadow over the Turkish Judiciary: Association of Judicial Unity" published by Crossborder Jurists in December 2023 provides detailed information on this issue. According to the report, as of December 2023, 18 out of 21 senior executives working in the Ministry of Justice are members of the YBD. 7 out of 8 members of the HSK, who come from the judiciary, are members of the YBD⁹. Due to its relationship with the government, the YBD has not been able to become a member of any international judicial organization¹⁰. All these data clearly demonstrate that YBD is not an NGO but a GONGO. Further information on YBD's relations with the government will be provided in the following sections.

12- To fully understand what the Platform for Judicial Unity (YBP) represented¹¹, it is important to look at the meeting with Ahmet Davutoğlu, who was the Prime Minister at the

⁴ <http://www.hurriyet.com.tr/dunya/25573679.asp>

⁵ https://en.wikipedia.org/wiki/Government-organized_non-governmental_organization

⁶ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/>, <https://www.odatv4.com/guncel/bekir-bozdag-odatvye-konustu-benimle-calisan-insanlardan-bir-tanesi-bile-boyle-soylerse-170170> (A. D. 07.09.2024).

⁷ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (ET: 07.09.2024)

⁸ <https://www.cagaskocaeli.com.tr/haber/4604763/kasirga-adliyeyi-ziyaret-etti> (A. D. 07.09.2024).

⁹ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (ET: 07.09.2024)

¹⁰ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (ET: 07.09.2024)

¹¹ The Union of Judges and Prosecutors (YARSAV) participated in the same election with its own list or independent candidates. No meeting has been held between the Government/Ministry of Justice

time. In his statement, Ahmet Davutoğlu provided important details about which ideologies, political groups, and belief systems supported the YBP¹².

12- The YBP, which began its activities with secret meetings under the coordination of the Ministry of Justice, held its first large-scale meeting in Konya on April 19, 2014. The meeting, attended by nearly 300 judges and prosecutors, was covered in the press with the headline "*New alliance in the judiciary against the Gulen Movement*". Deputy Undersecretaries of the Ministry of Justice Selahaddin Menteş and Basri Bağcı and many bureaucrats from the General Secretariat of the HSK, which was reshaped after December 17-25 by the government's intervention, also attended the meeting¹³.

13- Mahir Ünal, then AKP Parliamentary Group Deputy Chairman Mahir Ünal, said in a statement (26.09.2014) prior to the HSK elections that if the government-backed Platform for Judicial Unity loses in the HSK elections, they will not recognize the result¹⁴.

14- Against all government pressure and intimidation, three groups of candidates entered the election, as in the 2010 election. These are the YBP list supported by Erdoğan and the AKP, the list of YARSAV and the individual participation of independent candidates. Erdoğan's tactics of "demonization", "witchification" and discriminatory style, which he has used in all elections, were also evident in this election. This election, like the previous one, was fought between the group supported by the Erdoğan government, "those who love their homeland, state and nation(!)" and the independent candidates and YARSAV candidates who were declared as "members of the parallel structure and traitors(!)".#

15- The pressure and intimidation policy of Erdoğan, AKP and YBP had the greatest impact on independent candidates and their supporters. Comparing the 2010 and 2014 HSK elections, the pressure on judges and prosecutors is clearly visible¹⁵.

16- As a result, in the HSK elections held on 12.10.2014, most of the candidates of the YBP supported by the government won the elections¹⁶.

17- It is interesting that the number of judges and prosecutors dismissed immediately after the July 15 coup attempt is approximately equal to the average number of votes received by independent candidates. Both during the election process and afterward, YBP members were heavily involved in preparing purge lists. In this context, these efforts were coordinated by a special team within the Ministry of Justice and the HSK, and the lists were finalized. The data from these lists were used as the basis for appointments, promotions, and assignments.

18- Erdoğan and his government's takeover of the judiciary has proceeded in two directions. One is the intimidation, pacification and liquidation of those who are undesirable, dissenting or disobedient; the other is the promotion of those who are obedient and obedient to important positions. The HSK, under the control of the YBD, has fulfilled both tasks in a reckless manner, disregarding the law and the applicable legislation¹⁷.

¹² <https://m.haberturk.com/gundem/haber/986597-paralel-yapi-da-degerlendirildi> (E.T.: 2.12.2023).

¹³ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (ET: 07.09.2024)

¹⁴ <https://www.cumhuriyet.com.tr/haber/akp-demokrasisi-kazanirsak-mesru-kaybederse-gayrimesru-123637> (E.T.: 28.11.2023).

¹⁵ <https://www.ysk.gov.tr/doc/dosyalar/docs/2010HSK/KesinSecimSonuc/AdliKesinSonuc.pdf> (A. D. 07.09.2024)

¹⁶ <https://www.cumhuriyet.com.tr/haber/yargi-da-akpye-baglandi-129695> (A. D. 07.09.2024).

¹⁷ <https://humanriHHts-ev.com/wp-content/uploads/2019/08/Ceza-Mahkemeleri-Bagimsizlik-ve-Tarafsizlik-Report.pdf> (A. D. 07.09.2024).

19- As emphasized in many international reports, and in particular in the EU Commission's reports on Turkey, the YBD has fully subordinated the Turkish judiciary to the executive¹⁸.

20- As soon as it took office in October 2014, the HSK, under the leadership of the YBD, started to intimidate its opponents. His first act was to reassign members of the HSK who served in the previous term to inactive positions¹⁹.

21- The second practice of the HSK under the control of the YBD was to issue a decree on the candidates nominated from the YARSAV list and independent candidates in the HSK elections and to change the positions of these judges and prosecutors. However, this practice was extremely ruthless and untimely. In Turkey, until that day, decrees appointing judges and prosecutors were issued by the HSK in June. In September or October, those with excuses such as marriage or illness would be transferred upon their own request. The YBD changed this practice arbitrarily for the purpose of mobbing judges and prosecutors whom it considered to be its opponents.

22- Although it was not a normal decree period, a total of 1064 judges and prosecutors, who did not request to be reassigned and whose legal term of office had not expired, were reassigned by serial decrees published on 27.11.2014²⁰ , 28.11.2014²¹ , 18.12.2014²² , 15.01.2015²³ and 05.03.2015 .²⁴

23- 2401 judges and prosecutors were appointed by the Decree No. 2015/943 dated 12.06.2015²⁵ of the 1st Chamber of the HSK for the Civil and Criminal Judiciary and 265 administrative judges were appointed by the Decree No. 2015/944 of the same date for the Administrative Judiciary.

¹⁸ See Title "International Reactions to the YBD"

¹⁹ <https://www.hsk.gov.tr/h-kimler-ve-savcilar-kurulu-eski-uyelerinin-yargitay-uyeligine-secilmelerine-iliskin-announcement> (A. D. 07.09.2024).

²⁰ With the Decree No. 2710 dated 27.11.2014 and numbered 2710 of the Judicial Judiciary Decree of the 1st Chamber of the HSK the requests of 74 judges and prosecutors and 7 administrative judges by the Administrative Judiciary Decree No. 2711 of the same date outside of the country. With this decree, candidates who ran for the CJP elections on October 12, 2014 but did not win. However, the candidates who received the highest number of votes were reassigned to other provinces without their request and before the end of their term of office.

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/594_hakimler-ve-savcilar-yuksek-kurulu-birinci-dairesinin-27112014-tarihli-kararnamesi.aspx (A. D. 07.09.2024).

²¹ With the Decree No. 2714 dated 28.11.2014 and numbered 2714 of the 1st Chamber of the HCJ for the Judicial Judiciary, the Ministry and the Constitutional Two judges from the Court were appointed.

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/595_hakimler-ve-savcilar-yuksek-kurulu-birinci-dairesinin-28112014-tarihli-kararnamesi.aspx (A. D. 07.09.2024).

²² With the Decree No. 2805 dated 18.12.2014 and numbered 2805 of the 1st Chamber of the HCJ Judicial Judiciary, 66 judges assigned to the Court of Cassation They were transferred against their will.

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/603_hakimler-ve-savcilar-yuksek-kurulu-birinci-dairesinin-18122014-tarih-ve-2805-sayili-kararnamesine-iliskin-duyuru.aspx (A. D. 07.09.2024).

²³ The Decree of the 1st Chamber of the HCJ dated 15.01.2015 and numbered 2015/24 on the Judicial Judiciary was issued for 784 judges and prosecutors, and on the same date With the Administrative Judiciary Decree No. 2015/25, 104 administrative judges were appointed.

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/614_hakimler-ve-savcilar-yuksek-kurulu-birinci-dairesinin-15012015-tarih-ve-20152425-sayili-adl%C3%AE-ve-idar%C3%AE-yargi-kararnamelerine-iliskin-duyuru.aspx (A. D. 07.09.2024).

²⁴ With the Administrative Judiciary Decree No. 382 dated 05.03.2015 and numbered 382 of the 1st Chamber of the HSK, the Ministry of Justice and the Constitutional Court 2 administrative judges assigned to the Court were appointed against his request.

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/632_hakimler-ve-savcilar-yuksek-kurulu-birinci-dairesinin-05032015-tarihli-ve-382-sayili-idar%C3%AE-yargi-kararnamesi.aspx (A. D. 07.09.2024).

²⁵ https://www.hsk.gov.tr/Kararnameler/DuyuruOku/668_2015-yili-adli-ve-idari-yargi-ana-kararnamesi.aspx (A. D. 07.09.2024).

24- It was explicitly stated in the Constitutional Court's decision dated 26.07.2017 with the individual application number 2016/49158 that arbitrary appointment decrees were made based on profiling lists²⁶. However, prior to July 15, 2016, there is no official statement that any judge and prosecutor was reassigned or reassigned due to their (alleged) FETÖ/PDY connection or affiliation. The Constitutional Court decision confirms that these decrees were made according to unlawfully created lists.

25- To date (December 2023), the HSK, under the direction of the YBD, has dismissed 4398 judges and prosecutors from their jobs on charges of "membership in a terrorist organization"²⁷.

26- As the Council of Europe and European Union officials have stated, not all of these individuals were named overnight. From the beginning of 2014 onwards, the YBP (YBD) carried out preparatory work in an intensive plan, systematically and in an organized manner, under the control of a central unit, and prepared "profiling" files on every judge and prosecutor in the judiciary. After 15 July, dismissals were carried out according to these pre-established lists.

3. Section : Plotting activities in the judiciary by the Association of Judicial Unity

27- Following the coup attempt on July 15, 2016, in the first hours of July 16, before even the perpetrators of the coup attempt had been arrested and interrogated, the Ankara Chief Public Prosecutor's Office issued detention warrants for 2 members of the Constitutional Court, 140 members of the Court of Cassation, 48 members of the Council of State and 2745 judicial and administrative judges and prosecutors²⁸. The HSK suspended the members of the judiciary on the same day.

28- Mehmet Yılmaz, Deputy President of the HSK and founding member of YBD, made a statement on September 21, 2016 regarding the detention and suspension orders issued against 2745 members of the judiciary, stating that the lists of judicial members subject to these orders were not prepared overnight and that they had been working on them for three years²⁹. The fact that the list includes Ahmet Biçer, a prosecutor who passed away two months ago, and

²⁶ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/49158>, (A. D. 07.09.2024).

²⁷ The CJP and the Ministry of Justice have not publicly announced the number of dismissed members of the judiciary. The CJP did not share the number of the number of the CJP, and the questions posed in this regard were left unanswered. The number stated by the CJP are the figures obtained by compiling the dismissal decisions issued and published in the Official Gazette. Those dismissed whether there are any of them who have been reinstated and, if so, the number of those reinstated, which was also shared with the public there is no official information. The number of dismissed members of the judiciary, the grounds for their dismissal, and how many of them have been detained taken, arrested, tried, sentenced, put in solitary confinement, etc., are also deliberately. It is concealed by the Ministry and the HSK officials.

²⁸ <http://www.hurriyet.com.tr/2-bin-745-hâkim-ve-savci-icin-gozalti-karari-cikti-40149496>(A. D. 07.09.2024).
<http://t24.com.tr/haber/bazi-HSK-yargitay-ve-danistay-uyeleri-hakkinda-yakalama-karari-cikarildi,350225>
(E.T: 07.09.2024).

²⁹ These statements indicate that the studies have been conducted on the elements of genocide and crimes against humanity regulated under Articles 76 and 77 of the TCC.

"systematically in line with a plan against a certain group of people".

<https://t24.com.tr/haber/HSK-2-daire-baskani-elimizdeki-feto-listesi-bir-gecede-yapilmadi-3-yildir-360895> (A. D. 07.09.2024).

<http://www.memleketimbolu.com/haber/13335/yilmaz-feto-listesi-bir-gecede-yapilmadi-3-yildir-calisiyorduk> (A. D. 07.09.2024).

some retired judges, shows that the list was prepared well in advance. Similar comments were made by Metin Yandirmaz, a member of the CJP³⁰.

29- In a letter allegedly written to the President, Prime Minister, Minister of Justice and prosecutors conducting the investigation into former undersecretary Birol Erdem by Muharrem Özkaya, one of the founders of YBD and a member of the 2nd Chamber of the HSK at the time, *"Birol Erdem prepared the list of FETÖ members in the Court of Cassation, Council of State and high courts. Birol Erdem again carried out the identification of 456 FETÖ members in the administrative judiciary"*³¹. It is seen that these plots were confessed.

30- Birol Erdem, former undersecretary and member of the Council of Judges and Prosecutors, has confirmed these allegations in his statements in the investigation against him, stating that *"after the crisis that emerged on February 7, 2012 when the Undersecretary of National Intelligence Organization (MİT) was summoned to testify, he identified the people he believed to be members of this structure within the Ministry of Justice, the Supreme Court of Appeals and the Council of State, and reported the lists he had prepared to the Council of Judges and Prosecutors, the Minister of Justice, the Undersecretary of MİT and the Prime Minister"*.

31- Institutionally, the YBD, the HSK under its control and the Ministry of Justice as the representative of the government have launched a witch hunt against all judges and prosecutors who opposed them in the 2014 elections, who did not vote for the candidates they supported, who prioritized the law with their discourse and decisions, and who pushed the "best interests of the state" to the background. The targeted number was set at approximately 5,500. This number is equivalent to the number of judges and prosecutors who voted for independent candidates in the HSK elections held in October 2014.

32- Immediately after the members of the Supreme Judicial Council (HSK) under the control of the YBD took office, the process of purging judges and prosecutors targeted by the Erdoğan-AKP government began. The judges and prosecutors who took part in the December 17/25, 2013 investigation³² and the judges and prosecutors who stopped and searched the trucks carrying military ammunition to ISIS, known as the MIT Investigation, were dismissed as the primary targets³³. Subsequently, judges who took part in the December 17/25, 2013 investigation and then released the arrested police officers were dismissed from their jobs³⁴.

33- The demands of Birol Kırılmaz, President of the Association of Judicial Unity (YBD), and YBD and HSK member Turgay Ateş for regulatory changes to facilitate the purge of opposition figures were realized with the suspicious coup attempt of July 15, 2016.

34- It is known that during this process, the HSK forced hundreds of judges and prosecutors who made statements or testified against themselves or others, or who were declared persona non grata due to their open opposition stance, to resign or retire by "allowing them to practice law (!)". Since there is no official document on this issue, and no report has been published on this issue to date, we have not been able to share any data on this issue in this study.

35- Erdoğan and the AKP Government amended the Supreme Court of Appeals and Council of State Laws with Law No. 6572 in order to obtain the majority of members in the Supreme

³⁰ <https://www.hurriyet.com.tr/gundem/5-bin-hakim-savci-tespit-ettik-40064585> (A. D. 07.09.2024).

³¹ <http://www.karar.com/yazarlar/elif-cakir/yargi-camiasinin-vicdanini-rahatsiz-eden-gozalti-4235> (A. D. 07.09.2024).

³² <https://www.aa.com.tr/tr/turkiye/HSK-zekeriya-ozu-meslekten-ihrac-etti/48232> (A. D. 07.09.2024).

³³ <https://www.aa.com.tr/tr/turkiye/mit-tirlarini-durduran-5-savci-meslekten-ihrac-edildi/504899> (A. D. 07.09.2024).

³⁴ <https://www.aa.com.tr/tr/turkiye/HSKdan-meslekten-ihrac-karari/508382> (A. D. 07.09.2024).

Court of Appeals and Council of State by electing members to the Supreme Court of Appeals and Council of State. Law No. 6572 was adopted by the Turkish Grand National Assembly on December 02, 2014 and entered into force after being published in the Official Gazette¹⁰⁸ on 12.12.2014. With this Law, the Court of Cassation and the Council of State were restructured. Accordingly, 8 new departments were established in the Court of Cassation and 129 members were appointed, including 8 heads of departments and 121 members. On 15.12.2014, 144 members were elected to the Court of Cassation by the HSK. Of these elected members, 121 are members of the YBD³⁵.

36- After the election of the members of the Court of Cassation, the First Presidency Board was reconstituted. The decision of the newly formed First Presidency Board on the division of labor of the chambers was published in the Official Gazette. The First Presidency Board re-determined the chambers in which the presidents, members and examining judges would serve. As can be seen, the Association of Judicial Unity (YBD) has completely taken control of the Court of Cassation (Yargıtay) after gaining influence over the HSK. In the division of labor, terrorism and organizational crimes were taken from the 9th Criminal Chamber, which had been specialized with its jurisprudence for years, and assigned to the newly established 16th Criminal Chamber. Seven of the 12 members appointed in the first establishment of this chamber were members of the YBD.

37- With Law No. 6572, the Council of State (Danıştay) was allocated 2 Department Chair positions, 37 member positions, 23 Prosecutor positions, and 50 Rapporteur Judge positions. On December 15, 2014, the HSK appointed 30 members to the Council of State. Of these members, 11 were members of the Association of Judicial Unity (YBD). Similar to the process in the Court of Cassation (Yargıtay), after the election of new members, the Presidency Board of the Council of State was reconstituted. However, members who were not officially members of YBD but actively participated in YBP activities were also elected. The division of labor between departments and the assignments of department chairs, members, and rapporteur judges to specific departments were also redefined.

38- The biggest staffing in the Supreme Courts was carried out during and after the implementation of Law No. 6723, which entered into force on 23.07.2016, immediately after the coup attempt on July 15, 2016. With this law, all members of the Court of Cassation and Council of State were dismissed. On 25.07.2016, the High Council of Judges and Prosecutors re-elected the members of the Court of Cassation and Council of State as members of the Court of Cassation and Council of State after weeding out the undesirables. This election took place under extraordinary circumstances after July 15th and the criteria for the selection of members were determined by the Erdoğan-AKP government. After this election, the Court of Cassation and the Council of State were completely harmonized to work with the political power³⁶. On that day, 150 of the 267 members of the Court of Cassation and 14 of the 96 members of the Council of State were members of the YBD. As we mentioned above, members of the Supreme Court of Appeals and Council of State were also elected from among judges and prosecutors who, although they were not members of the YBD, supported the Platform for Judicial Unity from its inception and actively participated in its activities.

39- Before Law No. 6723 entered into force, the July 15 coup attempt took place. On July 16, 2016, 140 members of the Court of Cassation and 48 members of the Council of State were

³⁵ <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (ET: 07.09.2024)

³⁶ <https://www.sozcu.com.tr/2016/gundem/yukse-yargiyi-saraya-baglama-yasasi-gecti-1299114/>, (E.T.: 07.09.2024).

detained by the Ankara Chief Public Prosecutor's Office³⁷. Of these high court members, those who made individual applications to the ECHR were found in violation of the right to liberty and security of person. As explained above, Erdoğan and the AKP have aimed at two things by increasing and decreasing the number of members in the high courts. The first one is to increase its influence in the executive boards of the Supreme Court of Appeals and the Council of State in order to easily intervene in the internal functioning of the high courts and in cases. Thus, by determining the members of the chambers in charge of handling critical cases, it is prevented from issuing a decision contrary to the wishes of Erdoğan or the AKP. The other is to appoint members from the high courts to very important positions such as the Constitutional Court, the High Council of Judges and Prosecutors (HSK) and the Supreme Electoral Council (YSK).

40- The list of the names of judges and prosecutors who are members of the YBD, which is used as the basis for the report and used in the statistics, was published on the YBD's own website in order to make an announcement to those who will attend the General Assembly meeting to be held on April 30, 2021, but this list was removed from the website after the list and the names of the judges and prosecutors mentioned in the lists started to be discussed in the public opinion. After April 30, 2021, there is no information on those who became members in open sources.

41- 47 of the 85 founding members of the YBD are active members of the Constitutional Court, the Court of Cassation, the Council of State, the Supreme Electoral Council or the HSK, or in the senior management of the Ministry of Justice. Considering the environment and purpose in which the YBD was founded and organized, its activities in the following period, and its relationship with the Erdoğan-AKP government, the criticisms and observations directed at the Turkish judicial system by nationally and internationally respected individuals and organizations will be better understood. The other 39 members hold very important positions within the judicial system, such as members of the Regional Administrative Court, President of the Regional Court of Justice, President of the High Criminal Court, President of the Administrative or Tax Court, Chief Public Prosecutor, Deputy Director General and Head of Department in the Ministry of Justice³⁸.

42- Most of the Chief Public Prosecutors, the Presidents of the Judicial, Criminal and Administrative Judicial Commissions, the Presidents of the Criminal Courts and the Justices of the Peace are members of the Association for the YBD. This shows the influence of the Association on the judicial system as a whole.

43- The official website of the Ministry of Justice lists a total of 21 people from the profession of judges and prosecutors who hold the highest positions in the hierarchy of the ministry, such as deputy minister, general director and head of independent department.³⁹ While 18 of these 21 people are members of the YBD, 3 of them are not members.

44- The HSK consists of 13 members. The President of the Council is the Minister of Justice, who is a natural member. In addition to the Minister, one of the Deputy Ministers is also a natural member of the Council. Of the remaining 11 members, 4 are elected by the President

³⁷ <https://bianet.org/bianet/toplum/176800-HSK-yargitay-ve-danistay-da-gozalti-ve-aciga-almalar-var> (A. D. 07.09.2024).

³⁸ For the list of YBD founding members, see <https://yargidabirlik.org.tr/ybd-hakkinda/kurucu-uyeler> (A. D. 07.09.2024).

³⁹ In the Ministry of Justice, the top managers of all departments, except the Forensic Medicine Institution, are judges or prosecutors.

About the relevant units and their managers, see <https://www.adalet.gov.tr/birimler> data creation and names comparison date is 05.12.2023.

of the Republic. The remaining 7 members are elected by the Grand National Assembly of Turkey. Since 8 of the 13 members of the Board are selected from among judges and prosecutors, only their membership status in the YBD has been determined. 7 of the 8 members are members of the YBD.

45- After the 16 April 2017 referendum on the constitutional amendments, the Constitutional Court has 15 members. Of these 15 members, 3 are elected from among the members of the Court of Cassation and 2 from among the members of the Council of State. The names of 5 members of the Constitutional Court from the judicial or administrative judiciary were compared with the list of the General Assembly of the YBD and it was determined that two of them were members of the YBD. Finally, it was observed that the member of the judiciary elected among senior public officials in the election for the membership of the Constitutional Court on 18.07.2024 was one of the founders of the YBD. However, the situation of the member who was elected as a member of the Court of Cassation while he was the Chief Public Prosecutor of Istanbul, who openly supported and participated in the activities of the YBP after 17-25 December 2013, although he was not a member, should also not be overlooked.

46- As of 15.12.2014, the comparison was made based on the names of the members of the Court of Cassation elected by the HSK and published in the Official Gazette. While the current number of members of the Court of Cassation is 380, after our study, we reached 454 judges and prosecutors who were elected as members. The reason for this is that after July 15, 2016, on July 25, 2016, all members of the Court of Cassation were dismissed and replaced by new members. Some of the names of those who were previously members of the Supreme Court of Appeals (YBD) and elected to the Supreme Court of Appeals were not re-elected to the Supreme Court of Appeals afterwards. On the other hand, current President of the Court of Cassation is a founder of the Association of Judicial Unity and current Chief Prosecutor of the Court of Cassation is a member of the Association of Judicial Unity.

47- It was determined that 281 of the 454 members of the Supreme Court of Appeals who were elected as members after December 2014 by the YBD-controlled HSK were members of the YBD. The names of members who are not members but have participated in the activities of the YBP since its establishment are not included in this number.

48- Of the 140 members of the Council of State elected as members of the Council of State after December 2014 by the YBD-controlled HSK, 39 were identified as members of the YBD. The names of members who are not members but have participated in the activities of the YBP since its establishment are not included in this number.

49- The Supreme Electoral Council is a body of high judges responsible for the general administration and supervision of elections in Turkey⁴⁰. The Board has 11 members. As of December 2023, 7 of the 11 members of the Supreme Electoral Board are YBD members.

50- Showing how many of the Chief Public Prosecutors of 81 Provinces are members of the YBD as of December 2023 will help to make sense of the effectiveness of the YBD in the judicial system. 70 out of 81 Provincial Chief Public Prosecutors are members of the YBD.

51- Among the 521 criminal judges of peace appointed between 2015 and 2020 by the HSK, which is under the control of YBD, 304 out of 521 criminal judges of peace were identified as YBD members.

⁴⁰ On the structure, duties and functioning of the SBE, see.

<https://www.ysk.gov.tr/doc/dosyalar/Kurumumuz/YuksekSecimKuruluTanitimKitapcigi/YSK-TanitimKitabi.pdf> (A. D. 07.09.2024).

4. Section : Assessments in International Reports on the State of the Turkish Judiciary after the December 17/25 Investigations

52- At 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 December 12, 2016. In the said report; The Constitutional Court dismissed 2 of its own members on August 4, 2016 based on subjective opinion without any evidence, the HSK dismissed thousands of judges and prosecutors without any evidence to support the allegations against them, judges are special public servants, their independence is guaranteed by the Constitution and internationally, thus weakening the entire judicial system, that these dismissals have a "chilling effect" within the judicial system, forcing other judges to be reluctant to overturn 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 slim⁴¹.

53- In the European Commission's Türkiye report dated 12.10.2022, significant findings were made regarding the independence and impartiality of the Turkish judiciary. The report stated that Türkiye is at a preliminary stage in applying the EU *acquis* and European standards in the areas of the rule of law and human rights, and that serious backsliding continued during the reporting period. It highlighted that the main issues identified in previous reports, particularly the systemic lack of judicial independence and the urgent need to improve the human rights situation, have still not been addressed. The improper pressure exerted on judges and prosecutors by authorities continues to have a negative impact on the independence and quality of the judiciary. The refusal to implement rulings of the European Court of Human Rights raises concerns about the judiciary's commitment to international and European standards. The lack of objective, merit-based, uniform, and predetermined criteria for the recruitment and promotion of judges and prosecutors remains a cause for concern. Appeals against such relocations are often unsuccessful. Judicial independence has been further undermined by public statements made by representatives of the executive and legislative branches, including the President, about ongoing cases⁴².

54- 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 met with the Turkish authorities, members of the judiciary, national human rights bodies and civil society. The Commissioner's report of 19 February 2020 contains worrying findings on the independence and impartiality of the judiciary. In this context, the report stated that the powers of the CJP to regulate and supervise judges and prosecutors are broader than in many European countries and that these powers have long been interpreted and used in a highly controversial and politicised manner, with an extraordinary influence on law enforcement and the core competencies of the judiciary, and that the new structure of the CJP allows all members of the CJP to be appointed by the President or the Parliament without a procedure guaranteeing the participation of all political parties and interests; This situation, which is in clear contradiction with European standards, and recent legislative changes regarding the independence of judges and prosecutors, have created a general atmosphere of anxiety and fear among members of the

⁴¹ [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)

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

judiciary; The dismissals carried out by the HSK, especially during the state of emergency, do not meet with the standards that should be apply to the dismissal of judicial personnel; the inauguration ceremonies for judges and prosecutors and the opening of the judicial year are now held at the presidential complex, reinforcing the public perception that the judiciary is politicised and that the executive has control over the judiciary; judges are appointed arbitrarily after controversial rulings that protect the human rights of the accused; the assignment of politically sensitive cases to judges known to be biased, or the assignment of such cases to courts likely to issue certain types of rulings lends further credibility to allegations that the judiciary in Turkey and the CJP are biased, particularly in terms of political interests; that members of the executive and legislature continue to criticise the courts and the public in relation to ongoing trials, making comments that disregard the presumption of innocence and cast doubt on respect for the fair operation of the law; and that such statements have a negative impact on the way the judiciary handles cases.

55- In its February 2021 report "Judicial Independence and Access to Justice in Contemporary Turkey", the Turkey Tribunal summarized; 2013 was an irreversible turning point for the protection of human rights in the Turkish Judiciary, when in December 2013, some prosecutors began investigating the secrets of a Government corruption scandal, which the Executive had been trying to prevent, Within days, the Government decided to destroy the independence of the High Council of Judges and Prosecutors (HSYK) and reassert political control over the judiciary, and the coup attempt in July 2016 was an invaluable opportunity for the Government to launch a large-scale purge of the independent judiciary, the opposition and critical voices⁴³.

5. Section : Rights Violations

a) Status of the Turkish Judiciary with regard to the Right to a Fair Trial and Fundamental Human Rights (Art.9,10,11,14 ICCPR)

56-Since 2014, the Turkish judiciary has been frequently criticized in international reports on fair trial and fundamental human rights.

57- In the "Judiciary and fundamental rights" section of the "Rule of law and fundamental rights" chapter of the European Commission's 2022 Report on Turkey, assessments were made on "fair trial and respect for fundamental human rights", including "respect for fundamental rights in legislation and practice", "an effective (independent, high quality and efficient) judicial system", "the independence and quality of the judiciary", "the issue of alignment of the judiciary with international and European standards"⁴⁴.

58- 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 "(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. Major issues identified in previous reports remain unaddressed, in particular the systemic lack of judicial independence and the urgent need to improve the human rights situation."

⁴³ <https://www.crossborderjurists.org/tr/yargi-bagimsizligi-ve-adaleti-erisim/>

⁴⁴ https://www.ab.gov.tr/siteimages/birimler/kpb/2022_turkiye_report_tr_27.11.2022_22.05.pdf

59- "(Functioning of the judiciary): Turkey is at an initial level of alignment 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."

60- As stated in the reports, it is clear that Turkey is reluctant to implement the judgments of the ECtHR. As a matter of fact, thousands of applicants in a similar situation have brought the Yalçinkaya case before the ECtHR, and although the ECtHR has found Turkey guilty of serious violations, Turkish courts, including the Constitutional Court, have refrained from implementing the judgment⁴⁵.

61- Similarly, the Demirtaş⁴⁶ judgment and the Kavala⁴⁷ judgment, which are political cases in one dimension, are examples of ECtHR judgments that have not been implemented by Turkish courts.

62- "The failed coup attempt on July 15, 2016 led to the dismissal of judges and prosecutors on an even larger scale. In direct response to this attempt, the Turkish government deemed it necessary to suspend and dismiss judges and prosecutors allegedly linked to the Gülen Movement. To this end, Decree Law No. 667 of 23 July 2016 empowered the HSYK and higher courts to dismiss judges and prosecutors. The HSYK states that a total of 4726 judges and prosecutors have been dismissed. This number corresponds to approximately one third of the judiciary at the end of 2015. Thousands of judges and prosecutors have also been dismissed, detained by the police and then tried in pre-trial detention"⁴⁸. Very few of these judges and prosecutors are known to have been reinstated.

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 legislative branches continued to publicly criticize and openly reject the case law of the ECtHR and the Constitutional Court." Following the Kavala⁴⁹, Demirtaş⁵⁰ and Yalçinkaya⁵¹ judgments of the ECtHR, which concern thousands of people, senior politicians and bureaucrats have made statements that these judgments will not be implemented. Finally, although the Constitutional Court⁵² ruled on the application of Can Atalay⁵³, who was elected

⁴⁵[https://hudoc.echr.coe.int/#%22fulltext%22:\[%22Y%22CASE%20OF%20Y%C3%9CKSEL%20YAL%C3%87%C4%B1NKAYA%20v.%20T%C3%9CRK%C4%B0YE%20-%20\[Turkish%20Translation\]%20summary%20by%20Kadir%20%C3%96zt%C3%BCrk%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/#%22fulltext%22:[%22Y%22CASE%20OF%20Y%C3%9CKSEL%20YAL%C3%87%C4%B1NKAYA%20v.%20T%C3%9CRK%C4%B0YE%20-%20[Turkish%20Translation]%20summary%20by%20Kadir%20%C3%96zt%C3%BCrk%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

⁴⁶[https://hudoc.echr.coe.int/#%22fulltext%22:\[%22DEM%C4%B0RTA%C5%9E%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/#%22fulltext%22:[%22DEM%C4%B0RTA%C5%9E%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

⁴⁷[https://hudoc.echr.coe.int/#%22fulltext%22:\[%22kavala%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/#%22fulltext%22:[%22kavala%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

⁴⁸ https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-report-turkiye_2db5c502-en.html P.39

⁴⁹ <https://www.dailymotion.com/video/x8pd3de> also <https://www.bbc.com/turkce/haberler-turkiye-58993819>,

⁵⁰ <https://www.youtube.com/watch?v=7hdLy1CxiKg> also https://www.birgun.net/haber/erdogan-demirtas-ve-kavalaya-terorist-dedi-istryanoyl-gazeteciye-cikisti-basini-sallama-537767#google_vignette

⁵¹ <https://www.bbc.com/turkce/articles/cv2le2e07q1o#:~:text=Avrupa%20%C4%B0nsan%20Haklar%C4%B1%20Mahkemesi%20%28A%C4%B0HM%29%3B%20gizli%20bir%20tan%C4%B1%C4%9F%C4%B1n,yapmak%20suretiyle%20ihlal%20karar%C4%B1%20vermesi%20kabul%20edilemez%22%20dedi.>

⁵² (*Şerafettin Can Atalay* (3) [GC], B. No: 2023/99744, 21/12/2023, § ...)

<https://kararlarbilgibankasi.anayasa.gov.tr/BB/2023/99744>

⁵³ <https://www.dha.com.tr/yerel-haberler/ankara/mehmet-ucum-aym-yargitayca-verilen-karari-key-2483819> also

<https://www.bbc.com/turkce/articles/cevpgwz4q47o>

as an MP in the parliamentary general elections, the 16th CC of the Court of Cassation declared the decision of the Constitutional Court null and void and Can Atalay's parliamentary seat was closed by reading the decision in the parliament⁵⁴.

64- "Turkey should in particular: bring the Turkish Penal Code and the Anti-Terror Law and the manner of their implementation 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, based on concrete evidence and conducted in fully transparent procedures, 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 to a defense, the principle of equality of arms and the right to effective appeal; and ensure that the State of Emergency Inquiry Commission is an effective domestic remedy." As a matter of fact, the ECtHR found a violation in the Yalçinkaya judgment⁵⁵.

65- "During the reporting period, the European Court of Human Rights (ECtHR) delivered 621 judgments and found violations of the European Convention on Human Rights (ECHR) in 70 cases, mostly concerning freedom of expression, the right to liberty and security, protection of property, the right to a fair trial, the right to free choice, respect for private and family life and the right to life. 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."

66- "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. Defamation campaigns and targeting of human rights defenders⁵⁶ by pro-government media outlets, as well as aggressive rhetoric by elected and appointed officials, have 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" ⁵⁷.

67- "As regards procedural rights, the legislation is not in line with the European acquis or European standards. The ECtHR continued to issue judgments condemning Turkey for violating the right to a fair trial and the presumption of innocence by failing to respect procedural rules."

68- **In Simone Gaboriau's Article titled "There is no Justice Left in Turkey" dated 06/13/2017;** the following data on human rights violations are included; "The principle of the rule of law, the promotion and protection of human rights and fundamental freedoms can only be ensured on the basis of a strong and independent judiciary. In this respect, the history of justice in Turkey is certainly far from exemplary."

⁵⁴ <https://www.hurriyet.com.tr/gundem/son-dakika-can-atalayin-milletvekilligi-dusuruldu-42398666>

⁵⁵ [https://hudoc.echr.coe.int/#{?%22fulltext%22:\[%22%22CASE%20OF%20Y%C3%9CKSEL%20YAL%C3%87%C4%B1NKAYA%20v.%20T%C3%9CRK%C4%B0YE%20-%20\[Turkish%20Translation\]%20summary%20by%20Kadir%20%C3%96zt%C3%BCrk%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\]}](https://hudoc.echr.coe.int/#{?%22fulltext%22:[%22%22CASE%20OF%20Y%C3%9CKSEL%20YAL%C3%87%C4%B1NKAYA%20v.%20T%C3%9CRK%C4%B0YE%20-%20[Turkish%20Translation]%20summary%20by%20Kadir%20%C3%96zt%C3%BCrk%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22]})

⁵⁶ <https://tr.euronews.com/2021/04/02/milletvekilligi-dusurulen-omer-faruk-gergerlioglu-tutuklan-yor>

⁵⁷ MP Ömer Faruk Gergerlioğlu was targeted by the government for speaking out about human rights violations in the country as a human rights defender and a member of parliament, and was purged by the judiciary; he was arrested and stripped of his parliamentary seat, and after a period of imprisonment, he was released by the Constitutional Court and returned to parliament <https://tr.euronews.com/2021/07/01/aym-den-omer-faruk-gergerlioglu-icin-hak-ihlali-karar>

69- **The report dated February 19, 2020, by Council of Europe Commissioner for Human Rights Dunja Mijatović, following her visit to Türkiye from July 1-5, 2019,** includes the following data on human rights violations; "The Commissioner notes that the disregard by the Turkish judiciary of the most basic guarantees of a fair trial and the indiscriminate application of criminal laws to lawful acts, in particular in cases related to terrorism and organized crime, have reached a level of legal insecurity and arbitrariness that endangers the very essence of the rule of law. The Commissioner is fully aware of the extraordinary difficulties Turkey faces in fighting multiple terrorist organizations at the same time, but stresses that the failure to protect human rights in this process will only undermine this fight in the long term."

70- "The exercise of the right to an effective remedy is another problem... The Commissioner is concerned about recent developments that jeopardize 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 judgments and its consistent jurisprudence." The accuracy of the Commissioner's opinion has recently been demonstrated in the *Can Atalay* judgment and the ECtHR's *Yalçınkaya* judgment.

71- "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 heart 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 of the end of 2018, the ECtHR had handed down 3148 judgments involving Turkey in which there was at least one violation of the European Convention on Human Rights. Of these, 919 concerned in particular violations of the right to a fair trial, 755 concerned the right to liberty and security of the person, 603 concerned the length of proceedings and 279 concerned the right to an effective remedy."

72- "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 coup attempt 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, stereotypical, unspecialized reasoning, supplemented by lists of 2845 and 543 names."

73- In addition to the Commissioner's assessments, the report prepared by the OECD based on on-the-ground investigations similarly made the following assessments on the structure of the HSYK "One of the Government's key efforts in this regard has focused on the HSYK, given its dominant role in judicial discipline and dismissal. As mentioned earlier, the HSYK was replaced by the HSK through a constitutional amendment in 2017. The new body consists of 13 members, including the Minister of Justice, who is the President of the HSK. The other members are the Deputy Minister of Justice, 3 academics elected by the Parliament and 8 judges or prosecutors, 4 of whom are elected by the President and the rest by the Parliament. In other words, all members of the HSK come from or are selected by the executive and political branches. As the Working Group has observed in its assessments of other countries dealing with similar bodies, such an arrangement would leave the HSK "vulnerable to

potential political and executive influence. This reduces judicial independence overall, given the central role of the body in the functioning of the judiciary"⁵⁸.

74- "The Commissioner has repeatedly expressed particular concern about the decisions and functioning of criminal judgeships of peace, a judicial structure established in June 2014. While 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."

75- After the Criminal Judgeships of Peace, defined by Erdoğan as project courts, fulfilled their duties in the areas defined by the political power, following the completion of the cadre of the political power in the judiciary⁵⁹, an appeal against the decisions of the Criminal Judgeships of Peace to the Criminal Courts of First Instance was introduced.⁶⁰

76- "The Commissioner considers that questions of access to justice in Turkey have become more urgent in recent years for a number of reasons. First, the emergency decrees issued by the Turkish government explicitly exclude the measures they introduce from any judicial review. Second, a number of recent developments have raised questions about the effectiveness of the Turkish Constitutional Court as a remedy for human rights violations."

77- "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 overall situation and, lastly, the recent decisions of the Constitutional Court in which it appears to be departing from its approach in accordance with the Convention."

78- "The ECtHR confirmed that the delay (16 months and 24 days) in the Constitutional Court's decision 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 decisions of the Constitutional Court. For example, the Commissioner notes that Mehmet Altan was released more than five months after the Constitutional Court's judgment, as the lower courts refused to comply with its judgment in apparent defiance of its authority."

79- "The Commissioner considers that judicial proceedings targeting civil society and human rights defenders in Turkey are the most worrying element of a sustained and orchestrated crackdown on 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."

80- "The Commissioner is concerned by numerous indications that the Turkish authorities and judiciary have adopted an increasingly suspicious and hostile attitude towards lawyers who

⁵⁸ https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-report-turkiye_2db5c502-en.html p.38

⁵⁹ https://drupaltest.sol.org.tr/haber/hakim-savci-atamalarinda-akp-mhp-kontenjani-5546#google_vignette

⁶⁰ <https://www.mevzuat.gov.tr/mevzuatmetin/1.5.5271-20110808.pdf>

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 fulfill their critical role as a pillar of the criminal justice system, which is fundamental to ensuring the right to a fair trial. The sheer number of cases specifically targeting lawyers and, more worryingly, their professional activities, has a clear chilling effect on the profession as a whole."

b) Prohibition of torture and ill-treatment and the right to life (ICCPR Art.2,5,6,7,8)

81-Teoman Gökçe served as a member of the High Council of Judges and Prosecutors between 2010 and 2014. He was elected as a member of the HSYK by the votes of judges and prosecutors serving at the first instance court. In 2014, he ran for re-election but did not win. After July 15, 2016, he was first dismissed from his job, then detained and arrested. He was arbitrarily detained according to the precedent-setting decisions of the European Court of Human Rights⁶¹ and the United Nations Working Group on Arbitrary Detention.⁶² He was kept in solitary confinement from the time of his arrest until the moment of his death. The cause of death was announced as a heart attack.⁶³ Gökçe had been held in solitary confinement in Sincan Penal Institution for 2 years when he died.

82-Hüsamettin Uğur, a member of the Court of Cassation, was arrested on political grounds after July 15, 2016 on charges of being a member of an armed terrorist organization. According to the precedent-setting decisions of the European Court of Human Rights and the United Nations Working Group on Arbitrary Detention, he was arbitrarily detained with a discriminatory approach. Hüsamettin Uğur shared his experiences in an open letter made public on 06.11.2021⁶⁴. In his letter, he stated that he was beaten and threatened while in Keskin Prison, that the prosecutor's office arbitrarily delayed his application for a long time and that the investigation was hastily closed with a decision not to prosecute after the incident became public, that he was kept in a small cell for 24 hours during his detention and was only allowed out for two hours a day until the date of the letter, that his psychological condition was not suitable for this solitary confinement and described in detail the violations of his rights he had suffered.

83- Nesibe Özer was a member of the HSYK between 2010 and 2014. In the 2014 elections, she ran for re-election despite all pressure from Erdoğan and the AKP. For this, she was targeted. After July 15, 2016, she was dismissed from her job, detained and arrested and kept in solitary confinement from the day of her arrest until her release.

84- Ayşe Neşe Gül was the Director of the Training Center at the Justice Academy. She was a very successful judge and administrator. Just like Nesibe Özer, she was a candidate in the

⁶¹ The decision of the European Court of Human Rights dated April 16, 2019 and numbered 12778/17 B. Alparslan Altan, and the decision of the European Court of Human Rights dated 03.03.2020 and numbered 66448/17 B. Hakan Baş are precedent-setting decisions showing the arbitrary detention of Teoman Gökçe.

⁶² UN Working Group on Arbitrary Detention Resolution A/HRC/WGAD/2018/78 on Hamza Yaman.

⁶³ Teoman Gokce - Finished Lives

⁶⁴ Nalan Dilara Uğur on Twitter: "This is the open letter of my father Hüsamettin Uğur, a former member of the Court of Cassation, who has been held "captive" in prison for 5.5 years and subjected to systematic torture, to all institutions and organizations concerned with human rights, to everyone who says "I am human" @adalet_bakanlik @TCYargitay <https://t.co/VQZ8WUNHOs> / Twitter, <https://kronos35.news/tr/eski-yargitay-uyesi-husamettin-ugur-insanim-diyen-herkese-acik-mektup/> , Open letter to all institutions and organizations concerned with human rights, to everyone who says "I am human"pdf - Google Drive

2014 HSYK elections. Despite all the pressure, she did not withdraw her candidacy. On July 15, 2016, he was dismissed from his job, detained and arrested. He remained in solitary confinement from the day of his arrest until his release⁶⁵.

85- The number of judges and prosecutors who were subjected to torture and ill-treatment during the period is numerous. Examples known to the public are included here. There are still hundreds of judges and prosecutors in prisons who were dismissed from their jobs after July 15, 2016. Despite the ECHR⁶⁶ violation decision on these judges and prosecutors, their convictions are finalized and arrest and detention procedures are carried out in a way that damages their personal rights in the public opinion⁶⁷.

RECOMMENDATIONS

The findings of this shadow report reveal that people are threatened with judicial retribution for exercising their most fundamental rights, particularly in the aftermath of the investigations of December 17/25, 2013 and the attempted coup d'état of July 15, 2016, when the independence and impartiality of the judiciary was dismantled in Turkey. Despite Turkey's official claims that it abides by the democratic order and complies with international human rights standards, the evidence presented in this report reveals an entirely different reality.

It has become clear that Turkey's legal and institutional framework is not willing to realize the independence and impartiality of the judiciary in the new order that the current government wants to build. Due to government pressure on the judiciary, Turkish courts have been reluctant to comply with ECtHR judgments in cases where the ECtHR has found violations. In the aftermath of ECtHR and UN judgments, the government and its other partners in power strongly criticize these judgments in front of large public audiences, calling the victims of these cases terrorists.

In light of these findings, the Human Rights Committee is respectfully requested to recommend in its Concluding Observations on the Second Report of Turkey that the Turkish government take urgent and concrete steps to bring its practices in line with its international human rights obligations. These recommendations should include Turkey taking legislative and institutional steps to realize the independence and impartiality of the judiciary.

The Committee is also urged to recommend to the Turkish government to take legislative, institutional and political steps to build an independent and impartial and independent judiciary.

As stated in the relevant sections of the report, thousands of judges and prosecutors have been, and still are, deprived of their freedom by being dismissed from their jobs for political reasons in the process of designing politics and social life through the judiciary. This discrimination-based behavior is not only a problem of the judges and prosecutors who have been harmed by this action, but also a problem of judicial independence in general. Through these judges and prosecutors, the political power is very clearly threatening the judges and prosecutors who are still in office and who are trying to act impartially, even if only a little. Therefore, these discrimination-based practices should be abandoned.

⁶⁵ <https://www.crossborderjurists.org/torture-report-on-judges-and-prosecutors-in-turkey/>

⁶⁶ [https://hudoc.echr.coe.int/#{%22fulltext%22:\[%22Y%22CASE%20OF%20TURAN%20AND%20OTHERS%20v.%20TURKEY%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-213369%22\]}](https://hudoc.echr.coe.int/#{%22fulltext%22:[%22Y%22CASE%20OF%20TURAN%20AND%20OTHERS%20v.%20TURKEY%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-213369%22]})

⁶⁷ https://boldmedya.com/2024/08/09/polis-gucu-yine-khklilara-yetti-eski-ardahan-bassavcisina-ters-kelepceyle-iskence/#google_vignette

The political power controls judges and prosecutors through the Association of Judicial Unity, which it led the establishment of. In return, it rewards them by appointing YBD member prosecutors and judges to all high judicial positions, including membership of the Constitutional Court, and to all important courts and prosecution offices in the first instance courts. For this reason, the YBD, which is not only an NGO but also has other functions, should be put on the agenda of every platform and its activities scrutinised.

While the ECtHR has found that the Turkish judiciary has departed from the most basic rules of law, the ministerial committee has not been sufficiently effective in enforcing these judgments. As a matter of fact, it is seen that the Turkish judicial authorities have not fulfilled the requirements of the judgments on Demirtaş, Kavala and most recently Yalçınkaya, which affect thousands of people. Similarly, it is seen that the Turkish judiciary has abstained from the execution of the resolutions issued by the UN committees, and it should be ensured that adequate mechanisms are put in place for the execution of these resolutions.

The one-man influence on the Council of Judges and Prosecutors should be reduced and the Council of Judges and Prosecutors should be redesigned by taking into account international reports and Venice criteria.

Turkey's problem of judicial independence and impartiality is not only a problem of today, but has never been so severe in any period. Never has the desire to build a new system of governance through the judiciary been so clear. The international community must increase its scrutiny of Turkey's judicial independence practices and hold the government accountable to its obligations under international law. Only through sustained pressure and concrete steps can the independence and impartiality of the judiciary be restored and the rule of law be restored in Turkey.