



**JOINT SUBMISSION FOR THE FIFTH PERIODIC REVIEW OF TÜRKİYE BEFORE
THE UNITED NATIONS COMMITTEE AGAINST TORTURE**

BY VOLUNTEER JURISTS¹ AND JUSTICE FOR RULE OF LAW² ASSOCIATIONS

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**For the 80th session (08 July 2024-26 July 2024) of the United Nations
Committee Against Torture for the adoption of Concluding Observations on
the Republic of Türkiye**

¹ The Volunteer Jurists is a professional, non-political, non-profit and international association, aiming to disseminate, promote and defend democracy, human rights, the rule of law and the independence of the judiciary; and to fight against human rights violations against lawyers.

² Justice for Rule of Law ASBL is a professional, non-political and non-profit association, aiming to; defend judicial independence in the service of the rule of law and a lasting democracy, be in solidarity with the victims of illiberal and populist oppression, inside and outside the EU, contribute to cultural and social integration, as well as to the reintegration of jurists and their families who had to flee persecution in their country of origin.

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I- Introduction

This joint submission is prepared for the fifth periodic examination of Türkiye before the UN Committee Against Torture. The Committee's session will take place in Geneva between July 8 and 26, 2024. The Volunteer Jurists and The Justice For Rule of Law Associations are respectively Geneva and Brussels based non-profit organizations. To realize their objectives, we are committed providing international mechanisms, including the Committee Against Torture (hereinafter the Committee), with vital information on human rights issues. By doing so, we believe that human rights violations can be addressed more efficiently and swiftly by international mechanisms when they are supported with comprehensive and accurate information from organizations like the Volunteer Jurists and Justice For Rule of Law Associations.

Türkiye is a focal point of our attention due to the lack of respect for the independence of the judiciary by the authorities, both internally and externally. In Türkiye, thousands of judges have been dismissed and detained under the pretext of combating terrorism. Those in power have eradicated judicial independence and transformed the judiciary into a tool for silencing dissenting voices. Mass detentions of judges and prosecutors, along with allegations of torture and inhumane treatment, are alarmingly prevalent in the country. As associations committed to combating human rights violations against judges and prosecutors, we have decided to present our observations on the independence of the judiciary, the mass detention of judges and prosecutors, and cases of inhumane treatment and torture to the Committee. We sincerely request that the Committee take the findings of this report into consideration, include them in its concluding observations after posing relevant questions to the representatives of Türkiye during the hearing.

In this submission, we present numerous examples to demonstrate the widespread prevalence of torture and inhumane treatment across Türkiye. This report builds on several foundational documents: the State Report of Türkiye dated October 27, 2020, the List of Issues prior to the submission of the fifth periodic report adopted by the Committee on December 27, 2018, and the concluding observations of the fourth periodic review. Our findings aim to elucidate the issues presented in these documents and substantiate our claims that Türkiye continues to dishonour its obligations under the CAT.

As associations that are dedicated to safeguard the independence of the judiciary and the rights of judges and prosecutors, we have prioritized the instances that primarily affects judges,

prosecutors, and lawyers. While we trust other human rights organisations to bring other issues to the attention of the Committee to demonstrate how torture is prevalent in Türkiye, we equally rely on the Committee to adopt concluding observations in a way that ensure the full implementation of the convention and pave the way of holding perpetrators accountable for their actions.

II- Overview

Türkiye is a signatory to several international human rights conventions that are essential for the promotion and protection of human rights. By signing the Convention Against Torture (CAT), Türkiye has pledged to honour its obligations under the convention. However, as noted by the Special Rapporteur on Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, there is a significant discrepancy between government policy and practice on the ground. Despite numerous and serious allegations of torture since July 15, investigations into these incidents appear insufficient. This inadequacy creates a perception of impunity for the perpetrators of torture and inhumane treatment.³ Since July 15, 2016, there have been serious allegations of various human rights abuses in Türkiye, including torture, inhumane, and degrading treatment. This incident marks a turning point where the government assumed the authority to violate fundamental human rights under the pretext of fighting terrorism. Thousands of judges, prosecutors, journalists, military personnel, and police officers were dismissed and detained on fabricated terrorism charges. From the outset, the government's intent and determination are evident in its derogation notification. On July 21, 2016, Türkiye notified the United Nations Secretary-General of its intention to derogate from certain obligations under the International Covenant on Civil and Political Rights (ICCPR), including the obligation to treat detainees humanely. The Committee has warned Türkiye about the inviolability of Article 10 of the ICCPR under any circumstances, emphasizing that there is no justification for torture under international law. The Committee has also reminded Türkiye of the importance of fundamental protections for everyone deprived of their liberty, stressing that the rule of law and the independence of the judiciary must be upheld even in public emergencies.⁴ This notification vividly illustrates the extent to which the rule of law has deteriorated in Türkiye.

³ United Nations Human Rights Council, 'The Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on his mission to Turkey', A/HRC/37/50/Add.1, para. 23.

⁴ United Nations Human Rights Office of the High Commissioner for Human Rights, 'A letter drafted as part of the follow up process of the concluding observations of the fourth periodic review', 31 August 2016.

Türkiye responded to the letter from the chairperson of the Committee with misleading remarks, attempting to convey that it does not violate basic human rights in the aftermath of the coup d'état. As usual, Türkiye tried to trivialize incidents of torture, inhumane treatment, and unfair detentions and trials by referring to the coup d'état and the severity of the threat it faced.⁵ Türkiye consistently behaves as if the coup d'état grants it the right to contravene fundamental human rights. It acts like a storyteller, attempting to mask the gravest human rights violations. By repeatedly narrating the same accounts, Türkiye seems to expect the international community to accept these unfounded stories as proven facts.⁶ Although Türkiye reaffirmed the non-derogable character of the article 10 of ICCPR, there are several incidents and allegations of torture and inhumane treatment at the hand of law enforcement officers and other state officials. This issue has been brought to the attention to Türkiye⁷, however it was not properly addressed in the state report. In our view, it's responded inadequately. Providing the initial and termination dates of the state of emergency and abstract expression of the convenience of the actions of the state of emergency to the rule of law stays far away from a proper response that should include facts and reasons.

The Committee urges the state party to investigate all instances and allegations of torture promptly, effectively and impartially⁸, however, Türkiye has taken steps in the opposite direction by introducing impunity shields to the law enforcement officers that inflict torture and inhumane treatments to the detainees. This intention primarily can be observed in the wording of the enactment of the presidential decree numbered 667 that functions as a legal shield protecting the perpetrators of human rights violations from prosecutions. This decree introduces impunity to state officials for acts conducted in line with the powers in the emergency of state.⁹ As stated in the state report of Türkiye, like other emergency decrees, this decree has become a law after the validation of the Turkish Grand National Assembly. Although Türkiye tells that there has been a zero tolerance policy for torture and there has been no provided impunity for possible perpetrators, the instances tell the otherwise.

⁵ United Nations Committee Against Torture, 'Concluding Observations on the fourth periodic report of Turkey Addendum – Information received from Turkey on follow up to the concluding observations', (CAT/C/TUR/CO/4/Add.1), para.55-66.

⁶ *ibid*, para.55.

⁷ United Nations Committee Against Torture, 'List of Issues prior to submission of the fifth periodic report of Turkey', (CAT/C/TUR/QPR/5), para.3.

⁸ United Nations Committee Against Torture, CAT/C/TUR/CO/4, para.10.

⁹ Presidential decree number 667 article 10, accessible at <https://www.resmigazete.gov.tr/eskiler/2016/07/20160723-8.htm> , last accessed on 01.06.2024.

From a wider perspective, the dependence of the judiciary to the executive power and its corollary inaction in safeguarding the human rights for all creates some repercussions that have been taken into consideration by other international mechanisms. For example, The recent [Written Declaration](#)¹⁰ by representatives of the Parliamentary Assembly of the Council of Europe (PACE) reflect the appalling situation in the country vis a vis its statutory obligations:

“In recent judgments, the European Court of Human Rights examined crucial cases, including the cases of [Osman Kavala](#), [Selahattin Demirtaş](#) and [Yüksel Yalçınkaya](#). The Court’s firm stance reveals a significant lack of predictability in the application of Turkish anti-terrorism legislation, highlighting a systemic violation of the right to a fair trial and the principle of legal certainty.

Notwithstanding the infringement proceedings, the Turkish government’s refusal to comply with the Court’s judgments signals a failure to uphold its membership obligations to the Council of Europe. The current situation in the country exposes worrying cases of enforced disappearances in which victims were abducted and returned to Türkiye.

Blatant disregard for principles of due process and abusive use of vague anti-terrorism charges that violates the principle of “nullum crimen sine lege” clearly indicate systemic failure to respect international law.

*The UN Working Group on Arbitrary Detention repeatedly stated that widespread or systematic imprisonment or other severe deprivation of liberty based on vague charges, in violation of international law, may constitute **crimes against humanity**¹¹.”*

In a more recent decision, the UN’s WGAD concluded that the Government of Turkey is responsible for the abduction and detention of its citizens from abroad, and for their forcible transfer to Turkey in breach of freedom of expression, prohibition of discrimination and torture.¹²

III- Legal safeguards

¹⁰ Written declaration No. 791 | Doc. 15920 | 31 January 2024, Systemic arbitrary deprivation of liberty in Türkiye may constitute crimes against humanity

¹¹https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_51_Ad_vance_Edited_Version.pdf

See also :

https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_47_Ad_vance_Edited_Version.pdf

¹²WGAD Opinion No. 2022/8 concerning Alettin Duman and Tamer Tibik (Malaysia and Turkey) (7 June 2022, para.86 and 107

In the aftermath of the coup d'état, the judges and prosecutors were detained by the order of the Ankara Chief Public Prosecution Office. The legal safeguards and constitutional guarantees were blatantly overlooked by investigation authorities. While the pre-requisite conditions for detaining judges and prosecutors are clearly set out in the law numbered 2802, the Law on the Judges and Prosecutors, the investigation authorities effectuated detention orders against them. The coup d'état was used as a pretext as if judges and prosecutors participated to the coup d'état and caught in flagrante delicto. The European Court of Human Rights delivered a judgment on this issue in which it said the conditions of flagrante delicto were not present for the former judge Hakan Bas , thereby his right to liberty under 5 of the convention was violated.¹³ This finding was repeated in the same manner again and again in the ensuing decisions of the ECtHR regarding other individual applications of former judges and prosecutors. Additionally, Although Türkiye was asked to provide information about the deterioration occurred to the procedural guarantees by the means of presidential decrees, it did not address this issue in its response. The presidential decrees were enacted under extremely heated and intense conditions in a way to eradicate the procedural guarantees of the accused persons. The presidential decree numbered 667 for example prescribed a thirty day detention period that opened way to torture and inhumane treatments in detention places. The right to be promptly brought before a judge was overlooked along with other fundamental guarantees. It also authorized the Council of Judges and Prosecutors to dismiss thousands of judges and prosecutors in a way that disregards the afforded protections and guarantees in the constitution and other laws. The elaboration of this issue can be found under the title of independence of the judiciary.

IV- Human rights defenders, journalists

The attacks against human rights defenders and journalists have been cited as another area of concern in the concluding observations. Türkiye has been given a warning to refrain from detaining journalists and human rights defenders to ensure the free reporting of the incidents and allegations. The journalists and human rights defenders have been intimidated with charges brought in the context of terrorism. The committee urges the state party to allow the independent review of these trials against human rights defenders.¹⁴ Türkiye, in its response to the Committee as part of the follow up process of the fourth periodic review, has stated that

¹³ European Court of Human Rights, 'Case of Bas v Turkey', Application number 66448/17, 07.09.2020.

¹⁴ United Nations Committee Against Torture, 'Concluding Observations on the fourth periodic report of Turkey', (CAT/C/TUR/CO/4).

freedom of expression and media is among the fundamental rights in the Constitution and Türkiye possess pluralistic media community that enjoy the rights involved in the national and international legislation.¹⁵

Human rights defenders and journalists are attacked as a means of intimidation by the judiciary. Türkiye supports its stance by making reference to the acts of judges and prosecutors. However, it does not mention the dependency of the judiciary to the executive branch of the state. Human rights defenders do not face proper accusations that are based on concrete evidence but fabricated ones purposefully designed to dishearten the human rights defenders and journalists from no more exercising their function that is vital for the democracy and the rule of law. Presenting the existence of initiated proceedings against those persons should not be seen enough to accept that human rights defenders have been detained as part of an investigation other than their journalism or advocacy activities. While the real intention of the government is to penalize the action of human rights defenders and journalists on account of their awareness raising activities, they skillfully disguise its real intention by fabricating some accusations and evidence that stays within the ambit of anti-terrorism law. The detention of numerous journalists and human rights defenders present an example how Türkiye suppress the freedom of speech. Osman Kavala has been behind the bars for years, Sahin Alpay, Nazli Ilıcak, Ahmet Altan, Mehmet Altan and several others were detained and accused of committing terrorism crimes although they only were enjoying the freedom of speech and the right to inform public opinion on important matters. The European Court of Human Rights decided in favor of the journalists and declared that the freedom of speech was contravened by Türkiye.¹⁶ These incidents are of great essence to our organizations and for this submission for their importance in illustrating the co-pilotage of the judiciary with the government in eradicating the rule of law and independence of the judiciary. While the judiciary is supposed to act like a guardian of the freedom of speech and rule of law, it opted to suppress the dissident voices in conjunction with the government.

V- Gender-based violence

Gender based violence has been another area of concern in the concluding observations. In this report, we will cover this issue from the perspective of unfair detentions and trials against our

¹⁵ United Nations Committee Against Torture, 'Concluding Observations on the fourth periodic report of Turkey Addendum – Information received from Turkey on follow up to the concluding observations', (CAT/C/TUR/CO/4/Add.1), para.52.

¹⁶ European Court of Human rights, 'Case of Sahin Alpay v Turkey', Application number 16538/17, 20.03.2018.

female colleagues in Tokat province. In contrary to all statements regarding the protection of women from violence, female judges and prosecutors have been targeted by unfair investigations in Tokat province. We also provide the statements of our colleagues as annexes to this report. In their statements, they explained the inhumane treatments of the public prosecutor and the law enforcement officers, the real motivation of the public prosecutor and why they were chosen as a victim. Two signed statements from two former female judges uncovers the gender based violence occurred at the hand of the judiciary. This issue was previously brought to the attention of the CEDAW by Sultani Temel with an application number 159/2020(TUR).

Tokat is a city in northern Turkey, notorious for its extrajudicial criminal investigations initiated by the Tokat Chief Prosecution Office. In this small city, more than a hundred female judges and prosecutors have been taken into custody again on the same charges for which they were previously investigated by other Chief Public Prosecution Offices. Turkish legal regulations clearly prohibit a second detention for the same charges in the absence of newly obtained evidence.¹⁷ However, the Tokat Chief Prosecution Office initiated an investigation and summoned over 100 female judges and prosecutors who were already under investigation. Without any jurisdictional basis, it detained numerous female jurists who had never worked or lived in Tokat.¹⁸ Clearly, there was a deliberate intent to conduct such an investigation at the expense of violating the law. Without any authority or reasonable grounds, the same prosecutor called and detained over a hundred female judges over time. This prosecution displayed a discriminatory nature and was evidently part of the efforts of the Council of Judges and Prosecutors to fabricate evidence against those who had been dismissed and detained without just cause. The aim was to coerce these female judges into confessing and testifying against other unlawfully detained prosecutors and judges. What these jurists had in common was their gender, particularly being women, pregnant, or nursing mothers. In preparing the lists of female judges to be detained, the Tokat Chief Prosecution Office specifically targeted those with babies or who were pregnant. They issued orders to detain them for 30 days. The discriminatory treatment of the Tokat Chief Prosecution Office towards female judges and prosecutors, including the applicants, is clearly covered by the definition of gender-based discrimination. They were unfairly targeted due to their gender and vulnerability as part of a plan to fabricate

¹⁷ Regulation on Apprehension, Detention and Taking Statements, accessible at: <https://www.resmigazete.gov.tr/eskiler/2005/06/20050601-10.htm>, last accessed 01.06.2024.

¹⁸ Criminal Procedure Law, accessible at: <https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5271.pdf>, last accessed 01.06.2024.

evidence against judges and prosecutors dismissed based on blackmail lists. They were threatened regarding their babies and pressured into accepting unfounded terror charges and becoming confessors. Those who refused were detained with their babies by Magistrate Courts, while those who accepted became confessor were released by the Prosecution. While in police custody, these women were subjected to constant psychological humiliation and torture by law enforcement units. Their gender and motherhood were used as tools to force confessions, exploiting the close connection between mothers and their babies to obtain statements. Although the convention and the domestic law order to protect the marital status of women, judicial authorities and law enforcement units persistently breached the rights of female judges. In defiance of the international recommendations on gender sensitive training of judges and law enforcement officers, public officials were selected according to what extent they are capable to coerce innocent women judges to confess.¹⁹ They were persistently pressured to consider their children and families. While the law enforcement officers should be held accountable for their actions, it's worth noting that they merely followed orders from the Tokat Chief Public Prosecution Office. This is evident from the lack of action by judicial authorities in response to allegations of inhumane and degrading treatment of detainees in police custody. Furthermore, the Tokat Chief Prosecution Office consistently claimed a lack of territorial jurisdiction after committing grave human rights violations against female judges. This alone demonstrates that the investigation was initiated for political purposes, coercing female judges to confess by exploiting their gender and marital status.

In brief, the gender, marital status, family status and health situation were used as a tool by the government, judicial authorities and the law enforcement officers to commit psychological violence against female judges.

VI- The independence of the judiciary

Concluding observations for the fourth periodic review has been adopted just before the attempt of coup d'état. In the aftermath of the coup d'état, the instances and allegations of torture and inhumane treatments have dramatically risen up and reached to the terrifying levels.

In the aftermath of the coup d'état, the Committee addressed Türkiye due to serious allegations and incidents about the grave violations of the convention. The 15th of July 2016 has been a

¹⁹United Nations Committee on the elimination of all forms of discrimination against women, 'General Recommendation 19', para.24.

notorious date in the history of Türkiye for the situation of human rights. The Committee delivered its serious concerns to Türkiye about the incidents. The presidential decree numbered 667 allowed mass dismissals from the judiciary. 1684 judges and prosecutors were detained after the detention order of Ankara Chief Public Prosecution Office against 2740 judges and prosecutors. The judges and prosecutors were detained for being involved in the coup d'état despite there were no evidence suggesting this presence. This issue raised concerns in the eyes of the Committee about the capability of the government in ensuring the independence of the judiciary. While the independence of the judiciary started to go down from a hill steadily, this issue has to be evaluated in its historical context to eliminate all elusive circumstances that leading to the erosion of the independence of the judiciary. Due to the importance of the issue, the allegations regarding the mass detention and dismissals of judges and prosecutors have also been incorporated into the list of issues prior to reporting due to its importance to ensure the respect for the rule of law and human rights.²⁰ In its state report, Türkiye initially attempted to sidestep the issues by asserting that the independence of the judiciary does not fall within the scope of the report. However, in opposition to this assertion, we firmly assert that all instances of torture and inhumane treatment occurred precisely because of the judiciary's lack of independence and its failure to investigate and hold perpetrators accountable. Judges and prosecutors have been complicit in these incidents, at the very least as negligent parties who chose to turn a blind eye and deaf ear to the atrocities taking place, contrary to the principles outlined in the Convention Against Torture (CAT).

Important milestones before the coup d'état need to be reiterated so that the Committee better understand the incidents taken place after the coup d'état.

a. Graft probes of 17-25 December

In early December 2013, Turkish police arrested the sons of three cabinet ministers and at least 34 others. These detentions struck at the heart of the government, involving prominent businessmen known for their close ties to the government and officials suspected of engaging in corruption, bribery, and tender rigging.²¹ In an environment where the rule of law prevails, the government would respect such investigations. However, in Türkiye, the government

²⁰ United Nations Committee Against Torture, 'List of Issues prior to submission of the fifth periodic report of Turkey', (CAT/C/TUR/QPR/5), para.17 and 18.

²¹ The Guardian, 17 Dec 2013, 'Turkish ministers' sons arrested in corruption and bribery investigation', accessible at: <https://www.theguardian.com/world/2013/dec/17/turkish-ministers-sons-arrested-corruption-investigation>, last accessed 01.06.2024

responded to these investigations with an unlawful outburst, targeting the prosecutors, police chiefs, and officers who were simply fulfilling their duties. ‘December 2013 signs the start of the race to the bottom for the rule of law in Türkiye.’²² The government changed the by law on judicial police on 21st December 2013 and ordered the police forces to report all judicial instances to their superiors prior to the prosecutors.²³

The General Assembly of the Council of Judges and Prosecutors reallocated 65 judges, including 13 court presidents, 26 court members, and 26 liberty judges, as well as 80 prosecutors, including 11 deputy prosecutors.²⁴ Only a small number of judges were allowed to continue working at the assize courts, which had replaced the special courts. This determination was made by the CJP six days after Law No. 6526 came into force. The appointment of judges and prosecutors was based on the demands of the government rather than on facts and objective criteria. Despite the significant public importance of the investigations, the CJP undermined the independence of the judiciary in collaboration with a government whose three ministers were under investigation for bribery and corruption. Undoubtedly, the Council of Judges and Prosecutors failed to protect the integrity of the judiciary profession, substantiating allegations of executive interference in the judiciary. ‘External independence protects judges from external political pressure. Judiciary must not be subject to any hierarchical constraint or subordinated to any other body. Independence is, therefore, guaranteed primarily vis-à-vis the other State’s powers, especially the Executive.’²⁵ Some of the judges of the investigations were made subject to disciplinary proceedings as well.²⁶ The Recommendation CM/Rec (2010) of the Council of Europe explicitly states that the ‘appointment of judges should be based on objective criteria pre-established by law or by the competent authorities, and on merit, having regard to the qualifications, skills and capacity

²² Perilli L, ‘Judicial Independence & Access to Justice’, Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed on 01.06.2024.

²³ Judicial Law Enforcement Regulation, accessible at: <https://cigm.adalet.gov.tr/Resimler/SayfaDokuman/23202011159Adli%20Kolluk%20Y%C3%B6netmeli%C4%9Fi.pdf>, last accessed on 01.06.2024.

²⁴ On 16th April 2017, the name of the council was changed from High Council of Judges and Prosecutors to the Council of Judges and Prosecutors by the amendments in the Turkish Constitution.

²⁵ European Court of Human Rights, ‘Beaumartin vs France’, Application number 15287/89, 24 November 1994, para. 38.

²⁶ Perilli L, ‘Judicial Independence & Access to Justice’, Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed 01.06.2024.

required to adjudicate cases by applying the law while respecting human dignity.²⁷ Contrary to the expectations on preserving the rule of law and the independence of the judiciary, the CJP chose to be an instrument in the hands of a government which has become infamous in eroding the democratic achievements of a country.

Just few months before the 17-25 December investigations, the common demands of millions of people who took to the streets regarding the rule of law were disregarded by the government. These setbacks marked milestones in consolidation of the arbitrariness in the country that affects not only one segment of the society but all who demand justice and prevailing of the rule of law.

b. The election of the (High)²⁸ Council of Judges and Prosecutors (October 2014)

On October 12, 2014, elections were held for the Council of Judges and Prosecutors (CJP). Following the 17/25 investigations, the government succeeded in influencing the CJP and replacing the Chief Prosecutors and heads of Judicial Commissions with judges and prosecutors who pledged full compliance to the executive authority. This move was aimed at preventing further bribery and fraud investigations and preparing for the upcoming elections, through which the government sought absolute control over the judiciary. The government initiated an election campaign by supporting (creating) a platform²⁹ in order to exert full authority on the judiciary. Different social and political groups gathered and pronounced their candidacies with promises to provide unity in the judiciary and fight against ‘the parallel state’ within the judiciary. The 17/25 December investigations were deemed by those as an attempt to overthrow the government and the so-called “parallel state” was deemed responsible for this conduct. The government explicitly declared its support to the platform and had allocated the public resources to launch a strong campaign. The chief prosecutors and the Head of Judicial Commissions backed the platform with all power they had. As a result of the long campaign, the government-backed platform gained the full control of the Council of Judges and Prosecutors by securing the majority in all three chambers of the Council.

c. The reallocation of judges and prosecutors at a mass scale without their will

²⁷ Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe, on Judges: independence, efficiency and responsibilities, para 44.

²⁸ At the time of the elections that were held in October 2014, the name of the council was High Council of Judges and Prosecutors.

²⁹ ‘The Judicial Unity Platform’. The status of the platform was subsequently changed to an association, accessible at: <https://yargidabirlik.org.tr/>.

Following its significant success in the elections, the Council of Judges and Prosecutors (CJP) acquired enormous power to reshape the judiciary according to the government's wishes. Between 2014 and 2016, the CJP continued to transfer judges and prosecutors between different regions without valid reason or justification, acting under government pressure.³⁰ The CJP played a crucial role in marginalizing judges and prosecutors, subjecting them to covert disciplinary punishments.³¹

Accredited sources of information report significant cases of forced transfers such as in the cases of Murat Aydın, a judge in Karşıyaka and Vice-President of the Judges and Prosecutors' Association (YARSAV); the Chief Judge of the Istanbul Regional Appeal Court, Sadık Özhan, was reassigned after he decided to reverse the CHP Deputy Enis Berberoglu's conviction; judges İbrahim Lorasdağı, Barış Cömert and Necla Yeşilyurt Gülbiçim from the Istanbul Court, who released twenty-one detained journalists after eight months of pre-trial detention, were suspended by the HYSK ; judges of the Istanbul 37th Heavy Penal Court were removed by the Council after the Court released seventeen detained lawyers; Ankara 20th Regional Appeal Court was dismantled a day after the Court acquitted a military officer charged of coup attempt: the three Judges of the Court were unseated and subjected to a disciplinary investigation; President Erdoğan accused them of being members of the terrorist organisation (so called) "FETO", during a press conference.³²

d. The new phase in the crackdown in the judiciary: The detention of judges and prosecutors

Judges shall be independent in the discharge of their duties; they shall give judgment in accordance with the Constitution, laws, and their personal conviction conforming to the law.

as stated by article 138 of the Turkish Constitution. However, judges Metin Özçelik and Mustafa Başer were arrested due to their decisions to release Hidayet Karaca, a former director

³⁰ Perilli L, 'Judicial Independence & Access to Justice', Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed 01.06.2024.

³¹ ICJ, Turkey: the Judicial System in Peril, 2 June 2016, available at <https://www.icj.org/turkey-icj-raises-concerns-at-threats-to-the-independence-of-judges-prosecutors-and-lawyers/>

³² Perilli L, 'Judicial Independence & Access to Justice', Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed 01.06.2024.

of Samanyolu Media Group. They were accused of being members of a terrorist organization and subsequently dismissed from the judiciary.³³

Another striking example have taken place after two separate incidents in Adana and Hatay cities. In the course of their duties, former Adana Chief Public Prosecutor Süleyman Bağrıyanık, former Adana Deputy Chief Public Prosecutor Ahmet Karaca, Adana prosecutors Aziz Takçı and Özcan Şişman ordered the stop of trucks after they had taken information that the trucks were illegally carrying weapons to some regions of Syria which was effectively under the control of some extremist groups at the time. They have been accused with “attempting to topple or incapacitate the Turkish Government through the use of force or coercion and obtaining and exposing information regarding the security and political activities of the state.” The case captivated the public attention and it was discussed among different parts of the society. The images of the weapons in the trucks were published in the Cumhuriyet newspaper by Can Dündar. Erdogan, the head of the government whom he was accused with illegal trade of weapons to the extremist groups, threatened the journalist to make him pay for the documentations published in the newspaper.³⁴ Accordingly, Can Dündar was made subject to an investigation by ‘independent prosecutors of the Republic of Turkey’. He was taken into police custody, detained and charged with complicity in crimes of espionage in favour of foreign countries. He had no option but to leave country not to be constantly targeted by Erdogan government. It is apparent that the CJP acted in conformity with the wishes of Erdogan and it disregarded the freedom of press which is one of the significant pillars of the democracy. Consequently, while the real criminals got away from their wrongdoings, the prosecutors, the judges and the journalists had to pay for the jobs that they have done.

e. The coup d’etat, the Executive decrees, the Mass dismissals and the Detention of judges and prosecutors

The government maintains that the mass dismissals of judges and prosecutors were based on their alleged affiliation with a so-called terrorist organization, and that the CJP used its constitutional authority to preserve the reputation and reliability of the judiciary. On the night of the coup d’état, 2,745 judges and prosecutors were suspended. These judges were then dismissed from the profession without awaiting the final results of the criminal trials at Assize Courts. On August 24, 2016, just one month after the coup, the CJP dismissed 2,745 judges

³³ ibid

³⁴ <https://www.bbc.com/news/world-europe-34939916>, last accessed on 01.06.2024.

and prosecutors. In subsequent decisions, the CJP ultimately dismissed nearly 5,000 judges and prosecutors in total including the supreme court judges. These dismissal decisions are among the worst of their kind, lacking concrete or individualized reasons to justify the dismissals. Instead, they consist of several pages filled with unfounded allegations and intelligence reports. The only individualization in these decisions was the inclusion of the dismissed judge's name and surname on an appended list. When the CJP was asked about the incredible detection speed of 2745 judges and prosecutors at the night of the coup d'état, it perpetuated the falsehood particularly when responding to international bodies. Before the coup d'état, the CJP claimed that ongoing judicial and administrative investigations were already targeting the actions of judges and prosecutors. This statement, along with other disinformation attempts, is a blatant misleading information. Despite being repeatedly invited to provide documentation of such investigations initiated before the coup, Türkiye has consistently failed to do so, instead deflecting the examination process before the competent international bodies.

On July 15, 2016, while the attempted coup was still unfolding, a mass persecution against judges and prosecutors began in the form of a witch hunt. Arrest warrants were issued for 140 members of the Court of Cassation, 40 Members of the State Council, and 2 members of the Constitutional Court were taken into police custody. Additionally, 2,745 judges and prosecutors from first instance courts were suspended from their positions by the Second Chamber of the Council of Judges and Prosecutors (CJP). Simultaneously, the Ankara Chief Prosecution Office initiated investigations for those who were on the lists provided by the CJP. The attempted coup served as a convenient pretext to circumvent the protections afforded to judges and prosecutors under Article 88 of Law No. 2802, which prohibits their arrest except in cases of being caught red-handed. Despite no involvement in the coup attempt by any judges and prosecutors, they were all charged with it. Chief Prosecution Offices were instructed by the Ankara Chief Prosecution Office to issue search and seizure and arrest warrants, even while soldiers were still on the streets. There are still unanswered questions about how the Second Chamber of the CJP identified and suspended 2,745 judges and prosecutors. The illegal profiling of judges and prosecutors is likely the only explanation unless the CJP provides evidence to refute allegations of conducting an unlawful campaign to collect information about their social, private, and professional lives. The National Intelligence Service, along with other intelligence services of the police and gendarme, and judges and prosecutors closely affiliated with the CJP, appear to have collaborated to obtain and store vast amounts of information through illegal profiling. One indicator of this is the inclusion of names of judges who had died

before the coup attempt, suggesting that the lists were prepared in advance of the events.³⁵ Following the arrest orders, the judges and prosecutors were detained, their homes, offices and cars were searched, their personal belongings including electronic devices were seized. Thousands of them were detained while some others were released on remand. They were instructed with travel bans and with some other judicial controls such as an obligation to appear before police stations and to sign the relevant papers in a defined time period. At later stages, they have been indicted with overthrowing the constitutional order and being a member of the armed terrorist organisation.

The government declared a state of emergency and derogated from some of the obligations under the European Convention on Human Rights. Furthermore, the state of emergency was pronounced to protect the national security against ‘unprecedented attacks’ to the democracy and the rule of law. Between the period of pre-trial detentions and deliverance of the indictments the CJP involved in the investigation procedures, despite it has no statutory function in the functioning of criminal investigations. It assisted judicial authorities to find “evidence which can constitute the terrorism crimes”. The vice president of the Council, Mehmet Yilmaz played an active role in these procedures. He promised the detainees with incentives such as a release from prison and a readmission to the judgeship profession in exchange of pleading guilty and giving incriminating statements against their colleagues. He even publicly pressurized judges and prosecutors to give statements against their colleagues. He later pronounced that he had made these statements to deceive judges and prosecutors and to convince them to confess.³⁶ He also mentioned ‘a special team’ tasked with working on the statements of judges and prosecutors to identify other members within the judiciary.³⁷

Before delving into the explanation of criminal investigations and adjudications, it's crucial to elaborate the dismissals of judges and prosecutors, as it's highly interconnected and essential to fully understand how the crackdown on the judiciary was executed without credible evidence. The Council of Judges and Prosecutors (CJP) is the institution with final authority in dismissing judges and prosecutors. With the enactment of Emergency Decree No. 667, a new

³⁵ Perilli L, ‘Judicial Independence & Access to Justice’, Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed 01.06.2024.

³⁶ <https://www.haberturk.com/gundem/haber/1342282-hsyk-baskanvekili-mehmet-yilmaz-itirafci-hkim-savcilar-meslege-donemeyecek>, last accessed on 01.06.2024

³⁷ <https://www.sabah.com.tr/gundem/2016/11/22/itirafcilar-icin-ozel-ekip-kurduk>, last accessed on 01.06.2024.

system for evaluating evidence was introduced to the Turkish legal system. According to this decree, the CJP can decide on the dismissals of judges and prosecutors whose names appear in lists appended to the decree-laws, or those considered to be members of, affiliated with, or have connections to a "terrorist organization." The obligation to seek credible evidence was removed. In the absence of tangible evidence, the CJP and General Assemblies of Supreme Courts may rely on rumours, opinions, affiliations, and other factors as "evidence" to issue dismissal orders. For instance, when the General Assembly of the Constitutional Court decided to dismiss two of its members, it referenced Article 3, stating that the court's opinion formed over time sufficed for dismissal, rather than requiring hard evidence.³⁸ Judges, prosecutors, and other members of the Supreme Courts have been permanently banned from holding official duties, evicted from public housing, had their passports cancelled, and sanctioned with travel bans. The principles of the right to a fair trial and proportionality have been infringed upon by those who should have been the guardians of democratic achievements. In other words, the CJP and other Supreme Courts have failed to implement the internationally adopted principles on the right to a fair trial under the regime of emergency decrees dictated by the executive power. Consequently, they should not be regarded as independent courts capable of ensuring the full enjoyment of the right to a fair trial as enshrined in Article 14 of the ICCPR. On December 8, 2016, the European Network of Councils for the Judiciary (ENCJ) declared that "the actions and decisions of the CJP, and therefore the CJP as an institution, cannot be seen to be in compliance with European Standards for Councils for the Judiciary. Therefore, the CJP does not currently comply with the ENCJ Statutes and is no longer an institution independent of the executive and legislature, ensuring the final responsibility for the support of the judiciary in the independent delivery of justice."³⁹ Four years later ENCJ reaffirmed its findings regarding the dependency of the Turkish judiciary and it even indicated the deterioration of the situation compared to the times shortly afterwards of the coup d'état.⁴⁰

After the completion of indictments, judges and prosecutors were put on trial under the provisions of the Anti-Terrorism Law No. 3713 and the Turkish Criminal Code No. 5237. In the Turkish legal system, Assize Courts have the authority to try terrorism crimes. The Criminal Sections of the Regional Justice Courts are entrusted with hearing cases already decided by the

³⁸ <https://www.anayasa.gov.tr/tr/duyurular/anayasa-mahkemesi-uyeleri-alparslan-altan-ve-erdal-tercan-in-meslekten-cikarilmasina-iliskin-gerekceli-kararin-basin-duyurusu/>, last accessed on 01.06.2024.

³⁹ <https://www.encj.eu/node/449>, 8 December 2016, last accessed on 01.06.2024.

⁴⁰ <https://www.encj.eu/node/578>, 8 December 2020, last accessed on 01.06.2024.

Assize Courts, and the Court of Cassation serves as the supreme authority to adjudicate matters upon referral from a defendant or prosecutor of the Regional Justice Courts.

One of the crucial components of the right to a fair trial under the Article 14 of the ICCPR is the independence and impartiality of the judges and courts. Defining the judicial independence and presenting the current situation of Turkish judiciary are of utmost importance to be able to make comparison between internationally applied principles and the maintenance of Turkish judiciary. Judicial independence is characterised in two main components, namely internal and external independence which provides that the judges has to be protected against the interferences from outside and from within the judiciary.⁴¹ ‘External independence protects judges from external political pressure. Judiciary must not be subject to any hierarchical constraint or subordinated to any other body. Independence is, therefore, guaranteed primarily vis-à-vis the other State’s powers, especially the Executive’.⁴² ‘Internal independence encompasses the independence of individual members of the judiciary and requires that judges designated to decide a case be free from directives or pressures from the fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court or the Judicial Council.

The mass dismissals of judges and prosecutors constitute a heavy burden on other judges and prosecutors who are still on duty. This situation undoubtedly creates a chilling effect on them because they are being held in constant fear of being sacked and/or detained. Accordingly they should not no more be considered as independent judges.⁴³ Under the new regime of Turkey operated by the executive decrees, no one is safe from being accused with any crime which may result in imprisonment and dismissal. They have been under constant pressure of the government therefore they somehow have had to follow the instructions on the maintenance of the judicial proceedings.

In five groups of judgments regarding more than 1100 arrested judges in Turkey, the ECHR underlined that detentions of these judges and prosecutors on a mass scale were not based on any evidence suggesting that the persons in question might have committed the crimes they

⁴¹ European Court of Human Rights ,judgment of 22.12.2009, application no. 24810/06, *Parlov-Tkalcic vs. Croatia*, para 86; *Agrokompleks vs. Ukraine*, judgment of 6 October 2011, No. 23465/03, para 137.

⁴² European Court of Human Rights, judgment of 24 November 1994, application no 15287/89, *Beaumartin v. France*, paragraph 38; CJEU, Grand Chamber, judgment of 24 June 2019, C.573/17, *Popławski* paragraph 96.

⁴³ MEDEL, ‘Situation of the Turkish judiciary- Report of the platform for an independent judiciary in Turkey’, 17th July 2017, accessible at: <https://medelnet.eu/situation-of-the-turkish-judiciary-platform-for-in-independent-judiciary-report/>, last accessed on 01.06.2024.

were charged with⁴⁴. More than another 1.000 applications by the arrested judges are still pending before the ECHR.

According to the data by the European Asylum Agency⁴⁵, only in 2022, over 55.000 Turkish citizens acquired refugee status throughout Europe. There is an estimated number of 200 former judges from Turkey living as refugees in different EU countries. Firmly believing in the fact that “Real patriotism is a willingness to challenge the state when it's wrong”, these judges in exile continue their struggle for justice on European soil.

f. The dissolution of YARSAV

YARSAV used to be an association of thousands of judges and prosecutors where they had a chance to discuss range of issues which are related to the judgeship profession from seeking solutions to the problems of judges and prosecutors to the improvement of the independence of the judiciary. YARSAV had been considered to be a prominent organisation by international organisations in terms of its role in preserving the independence of judges and prosecutors before it was dissolved right after the attempt of coup by the executive decree number 667. The president of YARSAV Murat Arslan was subsequently detained on terrorism related charges and he was sentenced to 10 years prison time. At the time of the coup d'état YARSAV had more than 1800 members and it was an institution which was a member of EAJ, MEDEL and IAJ. In an interview with Arrested Lawyers Initiative, Filipe Marques, president of MEDEL made the following remarks which depicts the current human rights situation in Turkey and the unfairness towards YARSAV and its president.

“The situation in Turkey is probably the most dramatic MEDEL had to face in its history. Our member association, YARSAV, was administratively disbanded immediately after the attempted Coup d'état of July 2016 and many of its members were arrested, dismissed, and deprived of freedom or property without any solid pieces of evidence, basic guarantees or procedural rights. Murat Arslan, the President of YARSAV, is in jail since October 2016 and was sentenced on January 18th, 2019 to 10 years imprisonment, after a trial that did not meet any basic principles of a due process of law. MEDEL does not recognize the legitimacy of the

⁴⁴Turan and Others v. Turkey, (*Applications nos. 75805/16 and 426 others*), 23 November 2021; *Case of Acar and Others*, (*Applications nos. 64251/16 and 49 others*), 28 June 2022.

⁴⁵<https://euaa.europa.eu/latest-asylum-trends-annual-overview-2022>

dismantlement of YARSAV and still considers it a full member and its board members as its rightful representatives.”⁴⁶

Turkey is a country where contradictions and disparities take place. At the same time of dissolution of YARSAV, the Association of Unity in the Judiciary has been supported by the government at taxpayers' expense. The membership of the association is automatically proposed to all newly recruited judges and prosecutors. The association considered to be ally to the government, has more than 9000 members in the judiciary.⁴⁷ The closure of YARSAV and the encouragement of the Association of Unity in the Judiciary sends a clear message to all judges and prosecutors that the only way not to be dismissed or imprisoned is showing the full compliance of the policies of the government in a way that costs their independence. In such an environment where judges and prosecutors are being kept under the pressure of the executive branch, the full enjoyment of the right to a fair trial is unattainable.

Amidst the ongoing persecution of independent judges and prosecutors, the recruitment of new judges and prosecutors has continued on a large scale, prioritizing politically adopted criteria over professional competence and personal abilities. As of July 15, 2016, the day of the abortive coup, there were approximately 14,500 judges and prosecutors in Turkey. In the few months following July 15, 4,560 of them were dismissed. According to the European Commission's 2023 report, by September 2023, the total number of judges and prosecutors had risen to 23,826.⁴⁸ These numbers illustrate that over ten thousand judges and prosecutors were appointed, clearly indicating that the composition of the judiciary has been redesigned in favour of the government, which considers the coup d'état "a grace from God" as defined by Erdogan. Vacancies in the judiciary continue to be filled by the government, allowing pre-selected candidates to enter the system through a fast-track procedure and a non-transparent selection process. This claim is reiterated in the 2023 progress report of the European Commission as saying “The selection and recruitment of judges and prosecutors is conducted in a non-transparent manner” and “There was limited progress in setting objective, merit-based, standardised and pre-established criteria for recruiting and promoting judges and

⁴⁶ Interview with Filipe Marques, President of MEDEL by the “Arrested Lawyers Initiative” on 21 August 2020, accessible at : <https://medelnet.eu/the-arrested-lawyers-published-an-interview-with-filipe-marques-president-of-medel/>, last accessed on 01.06.2024.

⁴⁷ Perilli L, ‘Judicial Independence & Access to Justice’, Turkey Tribunal, accessible at: https://turkeytribunal.org/wp-content/uploads/2021/11/Report_Luca_Perilli_-_Independence_Access_to_Justice_f.pdf, last accessed 01.06.2024.

⁴⁸ European Commission, ‘Progress Report of Türkiye 2023’, accessible at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_696%20Türkiye%20report.pdf, p.25.

prosecutors.”⁴⁹ The lack of objective, merit-based, uniform and pre-established criteria⁵⁰ for recruiting and promoting judges and prosecutors has opened wide the door to the politicisation of the judiciary. This severely affects not only the independence but also the appearance of impartiality of judges.

⁴⁹ *ibid*, page 25.

⁵⁰ CM/Rec(2010)12, par 44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.