



**Input for the thematic report
on safeguarding the independence of judicial systems
in the face of contemporary challenges to democracy**

1. Belgium-based Association **Justice for Rule of Law**¹ and **Volunteer Jurists**² of Switzerland express congratulations to the Special Rapporteur on the Independence of Judges and Lawyers for addressing this crucial issue and appreciate her engagement with civil society. As professional, non-political, and non-profit associations, our common mission is to safeguard the independence of the judiciary in support of the rule of law and sustainable democracy. Drawing from our expertise, monitoring, and reporting on the rule of law and democracy in Türkiye, we are pleased to provide input for the thematic report.

2. Türkiye ranked 117th among 142 countries in the Rule of Law Index of 2023³. This is a clear indication of the state of the judiciary's respect for democracy, the rule of law, and human rights. Freedom House has placed Türkiye in the league of '*Not Free*' countries for seven consecutive years since 2016, due to the lack of an independent judiciary and growing threats to all fundamental freedoms.

¹ <https://www.justiceforruleoflaw.eu/>

² <https://www.volunteerjurists.org/>

³ <https://worldjusticeproject.org/rule-of-law-index/global/2023/Turkiye/>

3. Following the July 2016 coup attempt, the country has experienced a substantial number of detentions, including over 300 journalists, party co-chairs, and elected mayors associated with the pro-Kurdish People's Democratic Party (HDP). Thousands of judges, prosecutors, and lawyers, including key figures like the head of the dissolved association of judges (YARSAV) and the president of the Progressive Lawyers Association (ÇHD) face terrorism-related charges.

Political Pressure and Interference

4. Following the corruption probes of December 2013, the President sought to discredit the operations and labeled them as a plot by the Gülen Movement, using the term "parallel structure" and accusing by judges and prosecutors of a "judicial coup". In a swift move, the government shattered the independent High Council of Judges and Prosecutors (HYSK) through Law No 6524 in February 2014 to achieve further political control over the judiciary. Prompted by governmental influence, the HSYK initiated coerced relocations of judges and prosecutors nationwide between 2014 and 2016.

5. Since 2014, practices have demonstrated that vague terms and exceptions within legal provisions can be exploited to target judges and prosecutors who make decisions contrary to the government's wishes.

Lack of Judicial Independence

6. Seeing the attempted coup d'état of July 2016 as a "gift from God"⁴, President Erdoğan used it as a pretext to implement a widespread purge against the independent judiciary, political opponents, and critical voices. On 16 July 2016, in the immediate aftermath of the botched coup attempt of 15 July, 2,745 judges and prosecutors were suspended and as of August 2016, dismissed from their posts in a 60-page decision that was completely contrary to law and procedure. In the following months, this number

⁴ [Erdoğan says coup was 'gift from God' to reshape country, punish enemies – EURACTIV.com](#)

exceeded 4,500, and in these 60 pages, nothing was attributed to any of these judges, except for about 50 judges and prosecutors who were dealing with some high-profile cases. Ironically, these were the cases in which Erdogan openly said he was acting as "chief prosecutor" to express his political support. Names of 4,500 judges were included in the purge lists attached to the same copy-paste decisions. Thus, there was no example of individualization or reference to a single specific act attributed to any of these judges. On July 16, 2016, five members of the High Council of Judges were also dismissed before the expiry of their four-year duty term without respect for any judicial security.

7. Similarly, the Constitutional Court itself purged two of its judges for alleged baseless links with a terrorist organization only on the grounds of "information from the social environment" and "common opinion emerging over time". Regarding this decision, the Venice Commission stated that "*The judgment does not refer to any evidence against the two judges concerned*".⁵ The arrest and detention of judges and prosecutors⁶ indeed started even before the coup attempt and this course has been pursued after the repeal of the state of emergency in July 2018.

8. More than 2,700 judges were arrested by using a similar copy-paste decision, without any evidence. They were arrested and subsequently dismissed on the grounds of arbitrary decisions that only contained vague, stereotypical, and non-individualized reasoning. In addition, about 10 judges who refused to arrest their colleagues based on such an order were arrested within a few days. The vast majority of the detained judges, including two members of the Constitutional Court, were held in overcrowded prisons, and some are still being held in solitary confinement, contrary to Turkish law and international standards.

⁵ Venice Commission, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, 12 December 2016, §§ 135, 136

⁶ In 2015, Süleyman Bağrıyanık, the former Adana Chief Public Prosecutor, along with Ahmet Karaca, the former Adana Deputy Chief Public Prosecutor, and prosecutors Aziz Takçı and Özcan Şişman were arrested due to their use of judicial powers ordering a search of trucks destined for Syria, subsequently revealed to be affiliated with the National Intelligence Organization. In Istanbul, Judge Metin Özçelik and Judge Mustafa Başer were arrested, accused of being a member of a terrorist organisation.

9. The suspension decisions were presented as evidence of the detention of judges/prosecutors, and then their detention on remand was presented as evidence of their dismissal from office. Next, their dismissal from office was taken as evidence of their prosecution and conviction. Finally, these convictions were used as evidence for the rejection of their appeals by the Council of State. First, they were suspended, dismissed, or imprisoned, and then the search for evidence began. Many of them were arrested in their offices in the courthouse. How these arrests and dismissals were carried out sent a strong message to those judges and prosecutors who remained in office.

10. The European Network of Councils for Judiciary suspended the observer status of the High Council for Judges and Prosecutors of Turkey in December 2016, as it no longer complied with ENCJ Statutes, functioning as an institution independent of the executive and legislature, thus jeopardizing the judiciary's independent delivery of justice.⁷

11. Independence of the Turkish judiciary was further imperiled following the constitutional amendments approved by the referendum on 16 April 2017.⁸ The constitutional amendment changed the structure, composition, and methods of the appointment of the previous judicial council (HSK). Four out of the 13 members are now appointed by the President of the Republic. The Minister of Justice, who presides over the HSK, and his deputy are *ex officio* members. The remaining seven members are appointed by the Turkish Parliament. All members appointed by the parliament are to be elected by a qualified majority, which the ruling AKP and the Nationalist Movement Party have at present. Consequently, the appointment of all members of the HSK is, in one way or another, factually controlled by the executive government. None of the members of the HSK are elected by judges or public prosecutors.⁹

⁷ <http://www.platformpi.org/wp-content/uploads/CPJreport.pdf>.

⁸ ICJ, *The Turkish Criminal Peace Judgeships and International Law*, Briefing Paper, Geneva, 2018, p. 5.

⁹ ICJ, *Turkey's Judicial Reform Strategy and Judicial Independence*, Briefing Paper, Geneva, November 2019, p. 3.

12. The amendments were assessed by the Venice Commission as lacking sufficient checks and balances as well as endangering the separation of powers between the executive and the judiciary.¹⁰

13. As a result of the constitutional amendments in 2017, the Constitutional Court (CC) now comprises 15 judges. Among them, three judges are elected by Parliament, and the President of the Republic appoints the remaining 12 judges.

14. In her 2019 report, the Council of Europe Commissioner for Human Rights highlighted significant issues, emphasizing the lack of independence and partiality of the Turkish judiciary to political interests. The Commissioner noted the abrupt dismissal of more than 4,000 colleagues without procedural safeguards, with half of the judiciary recruited through opaque procedures essentially controlled by the executive. The report pointed out that removals and transfers aim to influence decisions and legal proceedings, with public officials openly expressing preferences in an intimidating manner. In light of these circumstances, the Commissioner concluded that expecting the Turkish judiciary to act independently from political power and uphold the rule of law and human rights would not be reasonable.”¹¹.

15. The Platform for an Independent Turkish Judiciary¹² has maintained that the mass dismissals and mass arrests without proper individualized accusations have had a clear “chilling effect” within the judiciary. So, judges and prosecutors who are still in power also fear being subject to such arbitrary measures . As for the mass dismissals, no minimum procedural requirements (not even a hearing as a basic benchmark for adversarial procedures) were followed.¹³

¹⁰European Commission, [Key findings of the 2018 Report on Turkey \(europa.eu\)](https://ec.europa.eu/justice/venice/2018-report-turkey)

¹¹<https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>, paras.122-123.

¹²[Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\).](https://www.medelnet.eu/Situation-of-Turkish-Judiciary-Platform-Report.pdf)

¹³<http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-for-ordering-release-of-gulen-suspects.aspx?pag.ID=238&nID=111576&NewsCatID=509>

16. Based on this backdrop, Parliamentary Assembly of the Council of Europe adopted Resolution 2156 (2017) which made Türkiye the first and only member state to the CoE that has been demoted to monitoring status. Committee of Ministers of the CoE has formally launched an infringement procedure against Turkey in 2022 for failing to comply with the ECHR judgements¹⁴.

Continuous forced transfers of judges

17. Judges and prosecutors in Türkiye are subject to reassignments or removals, without clear and transparent criteria. These measures have been used to influence judicial decisions or to target judges who may be perceived as not aligning with the government's political agenda.

18. In May 2019, the Judicial Reform Strategy announced a guarantee of geographical tenure that should be introduced for judges with a certain professional seniority and based on merits. A day after the announcement of the Strategy, 4,027 judges and prosecutors were transferred. No reason was given for the transfers apart from “the requirements of the service.”¹⁵

19. In its report of June 2016, International Commission of Jurists (ICJ) expressed that the practice of rotating judges was being applied as a form of hidden disciplinary sanction.¹⁶ The European Commission echoed this view in April 2018 stating that “*there is a need for legal and constitutional guarantees to prevent judges and prosecutors from being transferred against their will.*”¹⁷

¹⁴ <https://www.hrw.org/news/2022/02/02/turkey-council-europe-votes-infringement-process>

¹⁵ European Commission 2020 report, page. 25

¹⁶ ICJ, Turkey: the Judicial System in Peril - A Briefing Paper, Geneva, June 2016, p.18.

¹⁷ European Commission, Turkey 2018 Report, Doc. No. SWD(2018) 153 final, 17 April 2018, p. 24.

20. ECtHR has declared the system of transferring judges as incompatible with the principles of the rule of law, as established in its *Bilgen v. Turkey* case.

Emergency decrees threatening judges

21. In the aftermath of the 2016 failed coup attempt, one-third of Türkiye's judges and prosecutors were summarily dismissed without individual investigation or a chance for judicial review. Commissioner for Human Rights of the Council of Europe noted that mass dismissals created an "atmosphere of fear" among remaining judges and prosecutors, emphasizing that the end of the state of emergency did not eliminate political control over the judiciary.¹⁸ While the state of emergency lapsed in July 2018, the power of the HSK to dismiss judges and prosecutors under the same criteria as under emergency legislation was maintained for a further three years under Law No. 7145 which came into force in July 2018. Since then, there have been at least 24 more dismissals of judges and prosecutors arbitrarily.

Abusive use of Anti-terror legislation

22. In August 2020, Special Rapporteurs of the UN OHCHR mechanism jointly penned a letter addressed to the Turkish Government. The letter stated¹⁹(dated 26 August 2020, with Reference Number OL TUR 13/2020) "Turkey's anti-terrorism legal framework grants the Government excessive authority over the judiciary, thus undermines its independence.

23. Law No. 7145 gives the Government the authority to dismiss any public official, judge, or prosecutor solely based on an "assessment" "connection" or "affiliation" with a "structure, formation or group" that Turkey's National Security Council has "determined to operate against the national security of the state." National Security Council (MGK) as a

¹⁸ <https://rm.coe.int/third-party-intervention-12-cases-v-turkey-on-freedom-of-expression-an/1680764ef6> para. 35.

¹⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25482>

security entity being in a position to make such determinations without judicial oversight and review is extremely troubling.”

24. United Nations Working Group on Arbitrary Detentions (WGAD) repeatedly stated that widespread and systematic imprisonment practices based on vague terrorism charges in Türkiye since 2016 may constitute crimes against humanity²⁰.

25. ECtHR in its *Yalçinkaya v. Türkiye* case found Türkiye in systemic and widespread breach of Article 6, Article 11, and Article 7 of the Convention²¹. In the decision, ECtHR expressly referred to Article 46 of the Convention and stated that there are currently more than 8.000 pending applications before the ECHR and more than 100.000 cases before the Turkish courts that will eventually reach Strasbourg. Hence, this landmark decision nullifying investigations and convictions along the principle *'nullum crimen sine lege'* reveals the gravity of the issues affecting not only Yalçinkaya but also hundreds of thousands of applicants in the context of a systemic failure in guaranteeing fair trial, legal certainty, and freedom of expression. However, Turkish authorities persistently ignore the Yalcinkaya decision just like Kavala and Demirtas decisions inter alia.

26. Before its dismantling, the Turkish Association of Judges and Prosecutors (YARSAV) had more than 1800 members. After July 2016, It has been dissolved through an state of emergency decree, which further damaged judicial independence and of the rule of law. Despite its dissolution, YARSAV is still recognized as a member of European Association of Judges (EAJ) and Magistrats Européen pour la Démocratie et les Libertés (MEDEL). The President of YARSAV, Murat ARSLAN, was arrested and sentenced to 10 years of imprisonment after a trial that failed to meet the minimum requirements of due process,

²⁰ Inter alia: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-3-AEV.pdf> ,
https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_47_Advance_Edited_Version.pdf ,
https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_51_Advance_Edited_Version.pdf

²¹ [https://hudoc.echr.coe.int/fre#{%22tabview%22:\[%22document%22\],\[%22itemid%22:\[%22002-14187%22\]\]](https://hudoc.echr.coe.int/fre#{%22tabview%22:[%22document%22],[%22itemid%22:[%22002-14187%22]])

as observed by MEDEL. Despite the legal challenges, Mr ARSLAN was honoured with the Vaclav Havel Human Rights Prize in 2017 by the Parliamentary Assembly of the Council of Europe.²²

Restrictions on Freedom of Expression

27. Judges who express dissenting opinions or criticize government policies may face disciplinary actions or be subjected to investigations. This creates a chilling effect, inhibiting judges from freely expressing their views.²³

Perceived Lack of Impartiality

28. The politicization of the High Council of the Judiciary, driven by the enduring alliance between the ruling Justice and Development Party and the Nationalist Movement Party, has led to a perception of political influence on judicial appointments. Public views on the impartiality of judges, particularly in political cases, are strongly shaped by the political affiliation of the judge involved. Judges not aligned with the ruling parties may face smear campaigns, forced transfers, or disciplinary actions, impacting the overall perception of judicial independence.

Unforeseeable regulations and practices regarding disciplinary measures

29. As noted by the Council of Europe GRECO 4th round evaluation²⁴, disciplinary measures against judges and prosecutors provided for in the legislation are not precise and clear enough, making them potentially applicable to any of their actions that could be perceived as contrary to government policy.

²²<https://www.medelnet.eu/index.php/news/europe/426-report-of-medel-s-observer-to-the-ongoing-trial-of-murat-arслан-president-of-yarsav-in-german-and-english>

²³<https://www.echr.coe.int/w/judgment-concerning-turkiye-1> & <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-208800%22%5D%7D>

²⁴<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c9d29>, para. 188.