TURKISH CRIMINAL PEACE JUDGESHIPS

A COMPREHENSIVE ANALYSIS

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Executive Summary

This Platform for Peace and Justice report provides a comprehensive summary of the lack of independence and impartiality of Turkey's Criminal Peace Judgeships (CPJ). The CPJ was established in June 2014 with the exclusive power of determining pre-trial detention and release or continuation of said detention; to authorise searches, seizures, appointments of trustees, and disclaimer trials; and to examine objections against decisions given in these proceedings. Given the state of affairs in Turkey over recent years, with ever-increasing political tensions and human rights abuses, the independence and impartiality of the CPJ is necessary for a viable judicial system and fair trial. Analysis of this competence is particularly important as international courts like the European Court of Human Rights will only accept cases in which there is no viable domestic avenue. As this report shows with events, statement, facts and other material evidence, the CPJ do not meet the requirements of a 'judge' or a 'court' which are 'independent, impartial and previously establishment by law' vis a vis the European Convention on Human Rights or International Covenant on Political and Civil Rights.

The report begins by explaining the context in which the CPJ was established. That is, the CPJ was intended to eradicate the so-called 'parallel structure', the Gulen Movement, after the 2013 corruption investigations which involved prominent businessmen, ministers, and then Prime Minister Erdogan's son. By 2016, the Gulen Movement was declared a 'terrorist organisation' by the Turkish authorities, with the name FETÖ/PDY. This is despite the strong support for the Gulen Movement by Erdogan and other ministers prior to 2013. The report shows how this narrative was clearly enunciated by members of the executive and outlines that following the corruption investigations, explicit meddling with the Turkish judiciary by the executive occurred.

The report delves deeper into the evidence that the CPJ do not satisfy the requirements of independence and impartiality. It is important to stress that control of the CPJ is a major concern for those who want to control the Turkish courts, given the power held by the Judgeships. Similarly, the CPJ comes under the authority of the High Council of Judges and Prosecutors (HSK/HSYK); thus, the independence and impartiality of the latter is also crucial to any analysis. Consequently, the report examines the structure of the HSK. Particular attention is given to the legislative changes to bring members of the HSK in alignment with the ruling Justice Development Party (AKP) following the 2013 corruption investigations. After the infamous July 2016 coup attempt several members of the HSK were dismissed, ensuring further compliance with, and therefore further control by, the executive. The subsequent 2017 constitutional changes again changed the composition of the HSK. Following this, as stated by the Council of Europe Human Rights Commissioner, *"The New Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary".*
As the HSK – have control over all courts, the report looks at the facts surrounding independence and impartiality of the Turkish courts of first and second instance. A critical

indicator of this is the irremovability of judges from their posts during their term of office. This can only be done if: they are appointed to a higher court; they make a personal request; or if they are suspended or dismissed in cases of serious criminal behaviour proved by a fair trial. Yet as shown by this report, there are numerous instances of transfers outside these circumstances. Most concerning is the fact that judges are being transferred – or even dismissed – due to taking decisions unfavourable to the executive. This is particularly common in political cases. Additionally, contrary to European Convention of Human Rights, the courts of second instance have been reviewing cases on alleged crimes committed before their establishment on 20 July 2016.

Other interferences and pressures by the executive are also revealed in this report. This includes remarks made by President Erdoğan and other ministers in cases such as those involving the 2013 corruption investigation; the probe on the alleged National Intelligence Agency trucks carrying arms to Syria; and alleged Gulen Movement members. It was further found that the judicial system is pressured to make decisions in line with the National Security Policy Document ('MGSB', often referred to as 'the Red Book'). Trials are monitored by the executive. During political cases, police and intelligence officers will stand outside the courthouse; if a release verdict is issued, they interfere and re-arrest the individual. President Erdogan has openly remarked that he receives daily reports on such trials. Pro-government journalists are guilty of exerting similar pressures on the judicial system. In this climate – with the CPJ and HSK clearly under control of the watchful executive – judges and prosecutors are rightfully fearful of making dissenting decisions.

Furthermore, Article 3 of Turkish Emergency Decree Law No: 667 enacted in July 2016 suspended key constitutional safeguards. It stipulates that judges and prosecutors can be permanently discharged by the executive without any legal investigation or proceeding. Indeed, since the 15 July 2016 coup attempt, more than 3,000 judges and prosecutors have been arrested and more than 4,000 judges permanently discharged. This Platform for Peace and Justice report covers some example cases of arrests and discharges, and how many were due to the executive clampdown on dissenting decisions. And despite the state of emergency ending in July this year, this Decree Law NO: 667 has been legislated to stay operative for another three years. In contrast to those punished for dissenting decisions, judges whom align themselves with the executive opinions are promoted.

On top of this, this report provides for how the executive – President Erdogan and other ministers – make their opinions on political cases widely known. In other words, not only is the executive in control of the Turkish judicial system, but they also ensure that the 'correct' decision to be taken by judges and prosecutors is acknowledged. A prime example is that of the Central Council of the Turkish Medical Association (TTB). In January 2018, the TTB released a statement against Turkey's Afrin Operation in Syria. President Erdoğan accused the doctors as being "*terrorist-lovers*"; subsequently, eleven TBB Council members were put in custody for 'terrorist propaganda'. Human Rights Lawyer Dr. Kerem Altıparmak made the following remark on this: *"Whenever President Erdoğan calls someone "terrorist, spy, traitor", prosecutors and courts receive his speech as an order. The last victims of this routine are 11 members of the Turkish Medical Association Central Council who were detained this morning*".

All in all, this Platform for Peace and Justice report provides key events, statement, facts and other material evidence on the lack of impartiality and independence of the Turkish Criminal Peace Judgeships and of the entire judicial system. We are not alone in this conclusion; the end of this report includes statements by prominent international organisations who have expressed their concern that the CPJ is essentially the final nail in the coffin of judicial independence and impartiality in Turkey. This shows no sign of improving, which is extremely worrying given the strong stance of the executive on issues such as the arrested journalists, dismissed public servants, jailed MP's and the persecution of the alleged member of the Gulen Movement. Judges and prosecutors, alongside journalists, scholars, activists and others who show dissenting opinions are being persecuted at an exponential rate on the basis of 'terrorism'. It is near impossible to hold ministers and state departments accountable, a core component of any democratic society. Pressure must be placed on Turkey to resume independence and impartiality of the judicial system; until this happens, it cannot be said to be a viable domestic avenue.

Introduction

1. *Criminal Peace Judgeships* (CPJ) were established with the Law adopted by the Turkish Parliament on 14 June 2014 and entered into force on 28 June 2014, functioning under the authority of the Turkish *Council of Judges and Prosecutors* (HSK). These judgeships have been given the power to: order pre-trial detention; decide on the continuation of detention; accept or reject requests on release; decide on searches, seizures, appointments of trustees, and disclaimer trials; and examine objections lodged against the decisions given in these proceedings. An individual who is suspected of a criminal charge is arrested by a criminal peace judgeship, and then an objection to the arrest is examined and rejected by another criminal peace judgeship. The continuation of pre-trial detention is decided by criminal peace judgeships every 30 days alongside objections to these decisions. Similarly, requests to be released are examined and rejected by criminal peace judgeships and objections to the said rejections are denied with decisions of other criminal peace judgeships. Thus, in 2014 criminal peace judgeships were given the exclusive responsibility vis a vis pre-trial detention, searches, seizures, appointment of trustees and disclaimer procedures.

2. Moreover, criminal peace judgeships – within the context of Article 5 (right to liberty and security) and Article 6 (right to a fair trial) of the European Convention on Human Rights and Article 9 (right to liberty and security, and to fair arrest proceedings) and Article 14 (right to equality before the courts and tribunals) of the International Covenant on Political and Civil Rights to which Turkey is signatory – do not satisfy the *sine qua non* requirements of a 'judge' or a 'court', which are 'independent, impartial and previously establishment by law'. This is explored by Platform for Peace and Justice with the following events, facts, material evidences and statements.

A. Establishment Process of the Criminal Peace Judgeships in 2014

1. The emergence of facts

3. As explained by the then Prime Minister Recep Tayyip Erdoğan on 22 June 2014[1], criminal peace judgeships were established to fight against the Gülen Movement,

[1] For the Parliamentary Assembly of the Council of Europe (PACE), Report on the Functioning of the Democratic Institutions in Turkey, 06 June 2016, Do. No. 14078, paragraph 5 (see https://www.ecoi.net/file_upload/1226_1465286865_document.pdf.

which was named a "Parallel State" and "Parallel State Structure" by representatives of Executive in 2014. It was then declared a "terrorist organization" by the Turkish Government under the name of FETÖ/PDY on 30 May 2016.

4. The Gülen Movement has been described by its followers as active in the fields of humanitarian aid, education, trade, finance and many fields in Turkey and around the world for approximately fifty years. Fethullah Gülen, the leader of the Movement which has opened educational institutions in more than 150 countries, was indicted on charges of 'establishing and managing a terrorist organization and seizing the state' (recruitment of its members to the state departments; forming the so-named "parallel structure") following the military intervention of 28 February 1997. In the official indictment dated 31th August 2000, all the activities undertaken by the Gülen Movement were examined and it was alleged that, amongst others, the 'recruitment of its members to the state departments and seizing the state' constitute a crime. The Ankara 11th High Criminal Court heard the case and acquitted on the basis that the charges in the indictment do not constitute a crime on 5 May 2006. The acquittal decision was appealed by Ankara Chief Public Prosecutor's Office. The 9th Criminal Chamber of the Court of Cassation approved the acquittal decision on 5 March 2008 unanimously. The Chief Public Prosecutor's Office of the Court of Cassation objected, and then the Plenary of the Criminal Chambers (ACC) reapproved the acquittal with on 24 June 2008 (ACC Decision Number: 2008/9-82E - 2008/181K). With this decision being the ultimate one in domestic law, the claims for Gülen Movement being a terrorist organization and attempting to seize the state were refuted with a '*res judicata*' (final decision) in the Turkish legal order[2].

5. The Justice and Development Party (Adalet ve Kalkınma Partisi - AKP) won the general elections held on 3 November 2002 and has been solely governing the country for the past 16 years. Since the early days of its governance, the AKP has regarded Gülen Movement as a non-governmental organization (NGO)[3] and supported its activities. The AKP's support to the Gülen Movement has been publicly announced and is known widely. The President of Republic, the Prime Minister, the Deputies of Prime Minister, the Foreign Affairs Minister, the President of Turkish Parliament, including many Ministers, members of Parliament, and mayors from AKP, have made statements indicating their support and encouragement. For instance, at the International Language and Culture Festival organized by Gülen Movement with students from over 150 countries in June of 2013, Mr. Erdoğan, the then Prime Minister, said "*I thank again and again to our seniors who pave the way for us, to brothers who set our mind*

[2] For a detailed analysis of the legal cases against Gulen in the aftermath of the 28 February post-modern coup see [Harrington, J. C., "*Wrestling With Free Speech, Religous Freedom and Democracy in Turkey*", (Maryland: University Press of America, 2011)].

[3] Ahmet Davutoğlu, who was the Prime Minister between September 2014 and May 2016, highlighted that these activities are part of "***the NGOs' most powerful activities***" in his assessment related to the event of *International Language and Culture Festival* organized by Gülen Movement with 2000 students from more than 150 countries when he was the Minister of Foreign Affairs (https://m.haberler.com/turkce-olimpiyatlari-kadar-turkiye-yi-tanitmada-4723303-haberi/).

at rest and have it said that good things happen in Turkey, to brothers who are Turkish language lovers."[4] In the closing remarks of the same event in June 2012, while inviting Fethullah Gülen (who was living in the United States of America) to Turkey, he said "*Let finish this longing.*"[5] In 2012 Ahmet Davutoğlu, the then Minister of Foreign Affairs and subsequent Prime Minister September 2014 to May 2016, during the opening ceremony of a school built by the members of Gülen Movement in Yemen said "*We owe you a debt of gratitude. Because of your teachers' contribution to the Yemen's new generation, both Yemen and Turkey will always grateful to you.*" The current Prime Minister Binali Yıldırım told the Movement that "*You contribute to global peace*" at the Canadian school Toronto Nil Academy in 2009 whilst he was the Transportation Minister.[6] The Deputy Prime Minister Bekir Bozdağ, who was the Justice Minister between 2013 and 2017, said that "*As Turkish Government, wherever they are… we have always supported Turkish Schools, and we will continue to support them. From here, I salute honorable Fethullah Gülen who has firstly come up with this beautiful opinion."*[7] As understood from all these statements, the members of the executive branch have not regarded Gülen Movement as a terrorist organization and have rather announced their support and encouragement to the Movement publicly.

6. On 17 December 2013, the İstanbul Chief Prosecutor's Office initiated a "*bribery and corruption operation*" against senior ministers and businessmen. With this, ministers, the Prime Minister's son, the general director of a bank and businessmen were taken into custody. At the house of a state bank's general director, $4,500,000USD in cash was seized.[8] After searches conducted at the houses of some Ministers' sons, money counter machines, steel safe-deposit boxes and great amount of money in Turkish Lira, Euro and US Dollar were seized.[9] The media reported that evidences[10] obtained from the court-warranted wiretaps of Reza Zerrab, a 28 year old gold-trader businessman and Iranian/Turkish citizen, had revealed that he bribed Ministers, including the Economy Minister and the general director of a state bank in order to

[4] https://m.sabah.com.tr/gundem/2013/06/16/basbakan-erdogan-konusuyor/amp
[5] https://m.haber7.com/amphtml/siyaset/haber/891422-erdogan-gulene-artik-don-cagrisi
[6] https://m.haberler.com/bakan-yildirim-dan-turk-okuluna-ovgu-kuresel-haberi/
[7] https://www.oncevatan.com.tr/haber/amp/27672
[8] http://www.hurriyet.com.tr/suleyman-aslanin-evinde-4-5-milyon-dolar-bulundu-25388816
[9] https://www.youtube.com/watch?v=KPvm2oPqDXs.
[10] http://www.cumhuriyet.com.tr/haber/turkiye/20419/iste_Reza_Zarrab_in_rusvet_agi.html

evade US sanctions against Iran.[11] One week later, four ministers resigned and some suspects were arrested.[12]

7. Just after the operation, the then Undersecretary of the Prime Ministry Efkan Ala said that "*Some public officials attempted a "coup d'etat" against the government by abusing their power*".[13] Efkan Ala was appointed as the Minister of Interior just one week after the operation on 25 December 2017.

8. The İstanbul Chief Prosecutor's Office ordered a second operation on 25 December 2013. However, this order and search warrants for suspects' houses and workplaces issued by courts were not executed by the police. The operation remained incomplete as a result of political interventions.

9. In many remarks, the then Prime Minister Recep Tayyip Erdoğan labelled these operations as "*a coup attempt against his government.*"[14] This was when he first indicated that this attempt was made by a "*Parallel Structure*"[15]. He also said in many public speeches that the Gülen Movement formed this structure in the judiciary and police, that these bribery and corruption operations were made by this structure, and that they will take revenge on them. For example, in one of his public speeches on 20 March 2014 in Sakarya Province, he stated "*We will call them to account for their doings, we will not leave them unpunished; we will go in their burrows, their burrows.*" In another speech given on 11 May 2014 in Afyon Province, by referring to the operations, he said that "*A villainous, uncoverable, unforgettable and unforgiveable attack took place to our country, our unity and our independence… I will not forget these villainous attacks and forgive in rest of my life.* [By referring to the Gülen Movement sympathizers working in state departments] *If it is a witch hunt, we will do this witch hunt.*"[16]

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[11] U.S. Attorney's Office for the Southern District of New York has launched an investigation and some criminal cases have been brought on violation of U.S. sanctions against Iran based on United Nations Security Council Resolution 1929 (2010). In one of these cases, the then Economy Minister, General Director of Bank and Deputy General Director of Bank (*Hakan Atilla*), who violated U.S. sanctions, and *Reza Zarrap*, who bribed to some high-ranking officials, have been on trial in federal court of New York by the 1st of November, 2017. U.S. authorities issued an International Arrest Warrant for the Economy Minister and the General Director of the Bank. *Hakan Atilla* was convicted by a federal jury in *Southern District Court of New York* for five accusations and acquitted for one accusation on 3 January 2018.

[12] http://www.aljazeera.com.tr/kronoloji/kronoloji-yolsuzluk-ve-rusvet-operasyonu

[13] http://www.ntv.com.tr/turkiye/efkan-ala-neredeyse-bir-hukumet-darbesi,1uC8jfenaEyQRRMhnfQxlA

[14] http://www.hurriyet.com.tr/basbakan-erdogan-en-ahlaksiz-darbe-girisimi-25566536

[15] In this way, the structure known as "*Gülen Movement*" started to be called "*Parallel Structure*" after 17th and 25th December, 2013 operations.

[16] http://www.aljazeera.com.tr/haber/erdogan-bu-cadi-avini-yapacagiz https://www.youtube.com/watch?v=dOZvu91KxVM

10. Even though the then Prime Minister considered the 17-25 December 2013 corruption operations as a "*coup attempt*",[17] this allegation does not reflect the truth. Reza Zarrab, who was arrested on 17 December 2013 and later released and went to the United States in 2016, was arrested in the United States on 20 March 20 2016 on the grounds that he violated economic embargo against Iran.[18] In the hearing of the criminal case The United States v. Hakan Atilla held in the Southern District Court of New York during November and December 2017, Zarrab stated that he gave bribes of more than 50 million Euros to the then Minister of Economy and 5.8 Million USD to the then the Interior Minister. He also said that he bribed the then General Director of the Halk Bank many times.[19] The lawyers of the Deputy General Director of Halk Bank Hakan Atilla explicitly accepted during the hearing that ministers and officials received bribes from Zarrab before the 17-25 December 2013 corruption operations.[20]

2. First apparent interferences to the Turkish Judiciary

11. While implicit interventions to the judiciary have always been possible in Turkey, in the wake of the abovementioned corruption graft probes, many meddling instances to judiciary explicitly occurred. Some of these are as follows:

12. Immediately after the graft probes were carried out on 17-25 December 2013 the Regulation on Judicial Police was modified. Judicial police officers were obligated to inform the representatives of the executive branch before the initiation of all judicial operations. Thereby, in contradiction with the principle of separation of power, the basic rule of confidentiality of criminal investigations was seriously undermined in favour of the executive body.

13. On 15 January 2014, upon the proposal of Justice Minister, two members of the First Chamber of High Council of Judges and Prosecutors (HSYK), who were in charge of

[17] http://www.aljazeera.com.tr/kronoloji/kronoloji-yolsuzluk-ve-rusvet-operasyonu

[18] The UN Security Council imposed some measures which could be considered as economic embargo against Iran with its resolution number S/RES/1929 (2010) dated 9 June 2010 (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/1929(2010)) in accordance with Article 41 of the UN Charter. The UN Security Council Resolution of 1929 (2010) is binding on all the states in accordance with Chapter VII of the UN Charter (*acting under Article 41 of Chapter VII of the United Nations Charter).* The European Union and USA authorities, too, determined some sanctions against the persons and corporations in the event of the violation of the embargo imposed by the Security Council.

[19] See the indictment at https://www.justice.gov/usao-sdny/press-release/file/994976/download.

[20] See "*the United States v. Hakan Atilla* case", https://en.wikipedia.org/wiki/U.S._v_Atilla

appointment of judges and prosecutors, were reshuffled. After this change, it was asserted by the media that the executive power grasped control over the majority of this vital Chamber and gained the ability to appoint any judges or prosecutors to any positions they desired.

14. On 15 February 2014, the Law on High Council of Judges and Prosecutors was amended and many provisions incompatible with the principles of separation of powers and independence of judiciary entered into force. The Venice Commission made the following evaluation of this amendment in its declaration on 20 June 2015: "*The Venice Commission notes that on 15 February 2014 the law on the High Council of Judges and Prosecutors was amended, strengthening the powers of the Minister of Justice within the High Council. This step reversed the positive achievements of the reform carried out in 2010 following the constitutional referendum. While many of these amendments were declared unconstitutional by a decision of the Constitutional Court of 10 April 2014, prior to this decision the Minister of Justice had already replaced key members of the administrative staff of the High Council and reassigned members of the Council to other chambers. These decisions were not reversed since the judgment of the Constitutional Court had no retroactive effect.*"[21]

15. Another amendment which did not comply with the independence of judiciary is the establishment of Criminal Peace Judgeships with the Law entered into force on 28 June 2014.

B. Establishment of Criminal Peace Judgeships

16. As stated in the Report by the Parliamentary Assembly of the Council of Europe (PACE) entitled "Functioning of Democratic Institutions in Turkey" and dated 6 June 2016 (Doc 14078)[22], pressure from the executive body on the judiciary began in the aftermath of 17-25 December 2013 corruption graft probes involving four ministers and son of the then Prime Minister. In this context, in addition to the abovementioned interferences, Criminal Peace Judgeships – which were defined as "special court" or "super judges" in the PACE report – were established. Criminal Peace Judgeships were set up against the public officers who carried out the graft probes who were identified as members of so-called "Parallel State Structure"; in other words, to combat the Gülen Movement (PACE Report dated 6.6.2016 §§ 5, 31, 40, 65 and 68). As it will be understood from the following incidents, facts and findings, Criminal Peace Judgeships were established with specific purposes*, inter alia,* to arrest police officers, in the context of the judicial investigations against those who carried out the corruption graft probes and to impede their release.

[21] http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf

[22] http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=22957&lang=en. See also, *Resolution 2121(2016)* adopted by the PACE on 22 June 2016.

17. Just after the corruption and bribery operation, at the beginning of 2014, the first judicial operations were conducted against the police officers detained in Ankara and Adana provinces. Subsequently some of these police officers were arrested and others were released by the courts, which were authorised to review the arrests upon the objections of arrestees on the ground of lack of material evidences implying commission of the charged offences. Thereupon then Prime Minister expressed his dissatisfaction with the sentences: "*how could these police officers be released in spite of the concrete evidences*".

18. On 22 June 2014, upon a journalists' question on "*whether an operation would be directed against parallel structure*", the then Prime Minister reacted as follows: "*Steps taken by the executive body are being blocked by parallel judiciary. Some of our legislative acts are before Mr. President* (Abdullah Gül). *After his approval, rapid actions will be taken*"[23] In the same speech, specifically referring to the operations to be initiated against police officers, he said "*We are designing a project. We are preparing the basis of this job*"[24]. The legislative act, which was before President Abdullah Gül to be promulgated and was called a "project", was the one establishing Criminal Peace Judgeships. The Law was adopted by Parliament on 14 June 2014 and entered into force on 28 June 2014. It set up the Criminal Peace Judgeships which are limited in number, have specifically chosen and appointed judges, are functioning on the basis of a kind of closed circuit model (report of the PACE dated 6.6.2016 § 69), and are exclusively authorised on issues like arrests, reviewing objections to arrests, search, confiscations, appointment of trustees and adjudications of refutation. Thus, with this legislative act, the executive body, which had previously not been able to ensure the obtainment of decisions it had desired in Ankara and Adana provinces, established a "*special courts*" system (Report of the PACE dated 6.6.2016 §§ 5 and 69) that would make decisions compatible with its desires and expectations.

19. Then Prime Minister reiterated his abovementioned opinions during his visit to the Great Unity Party (GUP) before the Presidential election in 2014. Vice-chair of the GUP Remzi Çayır made it clear that "*Recep Tayyip Erdoğan during his visit stated 'We have adopted the legislation on the criminal peace judgeships. Now it is before Mr Abdullah Gül* (for signature); *when it enters into force, in a week or ten days, we will settle their hash.*'"[25] Subsequently Remzi Çayır restated this event in a television[26], and these expressions have not been denied at the time of writing.

20. On 16 July 2014 the First Chamber of High Council of Judges and Prosecutors appointed six criminal peace judges to İstanbul Courthouse. Then Prime Minister, in the province of Ordu, with reference to the operation to be carried out two days later against police officers, stated that "*Judicial process is about beginning. This process will be performed by criminal peace judgeships*"[27]. On the same day, he also pointed

[23] http://www.aksam.com.tr/siyaset/paralel-yargi-c2turkiyeyi-bitirir/haber-318147
[24] http://www.aktifhaber.com/erdogan-daha-bitmedi-bu-baslangic-1021469h.htm
[25] http://www.grihat.com.tr/bunlarin-defterini-durecegiz-11949h.htm
[26] https://www.youtube.com/watch?v=ok1R_ne8I1M
[27] http://www.internethaber.com/yarginin-yeni-hakimlerinden-ilk-icraat-cemaate-1227131y.htm

out that "*in the context of the fight against parallel structure, you know, appointments in regard to criminal peace judgeships was made. As of tomorrow they will take office. We will see what will happen in police and judiciary*"[28]. Thus, the purpose of establishment of criminal peace judgeships was clearly enunciated.

21. On 21 July 2014, Criminal Peace Judgeships started to perform their duties. On this date, one judge named Hulusi Pur issued orders of detention and seizure against over 100 police officers who were allegedly members of parallel state after examining 106 folders, 7 hard discs, 238 wiretapping records, 1,292 pages extracted from CDs and many other documents. On the night of 22 July 2014 at 01.30 a.m., orders of search began to be performed and the related police officers were detained.

22. On 1 May 2015, one pro-government journalist Nagehan Alçı said on a program published at NTV news channel: "*criminal peace judgeships were established to eliminate parallel state structure*"[29].

23. As it is understood from this information, Criminal Peace Judgeships have been exclusively authorised on detention issues and were established with a special purpose of combating a dissident group internationally named "Gülen Movement" and defined by then Prime Minister as a *'parallel structure'* (2014).

24. Prior to the establishment of the Criminal Peace Judgeships, the Criminal Peace Courts had the jurisdiction over pre-trial detention or arrest orders. There were 38 Criminal Peace Courts in the Istanbul Court House before the establishment of CPJ. Suspects had the right to appeal against pre-trial detention or arrest orders to all Criminal courts of first instance. There were 58 Criminal courts of first instance in Istanbul Court House in June 2014. After the establishment of Criminal Peace Judgeships, only 6 specially selected judges have been appointed to the Istanbul Court House by the First Chamber of High Council of Judges and Prosecutors (see, § 13, above). Only these six judges have the power to order pre-trial detention and to examine all the objections made against detention orders in Istanbul province. Since then, Criminal Peace Judgeships are the only authority having exclusive jurisdiction over both ordering pre-trial detention or arrest, and examining the objections made against arrest orders. This is hardly the right to a free trail by an independent judiciary.

1. Evidence that Criminal Peace Judgeships do not satisfy the requirements of independence and impartiality, and violate the principle of a natural judge

25. According to the ECtHR, "*in order to establish whether a tribunal can be considered as 'independent', regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of guarantees against outside*

[28] http://haber.star.com.tr/politika/basbakan-erdogan-paralel-yapiyla-mucadele-etmeyen-bedelini-agir-oder/haber-915819

[29] https://www.youtube.com/watch?v=Vh4TBPAAB-o

pressures and the question whether the body presents an appearance of independence" (ECtHR, *Findlay v. The United Kingdom*, § 73).

26. The courts of first and second instance, including the Criminal Peace Judgeships (hereinafter 'CJP'), are performing their duties under the authority of the Turkish Council of Judges and Prosecutors in Turkey. Thus, the independence and impartiality of the courts of the first and second instance are directly related to the structure and practices of this Council of Judges and Prosecutors (hereinafter 'HSYK' or 'HSK'). The CJP is the main self-governing body overseeing appointment, promotion, transfer, disciplining and dismissal of judges and public prosecutors. The courts of the first and second instance are under the supervision of the CJP. All the members of the Court of Cassation and most members of the Council of State are appointed by the CJP. According to the Venice Commission, "*getting control over CJP thus means getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where transfers of judges are a common practice*".[30] In other words, once taken under control, the CPJ is a great tool to dominate the Turkish judiciary.

27. The following section examines the structure and the composition of the CJP within the context of the independence and impartiality of the judiciary. Section two and three reviews the level of independence of the Turkish judiciary from the CJP and the Executive respectively, whilst section four delves into outside pressures in general. Section five details how the attempted coup on 15 July 2016 exacerbated the independency and impartiality of the judiciary which has become more and more problematic since early 2014. Finally, section six outlines other findings about interference in judicial matters. Overall, the following facts, findings, events and evidence indicate that all the four layers of Turkey's courts of the first and second instance and especially criminal peace judgeships are not independent and impartial. They do not meet the requirements of a "tribunal established by law" or of a "tribunal" as set forth by Articles 5 and 6 of the ECHR and Articles 9 and 14 of the ICCPR.

2. Structure and composition of the Council of Judges and Prosecutors (HSYK/HSK)

28. The courts of the first and second instance are under the jurisdiction of the HSK.[31] The HSK (formerly known as the 'HSYK') is the ultimate authority in the selection, recruitment, appointment, career progress or termination of office of judges and

[30] See, the Venice Commission, "*Turkey - Opinion on the Amendments to the Constitution adopted by the Grand National Assembly on the 21st of January 2017 and to be submitted to a national referendum on the 16th of April 2017*" (Opinion No. 875/2017), dated the 13th of March 2016, § 119.

[31] The name of this administrative body was "***the High Council of Judges and Prosecutors***" (HCJP - HSYK) until the constitutional amendment dated the 16th of April 2017. According to this amendment, its name has become *"**the Council of Judges and Prosecutors***" (CJP - HSK).

prosecutors. The Council also rules on permissions to carry out disciplinary and criminal investigations as well as disciplinary penalties, including dismissals, against judges and prosecutors. All these powers have been vested in the HSK so that "*The Council of Judges and Prosecutors shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges*." (Article 159 of the Constitution as amended on 12 September 2010). Consequently, if the HSK's independence and impartiality is tainted, the independence of the courts falls into serious jeopardy. Therefore, the independence and impartiality of the courts of the first and second instance, including Criminal Peace Judgeships, must be evaluated with respect to the structure and the practices of the HSK. HSK decisions directly affect all first and second instance judges (including those in both criminal and administrative courts). In other words, a punitive measure taken against a judge, such as dismissal due to an "unfavourable" decision, would be of concern to all judges of first and second instance. Hence, the practices of the HSK against the judges of the first and second instance should be evaluated as a whole.

3. Formation of the 'HSYK' After the Elections of the 13 of October 2014

29. With the Constitutional amendment that came into effect after the referendum on 12 September 2010, the structure of the seven-member HSYK was changed to include 22 members. Article 159, as amended, stipulated that the majority of HSYK members be elected among judges and prosecutors in all ranks by their peers, for four years with the possibility of re-election. Of the 22 members, ten were to be elected from among judges and prosecutors in the courts of the first and second instance, three from among the Court of Cassation, two from among the Council of State, while four members were to be appointed by the President, and one by the General Assembly of the Turkish Justice Academy. The Minister of Justice chairs the Council and the Undersecretary of the Ministry of Justice is ex officio member.

30. After the corruption investigations involving ministers, officials and businessmen went public in December 2013, some members of the HSYK were reshuffled to different chambers of the Council upon the Minister's proposal. With this reshuffle, it has been noted that the executive gained sway over the First Chamber of the HSYK. The legislative amendments published on 28 February 2014 significantly eroded the institutional independence of the judiciary. Despite that the Constitutional Court annulled these provisions on 14 April 2014, finding them contradictory to the constitutional guarantees of judicial independence, the judgment had no retroactive effect and could not alter the administrative decisions already made. Therefore, the annulled provisions of the 2014 law still have a significant negative effect on the institutional independence of the HSYK.

31. An election was set to be held on 13 October 2014 to elect ten members to the HSYK from members of the judiciary from the courts of the first instance. Before the

elections, the pro-government Platform for Unity in the Judiciary (YBP) announced their group of candidates.

32. Immediately before the elections, Mahir Ünal and Mustafa Şentop, parliamentary group deputy chairmen of the ruling Justice and Development Party (AKP), announced that they would not recognize the results if the candidates of the YBP lost the elections.[32] Moreover, Bekir Bozdağ, then Minister of Justice, declared that the salary of judges and prosecutors would be increased by TL 1,000 if the candidates on the YBP lists won the elections.

33. Former judges and prosecutors who serve as bureaucrats in the Ministry of Justice were sent on the pretext of official duties to provincial courts to run campaigns for the candidates of the YBP. Other officials from the ministry visited the judges and prosecutors in courthouses and demanded that they vote for the YBP candidates. During these campaigns, they used and benefited from opulent means provided by Ankara and provincial governments.

34. On 4 October 2014, the then Prime Minister Ahmet Davutoğlu hosted the YBP representatives in his office and revealed his support for the group. Right after this meeting, the YBP representatives announced to the press that they would "*be working in harmony with the executive*", would raise the salary of judges and prosecutors by TL 1,000, issue an amnesty for approximately 1,500 judges and prosecutors who had received disciplinary penalties,[33] and increase the number of members in the Court of Cassation and the Council of State. These promises, all of which required legislative action, took place right before the eyes of the public.

35. The YBP, who promised to work in harmony with the executive, won eight of the 10 seats available. On the night of the elections, then Minister of Justice Bekir Bozdağ expressed his satisfaction with the results. Four members were appointed by the President and one by the Justice Academy. Including the Minister of Justice and his Undersecretary, 15 of the 22 members of the HSYK were members who either promised to work in harmony with the executive or were appointed directly by it.

36. Following the HSYK elections of 13 April 2014, a new law concerning disciplinary amnesty for the judges was enacted by the lawmakers of the governing AKP party. The disciplinary measures against approximately 1,500 judges and prosecutors were thus pardoned. Among those who received an amnesty were Ekrem Aydıner, the Istanbul prosecutor who closed the December 2013 corruption files by deciding on non-prosecution, and Uğur Kalkan, the member of the Assize Court in Tarsus who arrested 4 prosecutors and a colonel who were carrying out the probe on trucks allegedly belonging to the National Intelligence Agency (MİT) carrying arms to Syria

[32] www.cumhuriyet.com.tr/.../AKP_demokrasisi___Kazanirsak_mesru__kaybederse k_gayrimesru_.html

[33] www.memurlar.net/haber/482227//.

on 19 January 2014. Uğur Kalkan was later promoted to the Second Assize Court in Bakırköy, which arrested judges Metin Özçelik and Mustafa Başer.

37. The promise of TL 1,154 salary increase was too realized with a new law. Then on 12 December 2014 another law increased the number of members of the Court of Cassation by 144 and of the Council of State by 38. The HSYK appointed new members to all these seats some days later.

38. These points clearly indicate that the promises made by the YBP candidates for the HSYK was kept, soon after the election, by the lawmakers of the ruling AKP party. It is quite clear that the relationship between the YBP and the executive constituted a partnership and conflicted with the principles of the independence of the judiciary and the separation of powers.

39. Ergun Özbudun, an emeritus Professor of Constitutional Law and former member of the Venice Commission, made the following statement in the Rule of Law Conference held in Istanbul on 15 October 2015: "*The area where our democracy received the greatest injury in recent years is in the judiciary, judicial independence and rule of law… The main event that triggered the regression in the judiciary was the 17th -25th of December probes. A series of laws enacted to whitewash it, reset judicial independence in the end. The first attempt was the change in laws concerning the judicial police. Next came the famous HSYK law and then the law concerning criminal peace judgeships, which I believe inflicted the deepest of injuries… Finally, the law that aimed to change the composition of the two higher courts* [the Court of Cassation and the Council of State] *in favour of the government, aimed to fill these courts with their partisans. It seems that they have managed that. Moreover, we can say that control of the judiciary or the attempt to create a dependent judiciary has to a great extent been successful. This is what we saw in the HSYK elections. The group for which the government provided logistic support expressed its aim during the election process* [of the HSYK on the 13th of October 2013] *which was to "work in harmony with the legislature and the executive". As far as I know, the duty of the judiciary is not to work in harmony with the legislature and the executive; but rather to monitor them. So, it seems as if the process of seizing control of the judiciary is complete except for the Constitutional Court*".[34]

40. On 14 January 2015, the Constitutional Court rejected an application about the Criminal Peace Judgeships with respect to that they violate the principle of natural judge, do not satisfy the requirements of independence and impartiality, and their unconstitutionality (2014/164E – 2015/12K). At the same conference on 15 October

[34] See, https://www.sondakika.com/haber/haber-ergun-ozbudun-yargidaki-bozulmayi-17-25-aralik-7782627/. After 15th of July 2016 coup attempt, two members of the Constitutional Court were removed from their membership without any concrete evidence and without respecting any minimum guarantees. These two members were subsequently arrested and still in prison on pending trial.

2015, Professor Ergun Özbudun criticized the said judgment by stating that he is very surprised and sad in the face of this disappointing judgment[35].

43. The fifteen HSYK members, who promised to work in harmony with the government and who were either nominated or appointed by the executive, voted in the same direction in all the decisions of the HSYK General Assembly during their almost three years in office, except for a few objections over transfers. Without exception, all the fifteen members voted in the same way in all the decisions regarding election of members for the Court of Cassation and the Council of State.

44. Given these facts, the Council of Europe described the Platform for Unity in Judiciary (later changed to the YBD- Association for Unity in the Judiciary) as a *'government oriented'* organization.[36] The same association "*is perceived as being close to the government*", according to the European Commission.[37]

45. Turgay Ateş, a member of the *Association for Unity in the Judiciary* and the HSYK, said in a meeting in Malatya on 13 June 2016: "*Here's what we saw: unfortunately, the judiciary won't be able to rise from where it fell without cleansing the organization you well know in it. The number one priority of our HSYK is to make this possible with the support from the Association for Unity in the Judiciary. The HSYK certainly has various procedures with which to make this possible. These procedures take time to reach fruition within the scope of regulations. The process is prolonged. What can we possibly do for the fight that the State Supervisory Council (SSC) asks from the HSYK? I, along with other friends, submitted* (to the SSC) *that 'we need new legislation, within the scope of which we can take serious action against this organization. Without such legislation, we will still fight these friends with the available regulations. When can we get results? Allah may know. But we will continue working every day with the same determination to carry out our duty as best as we can*".[38] With this statement, Ateş confessed that an organ within the executive (the State Supervisory Council) demanded the HSYK to stage a fight, the HSYK obeyed the order in violation of Article 159 § 1 of the Constitution. This was a clear illustration that the HSYK was not independent from the executive.

46. The Ministry of Justice Deputy Undersecretary Yüksel Kocaman echoed Turgay Ateş's words in the same meeting: "*As our honorable member has mentioned, the Justice Ministry, the HSYK, and our Association for Unity in the Judiciary (YBD) have been working in complete harmony. We might not get the requested targets quickly. But this is a process. Everybody is well-intended and doing their best. But there's the legislation part. There are things for the HSYK to do. There are things for our ministry to do. They*

[35] https://www.sondakika.com/haber/haber-ergun-ozbudun-yargidaki-bozulmayi-17-25-aralik-7782627/

[36] GRECO "*Evaluation Report - Turkey*", dated 12-16 October 2015, p. 31.

[37] EU Commission, Turkey 2018 Report, 17 April 2018, p. 25.

[38] http://www.cnnturk.com/turkiye/hakim-ve-savcilar-iftarda-bulustu-devletinyanindayiz

are cooperating fully. We are aware of the setbacks, the problems. This is a process. We hope we'll get better results soon".[39] Kocaman's speech was another confession of the cooperation between the YBD, the HSYK and the Ministry of Justice (the executive) and the influence under which the HSYK worked. The view that the YBD was organized and supported by the Ministry of Justice was thus confirmed.

47. According to the Turkish Constitution, the HSYK "*shall be established and shall exercise its functions in accordance with the principles of the independence of the courts and the security of the tenure of judges (Art 159 § 1).*" One of the *sine qua non* characteristics of judicial independence is the guaranteed tenure of a judge in a specific posting. Yet five HSYK members who had nothing to do with the coup attempt were dismissed within 12 hours of the putsch on 15 July 2016 without being subject to any preliminary investigation or reporting their statements. Although they were clearly not caught on the act of a severe crime, all legal guarantees were violated and the five members of the HSYK were detained by an unauthorized public prosecutor and then placed in pre-trial detention by an unauthorized court. Four substitute members who would legally replace them were also dismissed on the same day. Consequently, after the dismissals of 16 July 2016, almost all the HSYK members were the ones who either promised to work in harmony with the executive or appointed directly by it.

48. A concrete manifestation of the HSYK's flagrant violation of the principles of independence of the courts and the security of the tenure of judges is the immediate dismissal of five active and four substitute members of the HSYK without any due process. Judges cannot be relieved of duty unless they make a personal request, are appointed to a higher court, or finish their tenure. They cannot be relieved of duty without an investigation carried out beforehand, nor can they be dismissed from duty without a due judicial process. These principles are prerequisites for the independence of courts and security of judges. All these facts are concrete evidence that the HSYK is neither independent nor impartial.

49. The HSYK members are entitled to choose members of the Court of Cassation and the Council of State. With a law published on the Official Gazette on 23 July 2016, all members of the Court of Cassation and the Council of State were dismissed. On 25 July 2016, 267 members of the Court of Cassation and 75 members (out of 100, of which the remaining 25 members were appointed directly by the President) of the Council of State were appointed by the HSYK, which had long become an executive accessory over the judiciary.

50. In May 2016, before the above-mentioned law was enacted, Ergun Özbudun, emeritus Professor of Constitutional Law and former member of the Venice Commission, evaluated the proposal in an interview: "*This is purely a purge law. It is a flagrant contradiction to the provisions of the Constitution on the rule of law, independence of the judiciary and guarantees for judges. According to our Constitution, judges cannot*

[39] http://www.cnnturk.com/turkiye/hakim-ve-savcilar-iftarda-bulustu-devletinyanindayiz

be dismissed or retired until they are over 65… If the law is legislated, I believe the Constitutional Court will cancel it. It may even say it is not a cancellation but an annulment because it obviously has a political aim such as creating a perfectly harmonious judiciary. The Constitutional Court will discuss complete annulment. You are making appointments for part of that staff through the HSYK, which is under your [Executive] *control. This surely is a proposal that will inflict serious injury on judicial independence."* [40]

4. Composition of the 'HSK' After the Constitutional Amendment on 16 April 2017

51. Some articles of the Constitution were amended with a referendum on 16 April 2017. The HSYK was renamed the Council of Judges and Prosecutors (HSK), which had two chambers (instead of three) and 13 members (instead of 22). Six of the 13 members including the Minister of Justice and its Undersecretary are appointed directly by the President of Turkey with the remaining seven appointed by the parliament. Considering that the ruling party has the majority in the parliament and is led by the President, it is clear that the President effectively has the authority to elect all members of the HSK. After this amendment, incumbent members of the HSYK, whose tenure normally ended in October 2018, were terminated and new members were appointed to the HSK in May 2017. It is evident that an organization that manages judges and prosecutors cannot be independent if its members can be discharged with a legislative or constitutional amendment before their term is over. All members of the new HSK were pro-government members with the Nationalist Movement Party (MHP) chairman's lawyer joining as part of an election alliance in the Parliament.

52. On 13 March 2017, before the constitutional referendum, the Venice Commission, an advisory body in the Council of Europe, published a report on the proposed amendments (Opinion No. 875/2017). It argued that the Turkish Judiciary would fall under the control of the executive [the President]. According to the Venice Commission, "*the constitutional amendment which runs the danger of transforming into a one-person presidential system is against a democratic regime based on the separation of powers. Considering the chronic concerns that the Turkish Judiciary is not independent, the judiciary's power to control the executive will further weaken with the HSYK, almost half of whose members will be directly appointed by the President.*" In brief, the Turkish judiciary, with lingering concerns on its independency, would – and did – virtually fall under the full control of a (executive, partisan) President. The HSK would – and did – become an accessory to dominate all the judges and prosecutors.[41]

[40] http://www.haberdar.com/gundem/ergun-ozbudun-yargidaki-degisiklik-teklifi-tam-anlamiyla-tasfiye-kanunu-h29393.html

[41] The opinions of the Venice Commission dated 13 March 2016 "*Turkey - Opinion on the Amendments to the Constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017*" (Opinion No. 875/2017), § 119, 128, 129, 133. www.venice.coe.int/webforms/documents/default.aspx

53. The Council of Europe Human Rights Commissioner, Nils Muiznieks said on 7 June 2017: "*The New Council of Judges and Prosecutors does not offer adequate safeguards for the independence of the judiciary*." [42]

C. Concrete facts showing that the courts of first and second instance have lost their independence and impartiality

1. Tribunals and Courts of First Instance, Including Criminal Peace Judgeships

54. A critical indicator of independency of courts is the irremovability of judges from their posts during their term of office, unless they are appointed to a higher court, they make a personal request or in cases of reorganisation of courts. According to the ECtHR, "*the irremovability of judges by the executive during their term of office must in general be considered as a corollary of their independence and thus included in the guarantees of Article 6 § 1 of the ECHR. However, the absence of a formal recognition of this irremovability in the law does not in itself imply lack of independence, provided that, it is in fact recognized, and that the other necessary guarantees are present*" (*Campbell and Fell v. The United Kingdom*, § 80 - *Lauko v. Slovakia*, § 63). Removing a judge from office before his/her term of office violates judicial independence and the principle of the rule of law. As a general principle, judges may leave their post before their term of office if they are appointed to a higher court or if they make a request to do so. As for their removal as a result of disciplinary probes and dismissal from work, "*judges can be suspended or dismissed only if their incompetence or criminal behaviour depends on very serious justifications and concrete findings and only after a fair proceeding*."

55. Since the beginning of 2014, thousands of judges and prosecutors have been transferred to other courts before their tenure was over, even though they have neither been elected to a higher court, nor have they made a personal request. Vitally, some judges were dismissed because of their decisions and appointed elsewhere. Any judge who decided to a release in a politically-motivated trial would be suspended within hours and later dismissed. Dozens of judges were dismissed, taken into custody and then arrested, as such. Furthermore, since 15 July 2016, 4,463 judges and prosecutors have been arbitrarily purged while barred from the right of defence.

56. There are other signs that the courts of the first and second instance are not independent. Judges have no guarantee whatsoever against outside pressure, in particular against pressure from the executive. The courts do not present an

[42] https://www.facebook.com/CommissionerHR/posts/806253422883903.https://twitt er.com/CommissionerHR/status/872468324013223936

appearance of independence (*Findlay v. The United Kingdom*, § 73). Below are some examples:

57. Following the 17-25 December 2013 corruption operations, on 15 January 2014, two members of the 1st Chamber of the HSYK were reshuffled to other chambers upon the proposal of the Minister of Justice. Pro-government members gained the majority in the chamber and thus the executive seized the opportunity to transfer judges and prosecutors as it pleased.[43] Soon the judges and prosecutors involved in the said corruption investigations were relieved of duty and appointed to other provinces. Evidence such as millions of dollars found in shoe boxes during the corruption investigations was overlooked, and the investigations were described as a coup attempt, which was ascribed to the '*Parallel State*' purported to be run by civil servants within the judiciary and the police force. In the case of *U.S. v. Hakan Atilla* whereby the same issues were the subject matter of a trial at New York Federal Court of Southern District in late 2017, the attorneys who were paid by the Turkish government stated, in grave contrast to the claims above, that "*the then Director General of Halkbank and some politicians shamelessly received bribe,*". Reza Zarrab, the Turkish-Iranian gold trader, also stated that he repeatedly paid bribes amounting more than 50 million euros to the Minister of Economy, the Minister of Interior, the Minister for the European Union Affairs and Director General of Halkbank.

58. The Criminal Peace Judgeships were formed to fight the organization that the government called the '*Parallel State*' and blamed for the corruption operations. With the legislation published in the Official Gazette of 28 June 2014, the limited number of CPJs, whose judges were specifically appointed, worked in a closed circuit whereby they became the sole authority in issues such as arrests, decisions over objections, searches, seizures, appointment of trustees and disclaimer trials.[44] The 1st Chamber of the HSYK appointed many of the criminal peace judges, including six to İstanbul and eight to Ankara on 16 July 2014. Referring to the operations against the police who worked on corruption probes, the then Prime Minister said in Ordu on 20 July 2014 that "*Legal procedures start soon and criminal peace judgeships will carry out this function.*"[45] In another statement on the same day, he said, "*You know, the appointments have been made concerning Criminal Peace Judgeships… in order to fight the 'Parallel State'. They will all start working tomorrow. We are going to watch and see what will happen in the police and the judiciary*".[46] It is implausible that the criminal

[43] The opinion of the Venice Commission on the Criminal Judgeships of Peace dated 13 March 2017, *Opinion No. 852/2017*, para. 49.

[44] The PACE report dated the 6th of June 2016 "*The functioning of democratic institutions in Turkey*" (Doc. 14078, paras. 5 and 69). This report was accepted with some amendments at the PACE session dated 22.6.2016 (*Resolution 2121(2016)*. Available at http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTMLen.asp?fileid=22957&lang=en

[45] http://www.internethaber.com/yarginin-yeni-hakimlerinden-ilk-icraat-cemaate1227131y.htm

[46] http://haber.star.com.tr/politika/basbakan-erdogan-paralel-yapiyla-mucadeleetmeyen-bedelini-agir-oder/haber-915819

peace judges – who were blatantly appointed by the executive – are independent, impartial or even present an appearance of independence.

59. The CPJs were established with the specific aim of prosecuting the alleged crimes committed before 17-25 December 2013 corruption probes. Several members of the government confirmed that these judgeships are the project to fight against the so-called 'Parallel State'. Natural judge principle prohibits the authorities from establishing specific courts for a specific purpose. In addition, it requires that individuals can only be brought before a court established before the date of alleged crime. According to ECtHR: "… *De même, a la lumière du principe de l'Etat de droit inhérent au système de la Convention, la Cour estime qu'un "tribunal" doit toujours être "établi par la loi", faute de quoi il lui manquerait la légitimité requise dans une société démocratique pour entendre la cause des particuliers*." (*Lavents v. Latvia*, No: 58442/00, § 81, 28 November 2002). The Criminal Peace Judgeships which were established to prosecute especially the members of the so-called 'Parallel State' thus violate the principle of natural judge. Every detainee has the right to be promptly brought before a judge or a tribunal which is previously established by law and provides the suspects with the requirements of the principle of natural judge (Art 5 § 3 of the ECHR; Art 9 § 3 of the ICCPR, see ECtHR, ECtHR, *Nikolova v. Bulgaria*). The appeal against arrest order is examined by another CPJ which also does not satisfy the requirements of natural judge principle. (Article 5 § 4 of the ECHR; Article 9 § 4 of the ICCPR, see ECtHR, *Lavents v. Latvia*).

60. Criminal peace judges began active duty on 21 July 2014. Criminal peace judge Hulusi Pur "examined" a total of 106 folders, seven hard drives, wire-tapping documents belonging to 238 suspects and 1,292 pages of CDs along with other documents and issued search and seizure warrants the same day for more than 100 police officers alleged to be affiliated with the 'Parallel State'. In the early hours of 22 July 2014, at around 01.30am, search procedures began, more than 100 police officers were detained and dozens of them were arrested.

61. As stated above, one of the prerequisites of independent courts is that judges cannot be removed from duty before the end of their tenure unless they are assigned to a higher court or make a personal request (*Campbell and Fell v. The United Kingdom*, § 80 - *Lauko v. Slovakya*, § 63).

62. Judges who competed against the YBP members at the HSYK elections of 13 October 2014 were transferred to other provinces before the end of their tenure, with a HSYK decree on 27 November 2014. For example, Judge Ayşe Neşe Gül, who had been working at the Ankara Courthouse for less than a year ran for the HSYK as an independent candidate, received 4,816 votes, and was then appointed to the Edirne province without her request or consent.

63. Judges and prosecutors who complete their term of office are normally appointed to other courts in June and November. However, an emergency decree was issued by

HSYK on 15 January 2015 and 888 judges and prosecutors were re-assigned in the middle of winter to different cities without their request or consent.

64. While traditionally about 1,600-1,700 judges and prosecutors were transferred with appointment decrees each summer, with the decree on 12 June 2015, 2665 judges and prosecutors were appointed to other cities without their request or consent. Some of the judges were re-assigned several times in the same year. For instance, Judge Bahaddin Aras was forced to move five times in one year.

65. A similar implementation was carried out with the summer appointment decree dated 6 June 2016. The location of duty of 3,228 judges and prosecutors, which is almost twice as many as the normal figure, were changed without their request and before the end of their term of office. The vice president of YARSAV (an association of judges and prosecutors), Judge Murat Aydın and his wife Judge Gülay Aydın were appointed from Karşıyaka to Trabzon without their request or consent. Murat Aydın was the judge who applied to the Constitutional Court for the annulment of the Article 299 of the Turkish Penal Code, on insults against the President, on the grounds that it was unconstitutional. In contrast, Hulusi Pur – the Criminal peace judge who released Reza Zarrab's collaborator Abdullah Happani, Halkbank's Director General Süleyman Aslan and four others who were detained as part of the December 2013 corruption investigations – was promoted and appointed as chief justice to the 17th Assize Court in Istanbul. CHP lawmaker Mahmut Tanal evaluated the 2016 summer appointment decree as follows: "*Many judges and public prosecutors were transferred without their request or consent before the end of their tenure. Now, judicial decisions are evaluated by grudge-bearing and hatred. It's as though they are keeping records of the decisions that judges are making. Judges and prosecutors who take decisions that are favourable to the government will be rewarded. The judges who released Reza Zarrab's men were rewarded. The judges and prosecutors who made decisions that were not much liked by the government were suspended, faced investigations and were jailed.*"

66. In terms of judicial independence, what is more worrisome than the removal of judges from office before the end of their tenure is their removal for their decisions. If judges are relieved of their duties due to their decisions, or face disciplinary proceedings and sanctions for this reason, it is evident that the judiciary is devoid of any tangible independence and impartiality. Over recent years, dozens of judges have been dismissed from office, transferred to other courts or even suspended due to this. Here are some cases that corroborate:

67. Kemal Karanfil, a criminal peace judge in Eskişehir province who referred a case to the Constitutional Court on the grounds that the criminal peace judgeships do not satisfy the requirements of an independent and impartial tribunal and violate the principle of natural judge, was appointed to Zonguldak province on 15 January 2015, only 6 months after his instatement in office.

68. İsmail Bulun and Numan Kılınç, the judges of the 7th Assize Court in Ankara who dismissed a case regarding the illegal wiretapping of the Prime Minister's office, were

removed from their posts shortly after their decision with the HSYK decree on 25 July 2015. Judge Fatma Ekinci, who decided the release of defendant Hasan Palaz, was appointed to another court after her decision.

69. On 16 July 2014, judges Hülya Tıraş, Seyhan Aksar, Hasan Çavaç, Bahadır Çoşlu, Yavuz Kökten, Orhan Yalmancı, Deniz Gül, Faruk Kırmacı were the first appointees to different criminal peace judgeships in Ankara. Within just one year, seven of eight Criminal peace judges in Ankara were dismissed. Firstly, Yavuz Kökten and Süleyman Köksaldı were removed from office because of their decisions to release some police officers inculpated by the ruling party. Orhan Yalmancı was dismissed because of his refusal to arrest police officers on 1 March 2015. Hasan Çavaç, who dismissed the motions concerning Orhan Yalmancı's decision and Seyhan Aksar, who had released the officers earlier, were dismissed on 9 March 2015. Hülya Tıraş, who released 25 police officers who had been under arrest for 110 days was relieved of her duty two weeks after her decision. Yaşar Sezikli and Ramazan Kanmaz were dismissed for the same reasons on 23 July 2015. Osman Doğan, who did not arrest 18 officers who were detained within the scope of the illegal wiretapping investigation, was also relieved of his duty. Similar practices have been observed in other provinces, especially in İstanbul and Izmir.

70. On 29 June 2017, Judge Yunus Süer, who was appointed to the Ankara 5th Criminal Peace Judgeship at a later stage, ordered the release of the wife of Birol Erdem, the former Undersecretary of the Ministry of Justice. However, in total contradiction with Article 104(2) of the Code of Criminal Procedures, she was arrested once again on the very same day that she released. Following the libellous news about Judge Süer, on 3 July 2017, he was appointed to Çorum, a city in Central Anatolia.[47]

71. Nilgün Güldalı, judge at the 2nd Assize Court in Bakırköy who voted for the release of judges Mustafa Başer and Metin Özçelik during their monthly detention evaluation on 24 of July 2015, was appointed to a labour court next day.

72. The Chief Judge of the 4th Administrative Court, Cihangir Cengiz, who granted a motion for stay of execution regarding the Presidency of Telecommunication and Communication decision to ban access to YouTube, was appointed to the Administrative Court in Konya before the end of his tenure.

73. The Chief of the 4th Administrative Court in Istanbul and two members were transferred, owing to the fact that they adopted a motion for stay of execution regarding the environmental impact assessment report for the construction of a third airport in Istanbul and the demolition of the 16/9 towers that spoil the Istanbul skyline.

74. The Chief Judge of the 10th Administrative Court in Istanbul Rabia Başer and associate judge Ali Kurt, who repealed the Gezi Park & Taksim Square Projects, were appointed to different courts and different cities after their decision, before the end of their term.

[47] http://www.tr724.com/yeni-hsktan-kullan-at-kararnamesi-kritik-isimler-suruldu/

75. Judge Cemil Gedikli, who issued the verdict of detention for the suspects of the corruption investigation on 17 December 2013, was appointed first to Erzurum, then to Kastamonu within a year, without his request or consent.

76. The Judge of the Bakırköy 2nd Criminal Court of First Instance Osman Burhaneddin Toprak, who admitted the indictment that the news appearing in pro-government newspapers that assassination allegations against Sümeyye Erdoğan (daughter of the President) was slander, was appointed to Konya without his request or consent on 15 October 2015, before the end of his tenure.

77. Before the general elections held on 1 November 2015, STV and Bugün TV were arbitrarily removed from subscription-based digital TV platform Digiturk. The judge at the 1st Consumer Court in Mersin, Mustafa Çolaker, who ruled in favour of these channels against the Digiturk platform, was transferred to the city of Çorum, with disciplinary investigations to follow.[48]

78. The judge at the Criminal Court of Peace in Ankara, Süleyman Köksaldı, who issued a rebuttal decision for the news about the cancellation of Fethullah Gülen's passport and espionage allegations at the Presidency of Telecommunication and Communication, was appointed to the 21st Labor Court in Ankara without his request or consent before the end of his term.[49]

79. On 26 July 2015, pro-government daily Sabah ran the news: "*Judges who took a firm stand against the Parallel Structure were appointed to Assize Courts, whereas judges who were indecisive about the Parallel Structure were demoted to family courts or the criminal courts of the first instance.*"[50] Thus, the guidelines for the unfair promotion of judges were craftily and blatantly made public. The criminal peace judge Hulusi Pur is quintessential in this regard. After a series of pro-government decisions, he was appointed as chief justice to İstanbul 17th Assize Court, then to 24th Special Assize Court. Hulusi Pur, as a criminal peace judge, released six suspects of the December 2013 corruption investigations on 14 February 2014. Later, he issued search and seizure warrants for more than 100 police officers who undertook the corruption investigations in two separate lawsuits; moreover, he arrested some of the officers. HSK finally appointed Hulusi Pur as a member of the Court of Cassation on 16 July 2018.[51]

[48] http://www.baroturk.com/hsyk-begenmedigi-kararlari-veren-hakimlericezalandirmaya-devam-ediyor-15115h.htm

[49] http://www.halkinhabercisi.com/suleyman-aslani-birakan-hakime-odul

[50] http://t24.com.tr/haber/sabah-paralelle-mucadelede-kararsiz-hakimlerin-yetkilerialindi,304066

[51] https://www.yenisafak.com/gundem/yeni-atanan-yargitay-ve-danistay-uyelerinin-isimleri-aciklandi-3384338

80. Two judges who rendered a verdict for stay of execution regarding the operating permit of a mine in Artvin Province were appointed to different provinces on 28 February 2016. The operation licence for the said mine was given to pro-government businessman Mehmet Cengiz.[52]

2. Courts of Second Instances (Regional Courts of Justice and Regional Administrative Courts)

81. The Turkish courts of appeal (Regional Courts of Justice and Regional Administrative Courts) were established on 20 July 2016. According to the principle of being "established by law", these courts should only be authorized to review decisions of the courts of the first instance on acts committed after their commencement.

82. Party states to the ECHR have discretion over legislative amendments regarding the organization of the judiciary. However, new legislation should comply with the fundamental rights surrounding judicial hearing such as the principle that courts must be previously established by law. According to the Article 6 of the ECHR, new courts should only be authorized to try crimes committed after their establishment. Nevertheless, the courts of the second instance, in violation of the principle of 'establishment by law' have been reviewing cases on alleged crimes committed before their establishment on 20 July 2016.

83. Regional courts of justice, which are the courts of appeal to the courts of first instance, are also under the supervision of the HSK. Therefore, judges of the courts of second instance suffer from the same aforementioned problems.

84. The Antalya Regional Court of Justice, 2nd Penal Chamber reversed an aggravated imprisonment sentence for six years and three months pronounced by the Assize Court in Denizli on 4 April 2017 on the grounds that the investigation into ByLock application was insufficient. On 26 April 2017, Şenol Demir, the Chief Justice of the Antalya Regional Court of Justice 2nd Penal Chamber was vilified by pro-government daily Yeni Asır because of his decision.[53] On 8 May 2017, Demir was assigned by the HSK to Konya as a judge of the first instance after only 9 months and 18 days.[54] Judges of the second instance normally have a term of at least four years.

85. A similar case occurred at the Regional Court of Justice in Gaziantep. The 11th Assize Court in Adana convicted a deputy police chief on 20 January 2017 for being a member of a terrorist organization on the grounds that he '*used the Bylock App, sent his son to Işık Preparatory School between 2013 and 2015 and had an account in Bank Asya'*. The Gaziantep Regional Court of Justice 3rd Penal Chamber reverted this decision with a

[52] @farukmercan, 28 Feb 2016, 14:06

[53] http://www.yeniasir.com.tr/sürmanşet/2017/04/26/hakimden-skandal-bylockkarari

[54] https://twitter.com/aliaktas7/status/862022086059077635). (http://www.adaletbiz.com/m/ceza-hukuku/bylock-kararina-bozma-h148726.html

majority voting on 20 April 2017 saying that, '*a conviction for membership to a terrorist organization cannot be based on Bylock records, the contents of which are not known*' (2017/286E – 2017/573K). After this reversal, the Chief Justice of the 3rd Penal Chamber Zafer Yarar was assigned by the HSK to the Kayseri on 26 May 2017 as a judge of the first instance. Mustafa Tosun, a member of the 3rd Penal Chamber who voted with the chief justice, was assigned with the same HSK decree to Istanbul as a judge of the first instance. Bayram Korkmaz, the member who voted against the reversal of the conviction, was promoted to chief justice of the 3rd Penal Chamber. Hence, the two judges in the courts of appeal, who reversed decisions in favour of the defendants, were penalized for their alleged links to or indecisiveness against "FETÖ/PDY" (the so-called 'Parallel Structure' by the government).

86. There have been numerous other cases synonymous to those above. Judges appointed to the courts of the second instance, which commenced on 20 July 2016, had been transferred back to courts of the first instance by the HSK after only a short term into their tenure. With the HSK decree on 3 July 2017, 12 judges and chief justices of the second instance were transferred back to courts of the first instance, while three others were appointed to courts of the second instance in different provinces, without serving out a year. With the HSK decree on 13 July 2017, 17 administrative judges and chief justices were transferred to different courts of the first and second instance, before they served for a year. Considering these facts, no judge in Turkey has the security of tenure. The HSK can – and did – arbitrarily transfer, demote and/or dismiss any judge, at any time it sees fit.

87. All these events attest to the fact that the judges in courts of the first and second instance, including criminal peace judgeships, are not independent from the administrative organ of the Turkish judiciary, the Council of Judges and Prosecutors (HSK).

D. Concrete facts proving the lack of independence of the judiciary from the Executive

88. While addressing the crowd in a public speech in Gaziantep on 7 August 2014, then Prime Minister Mr. Erdoğan, with regard to the detention orders given by the Istanbul Criminal Peace Judgeships to the police officers who carried out the corruption probes of December 2013, lashed out saying: "*We said that we will enter their dens; Have we not? We will keep on raiding their lairs*." Thus, the true adjudicator of the verdicts became evident. Similarly, when a trustee was appointed to Zaman daily, on 4 March 2016 by the 6th Criminal Peace Judgeship in Istanbul, then President Mr. Erdoğan addressed the public in Burdur seven days later with the same narrative: *"What did I say? We would enter their dens; haven't we? Are we continuing to do so?*"[55] He overtly manifested the real decision-maker behind the appointment of a trustee to Zaman daily.

89. After being elected President on 10 August 2014, Mr. Erdoğan stated that he would declare the Gülen Movement a terrorist organization in the undisclosed National Security Policy Document ('MGSB', often referred to as 'the Red Book'). On 12 May

[55] http://www.milliyet.com.tr/cumhurbaskani-erdogan-burdur-gundem-2208110/

2015 he remarked to the press: "*From this day forth, the judiciary will make its decisions in accordance with the Red Book*". It means that, from that day forth, courts will not make their decisions based on the constitution, statutes and universal norms (Art. 138 § 1 of the Constitution); instead, they will make their decisions in compliance with an inaccessible, unforeseeable and officially secret document – the *Red Book*. After the President's comments, criminal peace judgeships started making decisions based explicitly on the *Red Bo*ok. For instance, on 23 June 2015, the 5th Criminal Peace Judgeships in İstanbul based its motion for a detention order on the Red Book.[56] On 8 September 2015, the 3rd Anadolu Criminal Peace Judgeship in İstanbul expressed in its motion (No. 2015/2983) that: "*The advisory note MGSB defines the Parallel State Structure as the Gülenist Terrorist Organization (FETÖ/PDY). In accordance with this advisory note and the decree of the Council of Ministers that avows these terrorist organizations and their financial supporters...*" Similar wordings and expressions were made by the 9th Anadolu Criminal Peace Judgeship in İstanbul in its decision (No: 2015/1291) on 7 September 2015. It is possible to find more such examples. These cases are clear evidence that the judiciary and especially criminal peace judgeships put the orders of the government into effect. Considering the dictum of the executive, '*the judiciary will base their verdicts on the Red Book*', the independence and the impartiality of the judiciary simply evaporates while courts decisions turn into rubber stamps of the orders of the executive.

90. On 26 October 2015, the 5th Criminal Peace Judge Yunus Süer in Ankara, who decided to appoint trustees to 18 companies of the Koza Group, ran a motion (No: 2015/4104): "*Appointing supervisory trustees to a company which supports a gigantic and intensive organization that aims to abolish and replace the constitutional order of the Republic, to abolish the government or to prevent it, in part or in full, from fulfilling its duties by a terrorist group known as FETÖ/PDY is not adequate for the collection of evidence and finding the financial proof, let alone the prevention of committing crime.*" Precisely three months and fifteen days later, on 11 February 2016, the 1st Anadolu Criminal Peace Judge Bayram Aydoğdu in İstanbul used these exact same sentences in its motion to appoint trustees to some other companies (No: 2016/1315): "*Appointing supervisory trustees to a company which supports, a gigantic and intensive organization that aims to abolish and replace the constitutional order of the Republic, to abolish the government or to prevent it, in part or in full, from fulfilling its duties by a terrorist group…*". The 10th Anadolu Criminal Peace Judge Ali Aslan Giritli in İstanbul used the same expressions in his decision of 17 November 2017 (No: 2015/2903). It appears that these are not mere coincidences, but verdicts penned down by officials in the executive and submitted to various judges for their signature and approval.

91. On 12 May 2015, while the President was flying back to Turkey from Belgium, he talked about the arrests of four prosecutors and one colonel related to the probe on the trucks allegedly belonging to the National Intelligence Agency (MİT) and carrying arms to Syria: "*The arrest warrants may continue with other* [judges and prosecutors]; *it*

[56] http://www.habererk.com/siyaset/erdogandan-u-donusu/15294

seems."[57] After that, judge Süleyman Karaçöl was arrested on 15 September 2015.[58] On 12 September 2015, an arrest warrant was issued for prosecutor Muammer Akkaş in absentia. Considering that the President hinted such arrests before they were actually made, it is clear that these decisions were not taken by an independent legal body but actually were ordered down to the judiciary by the executive.[59]

92. On his return from Ukraine on 23 March 2015, the President said, "*We are closely watching the judges who are ruling on the cases related to the Parallel Structure*." In this way, he sent a message to judges and prosecutors implying that they should watch their steps. Upon hearing this remark and knowing that 15 of the 22 members of the HSYK would be aligned with the government, a judge would not be able to rule without fear or hesitation on cases concerning the group in question.

93. Judges of the first instance Metin Özçelik and Mustafa Başer, who released 62 police officers and a journalist allegedly linked to the 'Parallel Structure', were arrested on 30 April and 1 May 2015. Without any evidence other than their verdict (see the Turkish Constitutional Court Decision dated 20 January 2016, § 135 and the justification of dissenting opinion), these two judges were arrested within five days of their decisions on the grounds of being members of an armed terrorist organization and of attempting to overthrow the government. The content of the President's message was therefore duly understood.

94. The intervention of the executive did not cease with the detention of these two judges. Following their decision on 25 April 2015, the HSYK launched a disciplinary investigation against the two judges on the next day. Nonetheless, President Erdoğan assessed the situation in his remarks as: "*the HSYK was late*." In response to the President's reprehensive remarks, the Head of the 2nd Chamber of the HSYK, Mehmet Yılmaz commented, "*Yes, we were late and apologize for it.*" In a press conference by the Council of Ministers on the 27 April 2015, the government spokesman Bülent Arınç, referring to the release verdict given by the two judges, pointed out, "*How dare they*!" Around this time, the then Prime Minister Ahmet Davutoğlu made the following comments at a public rally in Gümüşhane: "*Their release decisions should be regarded as a coup attempt against the government. We will never allow these verdicts to be put into effect*." Referring to the two judges' release decisions, the Head of the 1st Chamber of HSYK Halil Koç made this press release in Sabah daily: "*There will definitely be reprisals for this.*" At that time, Kenan İpek, the then Minister of Justice and the head of the HSYK, noted: "*These actions and behaviour have legal consequences … there will be retribution for them within the framework of the law*." As a result of the blatant pressure from the government cadres, the release decisions dated of 25 April 2015

[57] http://www.aksam.com.tr/siyaset/paralel-yargiya-karsi-tutuklamalar-surecek/haber404841

[58] http://www.trthaber.com/haber/turkiye/eski-hakim-suleyman-karacol-tutuklandi203815.html

[59] See, the Venice Commission Declaration on Interference with judicial independence in Turkey, adopted on the 20th of June 2015.

were not enforced and worse, both judges were arrested. This incident alone would suffice to exemplify the overt executive coercion on the judiciary.[60]

95. The President of the Court of Cassation Ismail Cirit stated that "*two judges acted without any jurisdiction*" on 1 May 2015. He deliberately made this remark knowing that they would eventually be tried at the Court of Cassation.

96. Four public prosecutors and a judge responsible for the December 2013 corruption investigation were dismissed on 12 May 2015 by the HSYK. Barely a day later, Ahmet Davutoğlu, the then Prime Minister, remarked on this: "*We have given back the 17th-25th of December operations to its perpetrators*."

97. On 12 June 2015 in an interview to Yeni Şafak daily, the Secretary General of the HSYK Bilgin Başaran stated that, "*… the Council would support the judges commissioned to the so called 'Parallel State Structure' cases",* and, referring to judges Mustafa Başer and Metin Özçelik, he added that *"in the event that a similar kamikaze judge attempt should be hatched or act out, the same measures will be taken.*" This remark is yet another sample of unjust interference by a top HSYK executive which damages independence of the judiciary.

98. On 20 November 2015, a confidential document was sent to the HSYK by the Ministry of the Interior (No: -2043. (31420) 152488 – Subject: *Judicial decisions*). This document entreated the HSYK to take actions against 78 administrative court judges who ruled against the Ministry. Thereupon, the 3rd Chamber of the HSYK immediately launched an enquiry against the listed judges, and the 2nd Chamber suspended the promotion process of 12 judges. Similar demands were submitted by other state governors such as from Siirt, Sakarya, and Diyarbakır.[61] The abovementioned governors entreated the HSYK to take steps to curb these judges who issued verdicts against them.

99. On 29 May 2015, Can Dündar, then Editor-in-Chief of Cumhuriyet daily, published a news story claiming that MİT trucks halted in Adana were transferring weapons to Syria on 19 January 2014. Later, in a live-TV interview on TRT1, the President stated the following: "*I am under the impression that the person who covered this issue as special news will pay a heavy price for this. I will not let him go*".[62] Without any further incriminatory evidence, Can Dündar was arrested and detained on 26 November 2015 by the 7th Criminal Peace Judgeship in İstanbul.

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[60] See, the Venice Commission Declaration on Interference with judicial independence in Turkey, adopted on the 20th of June 2015.

[61] www.haberdar.com/gundem/bakanlik-aleyhimizde-karar-veriyorlar-diye-hakimlerisikayet-etti-kurul-harekete-gecti-h17382.html

[62] http://www.sozcu.com.tr/2015/gundem/erdogandan-can-dundara-tehdit-846822/

100. At the beginning of April 2017, Kemal Kılıçdaroglu, the leader of main opposition political party CHP, stated on different occasions that the coup attempt of 15 July 2016 was organized under the control of the government. Then on a live TV program on 6 April 2017, in response to Kemal Kılıçdaroğlu's criticism of the July 2016 coup attempt as '*a controlled coup attempt*',[63] President Erdoğan made the following comment: "… *Did you put them in prison? We are clearing them out of all echelons of the state and putting them behind bars, aren't we? We have arrested them and thrown them into jail, haven't we*?" [64] These statements indicate that more than 70,000 arrests (pre-trial detention) after the coup attempt were enacted at the Criminal Peace Judgeships across Turkey following the orders of the executive.

101. At a meeting entitled '*the 15th of July Martyrs and Veterans*' on 12 April 2107, in response to the main opposition party leader Kemal Kılıçdaroğlu's allegations regarding the coup attempt, President Erdoğan made these additional comments: "*Currently there are thousands of incarcerated people. Which executive body put them behind bars? Did you do it? No, we did it!*" [65] It can be understood from these remarks that the executive body has orchestrated all the mass detentions and coerced the judicial body (especially the *Criminal Peace Judgeships*) to yield to its demands. Between 15 July 2016 and 1 May 2018, more than 70,000 people were arrested by criminal peace judgeships, in fact, on the orders of the executive. The examples presented above clearly illustrate that in Turkey, the judiciary functions under the sway of the executive. It is therefore not plausible to argue that the Turkish judiciary possesses even a modicum of independence or impartiality.

E. Concrete evidences showing that the Turkish judiciary is not protected from outside pressures

102. One of the indicators of judicial independence pertains to the immunity of judges to external interventions, pressures and effects (*Findlay v. The United Kingdom*, § 73). This protective umbrella of impartiality shatters when judges diverge from the scope of the case and concrete evidence and let coercive factors play a part in their adjudication. There are numerous concrete findings that show that this security is lacking within the Turkish judiciary. In fact, judicial malpractices already enumerated are sufficing to support this claim; yet more pertinent examples are specifically compiled in this section.

103. In a Twitter message sent to the Justice Minister on 4 April 2016, pro-government journalist Fatih Tezcan wrote: "*Judge Ayşe Özel, Reg. No:100601 released a PKK terrorist, Ahmet U. in the Şırnak Province. Please look into the problem @bybekirbozdag*".[66] The HSYK immediately launched an investigation against the

[63] http://www.theglobepost.com/2017/04/03/opposition-leader-july-15-was-acontrolled-coup/

[64] http://t24.com.tr/haber/erdogan-hayir-diyenlere-terorist-demedik-onlari-da-anlayislakarsilariz,397776

[65] http://video.haber7.com/video-galeri/88100-erdogandan-onemli-aciklamar-6

[66] https://twitter.com/fatihtezcan/status/716883579821809664

judge.[67] On its own, this case shows just how much the Turkish judiciary is vulnerable and open to external pressure.

104. In his article on 4 April 2017 titled, "*Judges and Prosecutors who lack credence in Bylock*", journalist Murat Kelkitoğlu from pro-government newspaper Akşam noted: "*4- At this juncture, I will share something with you. As you know, the National Intelligence Agency (MİT) came up with a lengthy list of Bylock (an app) users (..) 5- MİT didn't laze about, it sent groups to courthouses and debriefed judges and prosecutors about Bylock and its users (..) 6- Yet, some judges and prosecutors kept voicing their concerns, we still haven't connected the dots between the Bylock App and FETÖ; that is why, it cannot be considered as evidence (..) 7- so, that is how all the release verdicts are issued. Oh, friends! Didn't these traitors communicate through this program and attempt to occupy the country? Could there be any greater evidence?*"[68] Apparently, the responsibility of lawful evidence gathering for legal proceedings or assessing the pertinence of evidence for the case at hand was taken over by the intelligence agency which fulfils the mandates and orders of the executive body. It is impossible to talk about the security and immunity of judges in a system where the ruling body have a vice-like grip over the lawful gathering, production and integrity of the assessment of evidence. The above shows a direct interference in the judicial structure and the undermining of judicial security, independence and impartiality.

105. During political cases, trials are monitored by police and intelligence officers; when a release verdict is issued, they interfere and arrest the released citizens in the yard in front of the courthouse. Legal documents are drafted for ousting the judges and prosecutors that rendered their release decisions. All these practices have been rumoured among judges as the order of the day.

106. During a hearing held on 1 February 2017 in Kirsehir Assize Court, Chief Judge Fatih Mehmet Aksoy, in regard to 39 detained suspects who were pending trial without any shred of evidence, blurted out, "*I cannot bear it any more, I will set all of them free.*" Upon hearing this remark, the case prosecutor threatened the Chief Judge: "*If you do that, I will have you arrested in two hours for using ByLock.*"[69] Thousands of civil servants have been discharged solely for downloading and/or using the smartphone application *ByLock*. Under the initiative of the Police Chief of Kırşehir Province, Veysel Murat Tuğrul, who had been observing the court proceedings and has a close friendship with Doğu Perinçek,[70] the judge was suspended in less than two hours on

[67] https://twitter.com/defnebulbul1/status/717698529762869248

[68] @kelkitlioglumrt, 4/04/2017, 07:47, 07:48, 07:49, 07:50

[69] Bylock is a smart phone application allegedly invented and used by the members of the Gülen Movement. For more information see http://www.platformpj.org/opinionarbitrary-use-bylock-instrument-false-accusation/

[70] Doğu Perinçek, is the leader of Vatan Party, a neo nationalist party , who publicly claims that he has a parallel structure in the judiciary, the police, the army and MIT (Turkish National Intelligence Service) under his control and who supports the government.

the allegation that he used ByLock.[71] This incident demonstrates how the judicial independence is usurped by the ruling authority and how vulnerable the judges are. It also shows how a judge can be unseated during an ongoing hearing from his office by a mere telephone call made by the police chief to the Capital, which shatters any notion of irremovability of judges and of judicial independence. As for Chief Judge Fatih Mehmet Aksoy, he was detained later that afternoon on charge of using ByLock[72] and was then arrested.[73] He was then suspended on 2 February 2017 on the grounds of using ByLock, and it was not until 31 December 2017 that he was reinstated after having been ascertained that he was not a ByLock user.[74]

107. The above quoted Kırşehir case is just an example of numerous similar incidents. In early 2017, when the defendants of a case in Balıkesir pointed to a police officer in the courthouse and claimed that they had been tortured by him, the police officer ran out the courthouse un-apprehended. Judges who are working under the iron fist of the executive cannot try or hear such cases since they are constantly overwhelmed by fear, anxiety and trepidation.

108. During the iftar dinner program for the Home Guard Units on 7 June 2017 in Gölbaşı, President Erdoğan referred to the detentions and the court trials of the same date and said, "*All my principal consultants are following the trials. Half of them are following the trials in Istanbul and the other half in Ankara. I receive their reports daily, I keep up with what is happening*." At that time, six of 13 HSK members were newly appointed by the President Erdoğan and another seven chosen by the AKP, the ruling party whose chairman is also Mr. Erdoğan. All judges and prosecutors are aware of the fact that all of the new HSK members were directly or indirectly designated by the President and the message of the President is clear.

F. Developments affecting the judicial independence after the coup attempt on 15 July 2016

109. Article 139 of the Turkish Constitution has established guarantees for the independence of the judiciary and the security of tenure for judges. However, Article 3 of the Emergency Decree Law No: 667 enacted on 23 July 2016 has suspended these key safeguards. Article 3 of the Decree Law No: 667 stipulates that judges, prosecutors, and even judges of the higher courts including the Constitutional Court may be permanently discharged through a unilateral decision without any legal investigation or proceeding. One emergency decree abrogated and annulled all safeguards of the judiciary. With the Article 3, more than 4,000 judges and prosecutors were permanently dismissed from office by 15 March 2017, without any respect to the rule of law, let alone independence of the judiciary. In a democratic society in which, by definition, the principle of separation of powers is guaranteed, *"judges can be*

[71] @Demokrrasi, 5/3/2017.

[72] www.haberturk.com, "Hâkim FETÖ'cüleri yargılarken açığa alındı" (The Judge was suspended while judging FETÖ members), 02 February 2017, 02:53:34.

[73] http://www.kirsehirhaberturk.com/agir-ceza-mahkemesi-baskani-tutuklandi.html

[74] https://www.yenisafak.com/gundem/o-hakim-de-mor-beyin-magduru-2940916

suspended or removed only on serious grounds of misconduct or incompetence after fair proceedings."[75] Since the Decree Law No: 667 has extirpated the basic guarantees accorded by the Constitution to the judges, it is improbable that any judicial independence in Turkey during the state of emergency – or after, with decrees now legislated – could be claimed. As long as Article 3 of the Emergency Decree Law No: 667 is in effect and hangs over the judges like the sword of Damocles, it would be illogical to claim judicial independence. Since the abovementioned decree is applicable to the first and second-instance members of the justice system, the Court of Cassation, the Council of State as well as the Constitutional Court, none of the courts in Turkey could claim to be independent. In order for court decisions to be recognized as fair, courts must satisfy essential features of independence and impartiality. Therefore, verdicts given under this climate in Turkey cannot be in compliance with the essential features of the right to a fair trial within the meaning of Article 6 of the ECHR (*Beaumartin v. France*). Furthermore, after the removal of the state of emergency on 18 July 2018, Article 3 of the Decree Law No: 667 was enacted into regular legislation on 25 July 2018. It will be effective for the next three years.

110. After the 15 July 2016 coup attempt, more than 3,000 judges and prosecutors were arrested, and more than 4,000 judges were permanently discharged without any legal action in blatant violation of Articles 129 § 2 and 139 of the Constitution. On top of this, more than 2,500 judges and prosecutors were detained and arrested in overt violation of Article 159 § 9 of the Constitution and Article 88 of the Law No: 2802. Among the dismissed are two Constitutional Court judges, 140 Court of Cassation judges, and 48 Council of State judges. Under Turkish Law, judges and prosecutors may only be arrested if there are circumstances which give rise to strong suspicion that they have committed a crime and they have been caught *in flagrante delicto*. Some judges were arrested during a hearing in front of their colleagues.[76] It should not be expected that any judge who witnesses an unlawful arrest of a colleague can perform his or her duties in an independent or impartial manner.

111. The 8th Assize Court in Diyarbakır issued a release decision for the HDP deputy Idris Baluken who was detained pending trial. Soon after the decision, the deciding Chief Justice Cem Boztaş was transferred to another court and Mr. Baluken was rearrested on 21 February 2017.[77]

112. On 31 March 2017, Chief Justice İbrahim Lorasdağı and two associate judges Barış Cömert and Necla Yeşilyurt of the 25th Assize Court in Istanbul, who decided to release 21 of 26 journalists, and the prosecutor who proposed the release of eight of them were suspended and faced disciplinary proceedings solely for their verdict on 3 April

[75] @UNHumanRights – 27/7/16 – 09.00.

[76] UN Human Rights High Commissioner Zeid Ra'ad Al Hussein said on 8.3.2017 that in Turkey the reason behind the arrest of the journalists and the judges is not that they are members of a terrorist organization. In fact, critical journalists and judges were targeted.

[77] http://www.platformpj.org/opinion-turkeys-politicized-judiciary/

2017. Thus, an extremely strong message was given to other judges that their decisions are being closely watched by the HSYK and by the Executive.

113. Soon after the release decision, pro-government journalist Cem Küçük tweeted from "@cemkucuk55": *"10- If these traitors* [released journalists] *were not rearrested, some people would pay a heavy price. I am knowingly saying this. Things will get shattered."* (6:39 PM – 31 March 2017), *"13- Bekir Bozdağ (then Minister of Justice) must urgently convene HSYK this evening and actions must be taken concerning some judges. This is the demand of the Nation."* (6:50 PM – 31 March 2017), "*Every judge and prosecutor who releases the known persons from FETÖ shall be dismissed. This is the final decision of the STATE. Let everybody know this.*" (7.08 PM – 31 March 2017). *"15- The proprietor of these courts and the State is the Nation. No release shall be issued in defiance of the Nation. No one must muscle in the patience of the Nation and the State."* (10:09 PM – 31 March 2017). *"Our Ministry of Justice and HSYK have taken action. The traitors shall not be released God willing".* (31/03/2017, 21: 40)."

114. Pro-government journalist Ersoy Dede made the following statement from Twitter: *"This is not enough @cemkucuk55. all the judges undersigning the release decisions shall be collected one by one."* (@ersoydede, 31/03/2017, 21:46).

115. Pro-government journalist Fatih Tezcan made the following statement in the same evening: *"all the members of the court panel, who released the bastard who made a show with a halter in live broadcast saying "Tayyip Ergoğan shall be killed," must be arrested on FETÖ."* (@fatihtezcan, 31/03/2017, 20:35).

116. Pro-government journalist Ömer Turan shared the following tweet from his @omerturantv Twitter account on 31 March 2017 at around 23.50: *"HSYK must urgently convene tonight and must dismiss the prosecutor and judges who released the persons from FETÖ. These names must later be arrested on ground of FETÖ."*

117. A few hours after these tweets, the then Under-Secretary of the Ministry of Justice and member of HSYK Kenan İpek made the following explanation from his Twitter account: "*The ongoing fight by the TURKISH JUDICIARY and HSYK against FETÖ/PDY armed terrorist organization shall continue with the same RESOLUTION and DETERMINATION of the first day.*" (@kenanipek53, 1/04/2017, 00.17). Following these messages, 21 journalists who were released were kept waiting inside the prison vehicles and new custody and arrest warrants were issued against them. They were sent back to prison without actually ever being released.

118. On 7 April 2017 HSYK Deputy President Mehmet Yılmaz explained the reasoning of the suspension decision against the three judges and prosecutors who ruled for the journalists' release: *"the release decision is not based on reasonable, logical and valid reasons; the evidence has not been collected; the file has not been finalized; it is not consistent and far from legality; and the release decision issued without taking into account the principle of proportionality has caused public indignation and wounded*

public conscience".[78] Thus, the judicial decision was reviewed by the HSYK, which is controlled by the executive, and the judges who delivered the decision were suspended solely on this basis. This incident has put an end to the independence of the judiciary in terms of the courts of first and second instance who are under the control of the HSYK (See, ECtHR, *Cooper v. the United Kingdom*). Furthermore, if the members of a court can be suspended on the grounds that *a decision of the court has caused public indignation and wounded public conscience*, this suggest that the judges in Turkey are profoundly without any protection from external pressures. As stated above, one of the indicators of the independence of the courts is the fact that they enjoy protection against external pressures (*Findlay v. the United Kingdom*, § 73).

119. When the chief judge and two associate judges of the 25th Assize Court in Istanbul were suspended and forced through disciplinary proceedings due to their release order for the 21 journalists, Professor of Human Rights Law Yaman Akdeniz shared the following message on his Twitter account: "*It is improbable that any Turkish journalist or any FETÖ defendants can be tried fairly.*" [79]

120. The 2nd Assize Court in Antalya decided to release 20 police officers[80] on 17 March 2017, and eight people on 30 March 2017.[81] Immediately after these decisions, Chief Justice Yücel Dağdelen was unseated and assigned to Manisa as an associate judge; Associate Judge Saim Karakay was transferred to Siirt;[82] and two other members of the panel, Ayşegül Yıldız Kaya and Ali Emre Sula, were assigned to other courts on 6 April 2017.[83] The same governmental pattern of atrocity and oppression of the judiciary manifested itself in the form of expulsion without consent, abrogating tenure rights and incriminating judges for their verdicts. Upon the objection of the chief prosecutor for the release order, the 3rd Assize Court presided over by İbrahim Altınkaynak ordered the arrest of the formerly released defendants. İbrahim Altınkaynak was appointed by the HSYK on 8 April 2017 to the newly established 10th Assize Court which handles political and terror-related crimes; he was rewarded.[84]

121. On 18 March 2017, the Assize Court in Malatya ruled for the release of Colonel Avni Angun. Immediately after this ruling, the HSYK dismissed the Chief Justice Vedat Koç and reinstated another Chief Justice. The prosecutor of the case was also changed. The new members of the court adjudicated the re-arrest of Colonel Avni Angun.[85]

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[78] http://t24.com.tr/haber/21-gazeteci-hakkinda-tahliye-karari-veren-hakim-vesavcilarin-aciga-alinma-gerekcesi-aciklandi,398039

[79] @cyberrights, 3/04/2017, 20.19.

[80] http://www.cumhuriyet.com.tr/m/haber/turkiye/700771FETÖ_davasinda_20_tahliye.html

[81] http://www.antalyakorfez.com/guncel/21362/2/gazetecileretahliye

[82] http://www.hsyk.gov.tr/Eklentiler/files/05-04-2017-Adli-Karar-517.pdf.

[83] http://www.hsyk.gov.tr/Eklentiler/Dosyalar/ca59fbb0-8c31-4687-80733bcbd6788370.pdfueileri

[84] http://www.ulusalkanal.com.tr/m/?id=153112

[85] http://www.platformpj.org/opinion-turkeys-politicized-judiciary/

122. On 2 May 2017, the 14th Assize Court in Ankara ruled for the release of the journalist Ayşegül Parıldak. This decision was harshly criticized by pro-government journalists. Ayşegül Parıldak was detained for no apparent reason for eight hours and rearrested by the same court, in total contradiction with Article 104 § 2 of the Code of Criminal Procedure. Six days later, on 8 May 2017, the Chief Justice İsmail Ademoğlu was removed from duty and appointed to a different court as a member.[86]

123. A clerk working at the Izmir Court House, İ. K., accused under the suspicion of being a member of a terrorist organization, was detained on 25 August 2016 and arrested on 1 September 2016 by the Izmir 7th Criminal Peace Judgeship. In the hearing Judge Alev Özcan said: "*A seminar was organized to us. According to the instructions, I am under the obligation to arrest detainees who are found in your situations. Even if you were my brother, you should stay in prison for your State for two or three months*." This incident was happened in the presence of suspect Y.B., and the Clerk S. P. Lawyer of I. K. who was sent by the İzmir Bar Association who said: "*Madam Judge, the file is empty, the suspects must be released*."

124. Ironically, in the aftermath of 15 July 2016 coup attempt, some of the judges who issued the verdict for the arrest of other judges and prosecutors were also arrested. These judges explained the witch hunt and shed some light on how they arrested the other judges as such: "*the public prosecutor ordered. 'Arrest them all. Never mind the evidence and the file.' We also believed that there was a FETÖ structure within the judiciary; hence we did what we had been told to do*".[87]

125. On 20 July 2016, the Anadolu Criminal Peace Judge Hasan Akdemir in İstanbul ruled for the arrest of 60 judges and prosecutors, one of whom was Osman Kandemir. Before the verdict was pronounced, the judge told Kandemir that: "*What happens so ever, I will arrest you without taking your testimony. I am waiting for news from Ankara*".[88] Criminal peace judge Akdemir was caught in the very act of taking a bribe of $50,000 for the release of a businessman and was arrested on 20 April 2017.

126. All these concrete events demonstrate that the judges of the courts of first and second instance who are working under the authority of the HSYK (now 'HSK') have lost their independence.

127. In March 2017, the Ministry of Justice promulgated an urgent note for the offices of the chief public prosecutor demanding that all the details of the legal proceedings, hearings, and the updated and detailed records of trials be sent to the Ministry. The rationale behind this demand was to oversee every step of the political investigations

[86] http://www.platformpj.org/opinion-turkeys-politicized-judiciary/

[87] http://justiceheldhostage.blogspot.de/2017/04/FETÖ-iddiasyla-tutuklama-yapanyargclar.html?spref=tw,

[88] @jhhturkey, 26/04/2017, 04:45.

and prosecutions.[89] And so with this message, the ruling authority hinted to all prosecutors and judges that all legal records and verdicts are being traced in order to curb any challenge that would defy the will of political power.

128. A similar directive was sent by the Provincial Directorate of Security of Kilis Governorship to the Assize Court in Kilis on 1 April 2017 (No: 23828302-67876-22105/2017/2547744). In this confidential directive: "*One certified copy of all interlocutory rulings and the opinion of the court documents showing the details of the release decisions for the detained suspects pending trial who have been tried in connection with FETÖ investigations in your court during March is kindly to be sent to the anti-smuggling and organized crime department of the provincial directorate of security.*" It can be inferred that this directive is likely sent from the department of the General Directorate of Security to all Assize courts across the country, with the intention of monitoring court case decisions. It is impossible for judges, who are well aware of the fact that all motions for release of the defendants are tracked by the police force (the executive), to be able to issue release decisions without feeling any fear or worry. They are intimidated.

129. On 6 June 2017, the pro-government daily Sabah ran a headline that overtly affirms the undermining of judicial independence: "*If there is no evidence, freedom with judicial control.*" The news reads as follows: *"A new criteria has been introduced for ByLock detentions in FETÖ cases. Criminal peace judgeships can release farmers, workers, tradesmen and housewives whose case file consists only of ByLock as evidence, with the condition of judicial control. If the suspects are civil servants and charged with the same ByLock evidence, they can apply to the newly-issued law with the stipulation that they make concrete confessions about FETÖ in line with the effective remorse law. When drawing up the legal documents, the Democratic Union Party-PYD terrorist organization will be removed from the official documents; yet, FETÖ will be preserved. Thus, the emphasis on the terrorist organization will be highlighted. This initiative taken by the Ankara Office of the Chief Public Prosecutor aims to curb unjust suffering and victimization. Suspects' confessions taken within the new judicial control, freedom to decode the structure of the FETÖ organization are stipulated to be congruous."*[90] Obviously, the source of the news is the Ankara Office of Chief Public Prosecutor which dictates which evidence will be accepted and how it will be utilized by judges in case proceedings. In the aftermath of the 15 July 2016 coup attempt, some judges confessed that they have issued arrest decisions at the behest of the chief public prosecutor; therefore, this information corroborates the claim that arrest orders are issued to the courts. If the assessment of evidence is handed over to the Office of Chief Public Prosecutor with the judges subsequently following their orders, the judges have no independence.

[89] @shaber_com, 21/04/2017, 15:19.

[90] http://www.sabah.com.tr/gundem/2017/06/06/baska-delil-yoksa-adli-kontrolleserbestlik

130. 11 human rights defenders gathering for a workshop in July 2017 in Büyükada including German activist Peter Frank Steudtner[91] and representatives of Amnesty International were arrested on the charges of "*organizing the continuation of the 15 July 2016 coup attempt, espionage and terrorism.*"[92] They were released by the Assize Court on 25 October 2017, at the first hearing of the criminal trial lodged against them. One day after this decision, it was reported by the German media that *"the arrestees of Büyükada trial were released as a result of secret meeting the former German Chancellor Gerhard Schröder had with the President Erdoğan*"[93] which was also confirmed by the German Government.[94] It may be inferred from this that the release decision of the three-member panel of the Assize Court is rather a mere implementation of the instructions given to them by the executive.

131. Following the bilateral talks to resolve the crisis between the two countries, after the arrests of officials working in USA diplomatic missions in Turkey and the suspension of visa services by the USA, the US Embassy in Ankara made the following statement on 6 November 2017: "*Embassy of the United States - Ankara, Turkey, "Re-opening of limited visa services – November 6, 2017*: *We have received initial high-level assurances from the Government of Turkey that there are no additional local employees of our Mission in Turkey under investigation. We have also received initial assurances from the Government of Turkey that our local staff will not be detained or arrested for performing their official duties and that Turkish authorities will inform the U.S.*

[91] Peter Frank Steudtner stated that the same methods that have become a routine after 15 July 2016 were also applied to him as in the following: "*I was detained and not informed of my rights all day. I was subjected to an informal, threatening 1.5 hour interrogation*" (*@andrewegardner*, 24 October 2017). Steudtner assessed the evidence against him as follows: "*Some of the evidences against me is fabricated, the rest is unrelated to the charges: none of it links me to terrorism*" (*@DAlhuisenJJ*, 25 October 2017). This assessment as a matter of fact summarizes the characteristics of the evidence used in the great majority of arrests and prosecutions in the post 15 July 2016 period.

[92] The President made the following statement on 8 July 2017 on the human rights defenders who were put under custody on the ground that they convened a meeting in Büyükada: *"They came together for a meeting which is virtually a continuation of 15 July. They were put under custody on the basis of intelligence received. A judicial process from this may follow."* (http://www.gazetevatan.com/erdogan-o-toplanti-15-temmuz-un-devami-icindi-1083037siyaset/?f=mobil)

[93] See in particular "*Fall Peter Steudtner: Altkanzler Schröder vermittelte bei Erdogan*" (@spiegel.de – Oct 26, 2017) - "*It has been revealed that the former German Chancellor Schröder acted as mediator in the release of Peter Steudtner,*" (p.dw.com/p/2mXRL @dw_turkce) - "*Steudtners Haftentlassung: Schröder soll vermitteit haben*" (tagesschau.de/ausland/steudt…#Steudtner #Turkey - @tagesschau – Oct 26, 2017).

[94] "*#Turkey – German gov't confirms that ex chancellor Gerhard Schröder made a deal with Erdogan to free Peter Steudtner – what was the price*?" (@NordhausenFrank – Oct 26, 2017 – 11:51 AM).

government in advance if the Government of Turkey intends to detain or arrest a member of our local staff in the future. …"[95]

132. Turkish-German dual national Die Welt Newspaper Turkey representative Deniz Yücel was taken under custody on 14 February 2017 and arrested on 27 February 2017. The President Erdoğan summarized the accusations on Yücel, following his arrest as follows: *"He is not a correspondent; he is a terrorist. … This person hid in German consulate for a month as a representative of PKK, as a German spy. We have recordings, everything; this is the very spy terrorist*".[96] Despite the alleged evidence that was claimed to have existed, and his release requests continually refused, no indictment had been prepared on Yücel. Then on 15 February 2018, Prime Minister Binali Yıldırım made an official visit to Germany. In his speech to a German TV channel one day prior to this visit, Prime Minister Yıldırım stated, on the detention of Yücel, that "*I think that a development will take place soon*." During the joint press conference on 15 February 2018 following a meeting with German Chancellor Merkel, Turkish Prime Minister, stated that *"what is necessary shall be done within the scope of the rule of law; what is required of us is to clear the way for the courts… I hope that the trial will take place within a short time and a result will be achieved."*[97] One day after this statement, on 16 February 2018, Turkey's semi-official press agency '*Anadolu Ajansı*' released that an indictment was being prepared on Yücel and a sentence of up to 18 years of imprisonment was sought (@AACanli – 16/02/2018 – 14:07). Anadolu Ajansı stated, one minute after this tweet, that an Assize Court in İstanbul had accepted the said indictment and decided to release Deniz Yücel (@AACanli – 16/02/2018 – 14:08). Despite an aggravated imprisonment for up to 18 years being sought against Yücel, no international travel ban was ever imposed and he flew to Germany in the same evening on board of a private plane.[98] In contrast, almost all the suspects who were released following arrest in the aftermath of the 15 July 2016 coup attempt were released with international travel bans. All these facts reveal that Deniz Yücel was in fact released on the instructions of the executive. A judiciary which receives instructions from the executive cannot be independent; an organ which is not independent cannot enjoy the qualification of being a "court" (ECtHR, *Beaumartin v. France)*.

133. In a statement Deniz Yücel made just after his release, on 16 February 2018, he commented on the detention and release decisions delivered on him as follows: "*I was given a document while I was being freed from the prison today. It is a ruling by the the 3rd Criminal Peace Judgeship, dated 13 February 2018. The Judge had, in fact, ruled for the continuation of my pre-trial detention. I received this decision today when I was released. But I am free despite this (decision). I don't know why I was imprisoned a year ago, and why I was released today. Isn't it strange? Anyway, it doesn't matter. After all, I know that neither my jailing, more precisely my being taking as a hostage a year ago,*

[95] See *@USEmbassyTurkey*, 5:00 PM – Nov 6, 2017. (*Statement from the U.S. Mission to Turkey on Re-opening of Limited #Visa Services in #Turkey*.). After this declaration, it was commented that "*US Embassy acknowledges that #judiciary in #Turkey is no more independent or impartial, but under control of GOV"* (@GokturkYilmaz).

[96] @NecdatG – 2:35 – Feb 16, 2018

[97] @sputnik TR – 5:39 PM – Feb 15, 2018

[98] @cumhuriyetgzt – 7:24 PM – Feb 16, 2018

nor my release today is in accordance with the rule of law at all. I know this very well." [99]

134. On 21 February 2018, it was reported in the news that the German government started preparations for the release of Deniz Yücel and rented a plane to take him from Istanbul to Germany two days before his release (14 February 2018). On the other hand, on 13 February 2018, three days before his release, the Istanbul 3rd Criminal Peace Judgeship had already ordered the continuation of his detention. The rental of the plane on 14 February 2018 provides us with a strong presumption that the German government had already had the promise for the release of Deniz Yücel and knew that he will be free soon even before the Assize Court in İstanbul.[100]

G. Other facts showing lack of judicial independence

135. Finally, apart from what has been stated above, there are some facts and findings that affected the overall independence of the judiciary. The following are just a few of the many examples.

136. Galip Ensarioglu, an influential member of the AKP, was a guest speaker at a program called 'Arka Plan' (The Background) on A Haber news channel on 5 April 2016. Defending the presidential system, Ensarioğlu said, "*The parliamentary system is to our advantage. We have the legislature, the executive and the judiciary. Can we, I mean the parliament, have a (duty) such as inspecting the AKP government?*" Thus, he admitted that the judiciary is under government control. In the same program, Burhan Kuzu, an AKP lawmaker for the last three terms and a professor of constitutional law who presided over the Constitutional Committee of Parliament, made similar statements: "*The son is ours; the daughter is ours; why should we inspect it?*" When the statements were criticized by the public, journalist Yavuz Oğhan asked Galip Ensarioğlu on a radio program whether it was a slip of the tongue. Ensarioğlu said, '*I didn't say it by mistake*."[101] These two figures were on the executive board of the AKP when they made these statements, so their words reflect the party's stance.

137. The day after the National Security Council (MGK) meeting held on 26 May 2016, President Erdoğan made a speech in Kırşehir and said, "*Yesterday, we took a new decision (in the MGK). We called it (the Gülen Movement) an illegal terrorist organization with a legal front. We made a Council recommendation that it should be called Fethullahist Terrorist Organization (FETÖ) and sent this recommendation to the government. Now, we are waiting for the government to make a cabinet decision. We will register them as a terrorist organization. They will be tried as a terrorist organization, in the same category as the PKK, PYD and YPG*." This statement shows

[99] @TurkeyPurge, 6:45 AM – Feb 17, 2018

[100] Bkz. @dw_turkce – 11:20 AM - Feb 21, 2018– @BirGun_Gazetesi - 3:43 - 21 Feb 2018.

[101] http://www.hurriyet.com.tr/galip-ensarioglu-agzimdan-kacirmadim-40083231

that the courts in Turkey comply with the resolutions of the MGK in rulings concerning the Gülen Movement, that they are not independent from the executive.

138. After the meeting of the Council of Ministers dated 30 May 2016, the Deputy Prime Minister and Government Spokesman Numan Kurtulmuş said: "*At the previous MGK meetings, it was stated that fighting the Parallel State Structure (PDY) on all fronts is a state policy. With the recommendation of the MGK (of 26 May 2016), the new phase of the struggle has been launched against this parallel structure. Pursuant to the MGK recommendation decision, PDY* (Gülen Movement) *was described as a terrorist organization for the first time and the next phase of the campaign assumed a wider framework of fighting with a terrorist organization. Therefore, all the requirements of this battle will be fulfilled by both the Government and the judicial organs and this practice will continue without interruption*." There is no doubt that this statement was made on behalf of the executive body and binds the entire executive. It is understood from these statements that all the state apparatuses, including the judiciary, are waging a war against the Gülen movement. Thus, the executive body has officially declared that the decisions taken by the MGK (National Security Council) and the Council of Ministers have been carried out by judicial organs. A judicial structure which merely implements such decisions of the MGK and the Council of Ministers (the Executive) cannot be considered an independent court (*Beaumartin v. France*).

139. The Court of Cassation delivered a judgment on 26 October 2017 which states that: *"actions such as having only sympathy for the organization or adopting the aims, values and ideology of the organization, or reading and possessing publications in this connection, having respect for the leader of the organization are not sufficient for the membership of an organization."* (Court of Cassation, 16. Criminal Chamber, Case No. 2017/1809 – Decision No. 2017/5155). In response, Ankara Chief Public Prosecutor Yüksel Kocaman made the following statement on 15 November 2017: "*In this process where our fight with the organization continues, I am of the opinion that the decision of the 16th Criminal Chamber of the Court of Cassation is not right. …* [This decision] *shall not affect us at this stage. We will continue to fight against FETÖ with determination*."[102] The prosecution office, which is under a duty to discover the material truth by collecting evidence in favour of the defendant under the Turkish law, has explicitly stated that it has undertaken the duty "to fight", a duty assigned to them by the National Security Council (NSC) and the Council of Ministers.

140. As pointed out above, then Undersecretary of the Ministry of Justice and the member of HSYK, Kenan İpek, made the following statement 1 April 2017 from his twitter account: "*the ongoing fight by the TURKISH JUDICIARY and HSYK against FETÖ/PDY armed terrorist organization shall continue with the same RESOLUTION and DETERMINATION of the first day*." (@kenanipek53, 1/04/2017, 00.17).

[102] www.gazeteduvar.com.tr, "Başsavcıdan Yargıtay'a "FETÖ" eleştirisi" (FETÖ Criticism from Chief Prosecutor to the Court of Cassation), 15 November 2017 – 13:09.

141. Then Minister of Justice Bekir Bozdağ made the following statement from his twitter account on 22 April 2017 in connection with the lawsuits to be filed against the rejection decisions by the YSK (Supreme Electoral Board) of the application for the annulment of the referendum on 16 April 2017: *"2) No application shall be made against the decisions of the YSK to any courts/authorities including the Council of State and the Constitutional Court. 3) In the event of any application in defiance of this, the Constitutional Court and the Council of State shall have no choice but issue "REFUSAL" decision."* @bekirbozdag, 22/04/2017, 09:58). With this, an influential member of the executive organ has issued an order to the two supreme courts which virtually means that "*you have no choice but to refuse*."

142. Prime Minister Binali Yıldırım, during a statement to BBC correspondent Lucy Hockings on 27 April 2017 in London, stated that *"We do not keep any persons locked without evidence; Turkey is a country of the rule of law."*[103] According to the Turkish Code of Criminal Procedure, individuals can be placed in pre-trial detention only with a decision of a judge.

143. On 7 June 2017, during the iftar dinner programme for the Home Guard Units including the Gendarmerie and the Police Force in Gölbaşı, President Erdogan referred to the detentions and the court trials of the same date and said, "*All my principal consultants are following the trials. Half of them are following the trials in Istanbul and the other half in Ankara. I receive their reports daily, I keep up with what is happening. These bloody murderers will not escape from the sorrowful doom that awaits them. The indecency and lewdness (refers to court pleas) that they staged in courthouses will not avail them when they are rotting in prison cells. Even if they serve their time and get out, our Nation will mete out the necessary punishment on the streets. They will spit in their faces, and they will drown in spittle. Our fight will go on until we eradicate each and every FETÖ member*."[104] These remarks are a direct violation of the presumption of innocence. Besides, these remarks are voiced by the same President who has ability to appoint six out of the 13 members of the HSK and is the head of the ruling party in the National Assembly that appoints the remaining seven members. A judge who is cognizant of the fact that his files and records are being monitored by the President who elects the majority of the HSK cannot rule impartially and independently. Even if the defendant's innocence is corroborated by hard facts, the political pressure rules out any possibility for court members to issue any release decision without any anxiety. After all, when the President's speech is taken into account, the verdicts of conviction have already been delivered and their fate in prison cells has already been declared.

144. On 11 January 2018, the Constitutional Court decided that jailed journalists Şahin Alpay and Mehmet Altan's freedom of expression and right to liberty and security was breached. Following this judgment, Bekir Bozdag, the then Deputy Prime Minister and

[103] *@Birgun_Gazetesi*, 1:07 PM – April 27, 2017

[104] See the Anadolu Agency internet site, 07.06.2017, "*Cumhurbaşkanı Erdoğan: FETÖ davalarının günbegün rapolarını alıyorum (I am being reported about the FETO trials)*".

Government Spokesperson, wrote on his twitter account: "*4) In its judgment regarding Alpay and Altan, the Constitutional Court breached its jurisdiction which is defined by the Constitution and laws; it assessed the facts and evidences as if it was a court of first instance; it evaluated the formation of the crime and evidences.*"[105] Based on almost the same reasoning announced by Bekir Bozdag, six different Courts of first instance did not comply with the judgment of the Constitutional Court and ordered the continued detention of the two journalists for many more months. The Courts of first instance resisted against the judgment of the Constitutional Court and did not implement it. According to Article 153 §§ 1 and 6 of the Constitution, the decisions of the Constitutional Court are final and binding on the legislative, executive, and judicial organs, on the administrative authorities, and on persons and corporate bodies.

145. Following the military operations launched by Turkey in January 2018 against the Afrin region of Syria, the Central Council of the Turkish Medical Association (TTB) declared on 24 January 2018 that it stands against the operation with its press release; "*war is a matter of public health.*"[106] After this statement, President Erdoğan accused the doctors as being "*terrorist-lovers*". Subsequently, eleven TBB Council members were put in custody on 30 January 2018 on the ground of 'terrorist propaganda'. Human Rights Lawyer Dr. Kerem Altıparmak made the following statement on these custody decisions: *"Whenever the President Erdoğan calls someone "terrorist, spy, traitor", prosecutors and courts receive his speech as an order. The last victims of this routine are 11 members of the Turkish Medical Association Central Council who were detained this morning*".[107]

146. During his Parliament speech on 27 February 2018, Kemal Kılıçdaroğlu, the leader of the main opposition party CHP, disclosed the details of the "*Informative Booklet on the Terrorism Investigations*". This was prepared and circulated to judges and prosecutors by the General Directorate of Criminal Matters of the Ministry of Justice. Kılıçdaroğlu said: "*in this booklet which has been circulated to judges and prosecutors by the Ministry of Justice, it is written that 'The decision over the releases must be reached only after having consultations with the HSK.' Judges and prosecutors are told that before reaching the final decision they must consult the HSK. It is told by the Ministry of Justice*."[108]. Kılıçdaroğlu went on stating: "*It is also written in the booklet that 'During the FETÖ investigations, post 17-25 December 2013 period must be taken into consideration.' There is no doubt that this constitutes an interference in the judiciary*."[109] On 5 March 2018, Ismail Rüştü Cirit, the President of the Court of

[105] http://www.bbc.com/turkce/haberler-turkiye-42659391

[106] Human Rights Commissioner of the Council of Europe Nils Muiznieks stated on 30 January 2018 from his official Twitter account that the TTB press release did not contain any criminal content in the following words: "*The contents of the 24 Jan statement of the Turkish Medical Association calling for peace are clearly covered by freedom of expression. Their targeting and today's arrests are unacceptable. @ttborgtr*" (@CommissionnerHR, 2:22 PM – 30 January 2018).

[107] @KeremALTIPARMAK, 8:38 AM, 30 January 2018

[108] https://odatv.com/kilicdaroglundan-gundemi-degistirecek-iddia-27021826.html.

[109] http://twitter.com/KacSaatOldu1/status/968904834459021312?s=19

Cassation, responded to a question posed by a journalist over the same booklet: "*I am not the right authority to answer this question. I asked it to Mehmet Yılmaz, Deputy President of HSK. He replied that all those are for the judicial guarantees of judges and prosecutors*."[110] The remarks of the President of the Court of Cassation made it officially clear that the booklet and the instructions thereof were intentionally prepared and circulated by the Ministry of Justice with the participation of the HSK. The instruction obliging the judges to consult the HSK before the decision on release is a clear evidence of the loss of judicial independence across the country. The other part of the instruction which dictates the judicial authorities to deal only with the post 17-25 December 2013 period while conducting FETO investigations, makes it evident that the Turkish courts are not independent from the Executive.

147. In a prosecution in Ankara regarding the "February 28 Process",[111] the prosecution office demanded aggravated life imprisonment for a total of 60 defendants, including many retired generals. Immediately prior to the final hearings, on February 28 2018, then Prime Minister Binali Yıldırım, referring to the defendants, declared, "*They will get the heaviest punishment they deserve, no doubt*." Soon after this announcement, many retired generals were sentenced to aggravated imprisonment.

H. Statements of international organisations about independence and impartiality of Turkish judiciary

148. The evaluations regarding the prevalent lack of independence and impartiality of the judiciary in Turkey do not comprise of immaterial apprehensions and abstract allegations but are rather based on concrete evidence. This is reflected in numerous reports which have been published since early 2014 by various international organizations. The following are only a small portion of them:

149. As mentioned, judges Metin Özçelik and Mustafa Başer were arrested only five days after their decision on 25 April 2015 to release 62 police officers and one journalist. The Venice Commission made the following evaluation in its declaration on 20 June 2015:

"The Venice Commission stresses that measures against judges for their decisions can only be taken if there is sufficient proof that they did not act impartially but for improper reasons. The Venice Commission is particularly concerned that the High Council of judges and prosecutors took immediate and direct action against judges and prosecutors on account of their decisions in pending cases. This practice of the High Council contradicts basic principles of the rule of law. … The facts described above clearly demonstrate that there are

[110] https://odatv.com/hsk-o-skandali-dogruladi-05031855.html

[111] "*The February 28th Process*", started in 1996 and ended on June 18, 1997, by the resignation of the Government, is called "the February 28th Process". This process, also described as "post-modern military coup", is named after the date of the National Security Council Meeting held on February 28, 1997, in which the Government was imposed on some decisions.

insufficient guarantees for the independence of the judiciary in Turkey." The Commission also called on the Turkish authorities: "*To review the measures taken against the judges and prosecutors concerned; to further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive power within the Council; to outlaw any interference by the High Council of Judges and Prosecutors with pending cases; to provide judges with legal and constitutional guarantees against transfer against their will, except in cases of reorganisation of the courts*".[112]

150. In the report "The functioning of democratic institutions in Turkey" dated 8 March 2017 by the Parliamentary Assembly of the Council of Europe Monitoring Committee, the following statements were included (§ 77-78):

"… It is a well-known fact that thousands of judges and prosecutors were dismissed by the HSYK the day after the coup, based on lists which had been prepared in advance. These collective dismissals have also had an impact on the functioning of the judiciary and its independence. The Venice Commission pointed out that "judges represent a special category of public servants, whose independence is guaranteed at the constitutional and international levels (…). Therefore, any dismissals within the judiciary or the regulatory bodies of the judiciary such as the HCJP, for example, should be subjected to particularly exacting scrutiny, even in times of a serious public emergency. Such dismissals not only affect human rights of the individual judges concerned, they may also weaken the judiciary as a whole. Finally, such dismissals may create a 'chilling effect' within the judiciary, making other judges reluctant to reverse measures declared under the emergency decree laws out of fear of becoming subjects of such measures themselves. These measures may have adverse effects on the independence of the judiciary and the effectiveness of the separation of powers within the State." (Venice Commission, CDL-AD(2016)037, § 148).

151. The European Parliament, in its resolution "*Current human rights situation in Turkey*" on 8 February 2018, included following statements:

"*The European Parliament… 2- Expresses its deep concern at the ongoing deterioration in fundamental rights and freedoms and the rule of law in Turkey, and the lack of judicial independence; condemn the use of arbitrary detention and judicial and administrative harassment to persecute tens of thousands of people; …*"[113]

152. The European Commission, in the "Turkey 2018 Report" (SWD(2018) 153) dated 18 April 2018, made the following statements on the judicial independence in the country:

"*Each sovereign state has the right to decide for itself on the form of its government and state. However, in its March 2017 opinion, the Council of Europe's Venice Commission highlighted several features of the new political system which raise particular concerns with regards to the basic principles of*

[112] http://venice.coe.int/files/turkish%20declaration%20June%202015.pdf

[113] http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2018-0040&format=XML&language=EN

democracy. It concluded that the constitutional amendments (2017), which were drafted without consultations with the Council of Europe, represent a dangerous step backwards in Turkey's constitutional democratic tradition. The Venice Commission underlined that the future presidential system was characterised by a lack of the necessary checks and balances required to safeguard against an excessive concentration of power in one single office and to ensure the independence of the judiciary. Under the new system, the President's political accountability will be mainly limited to elections. Several provisions curtail the independence of the judiciary from the executive and run contrary to European standards. …

Continued political pressure on judges and prosecutors and collective dismissal of a large number of judges and prosecutors following the 2016 attempted coup had a significant negative effect on the independence and the overall quality and efficiency of the judiciary. … There has been serious backsliding and the independence of the Turkish judiciary was severely undermined following, among other issues, the dismissal and forced removal of 30 % of Turkish judges and prosecutors following the 2016 attempted coup. These dismissals had a chilling effect on the judiciary as a whole and risk widespread self-censorship among judges and prosecutors. No measures were taken to restore legal guarantees ensuring the independence of the judiciary. On the contrary, constitutional changes in relation to the Council of Judges and Prosecutors (CJP) have further undermined its independence from the executive.

While the principles of independence and impartiality are set out in the amended Constitution, the CJP continued to engage in large-scale suspensions and transfers of judges and prosecutors without their consent. There is a need for legal and constitutional guarantees to prevent judges and prosecutors from being transferred against their will, except where courts are being reorganised. In total, since the attempted coup, 4 399 judges and prosecutors have been dismissed from their positions of which 454 were later reinstated to their positions by the CJP. There are currently over 4 000 judges and prosecutors against whom legal action has been taken (dismissals or suspension). Judges and prosecutors who were in pre-trial detention, remained without an indictment for more than a year on average.

In its December 2016 opinion, the Venice Commission stated that every decision ordering the dismissal of a judge needs to be individual and reasoned, must refer to verifiable evidence, and that the procedures before the CJP must respect at least minimal standards of due process. The Venice Commission also emphasised that an appeal against disciplinary measures should normally be available to judges who have been dismissed, which was not the case in these decisions. Dismissals in circumstances such as these have the potential to cause general self-censorship within the judiciary. This may weaken the judiciary as a whole, its independence and the separation of powers.

Pluralism in judges' associations was affected by the closure under the state of emergency of two important associations, the Association of Judges and Prosecutors and the Judges Union. The biggest association, the Association for

Judicial Unity (YBP or YBD), with around 9 145 members, is perceived as being close to the government.

Representatives of the executive and legislative branches continued to publicly comment on ongoing judicial cases, disregarding the presumption of innocence of the suspects, in a clear violation of European standards.

No changes to the institution of 'criminal judges of peace' were made. The perceived influence of the executive over their decisions and their jurisdiction and practice continue raising serious concerns. These particularly relate to their extensive powers, such as to issue search warrants, detain individuals, block websites or seize property, with considerable financial consequences; and to the fact that objections to their decisions are not reviewed by a higher judicial body but by another single-judge institution. Their rulings increasingly diverge from European Court of Human Rights case-law and rarely provide sufficiently individualised reasoning. The recommendations of the Venice Commission in its March 2017 opinion should be urgently implemented."

153. The Venice Commission, on 13 March 2017, has indeed published a special report on Criminal Peace Judgeships in which many shortcomings of the CPJ system have been indicated. (See, Venice Commission's Opinion, "*Turkey – Opinion on the duties, competences and functioning of the criminal peace judgeships*", Opinion No: 852/2016, CDL-AD(2017)004, Adopted by the Venice Commission at its 110th Plenary Session, (Venice, 10-11 March 2017)[114]. (Appendix 3)

154. As the European Commission has pointed out, there are very important concrete evidences showing that the Criminal Peace Judgeships fulfil the Government's instructions. One of the most important pieces of evidence confirming this is that almost all of the important decisions taken by these judges have prior been publicly disclosed in social media accounts run by the AKP. For instance, those twitter accounts announced unequivocally on 22 July 2014 that more than 100 police officers in Istanbul would be taken into custody and subsequently be arrested prior to the court's verdict to this end. Judges of Istanbul Criminal peace judgeships have arrested the majority of those police officers. Two judges of this court were then rewarded by being appointed as members to the Court of Cassation. That a trustee would be appointed to Koza-Ipek Media Group and all the companies of Ipek Holding was announced likewise prior to the fact. Following this announcement Yunus Süer, Judge of Ankara 5th Criminal peace judgeship, on October 26 2015 appointed trustees to a total of 18 companies including media firms. The same goes for Feza Yayıncılık A.Ş., which operated Zaman daily. That is, a trustee appointed to Feza Yayıncılık A.Ş. had already been announced by pro-government twitter accounts and journalists. The twitter account 'baskentcii' (@baskentcii), widely known to be run by the ruling party, shared two messages on 18 November 2015 and 26 November 2015 respectively: "*Will a trustee be appointed to Zaman daily as well?*" and, "*Trustees for Zaman daily and STV tv channel in the pipeline*". The same account, which had tweeted on December 25

[114] http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29004-e

2015 that "*Trustee will be appointed to the Zaman newspaper*", reiterated its messages on 12 February, 15 February and 29 February 2016. On 1 March 2016, and again on 4 March 2016, the day on which the trustee actually was appointed, this account (@baskentcii – 4/3/2016 - 09:24) tweeted that: "*Cihan news agency, Aksiyon magazine, Today's Zaman daily, Zaman daily, Zaman Kitap, Radyo Cihan, Irmak TV, Cihan media distribution channel will be handed over to trustee*". A couple of hours after this second tweet and shortly before the end of the workday, Istanbul 6th Criminal Peace Judgeship appointed trustees to these exact media companies. At least six hours before the court took decision, members of the ruling party were aware of the decision to be taken. This circumstance indicates that the judges did not take these decisions independently and that instead they fulfilled the instructions of the ruling party. Otherwise, how can the court rulings be known precisely ahead of time?

155. That *Feza Gazetecilik A.Ş*. would be handed over to trustee had also been disclosed by pro-government journalists. For example, Cem Küçük, an AKP partisan journalist wrote in his February 29 2016 Star Daily column headlined "*Can Dündar needs to be rearrested, because he is a traitor*" four days before the decision of trustee appointment: "*Soon the relevant court shall appoint a trustee to the terrorist media group called Feza Gazetecilik. And FETÖ media will be eliminated.*"[115] The examples given are not isolated. Since the foundation of the Criminal Peace Judgeships, almost all decisions taken have been announced prior through pro-government social media accounts or newspapers. The Criminal peace judgeships, as has been clearly shown with this report, do not come close to providing an independent, impartial judiciary system in Turkey. This is despite their extensive and exclusive powers to decide on detention, release, searches and seizures, appointment of trustees and so on.

Conclusion

156. For the reasons described in this Platform for Peace and Justice Report, the Criminal Peace Judgeships as established by the Law adopted on 14 June 2014 by the Turkish Parliament and entered into force on 28 June 2014, do not satisfy the requirements of the independent and impartial tribunal. They violate the principle of natural judge, which are *sine qua non* characteristics of a "tribunal" in the sense of Articles 5 and 6 of the European Convention on Human Rights and Articles 9 and 14 of the International Covenant on Political and Civil Rights, to which the Republic of Turkey is party. It is effectively acting under the executive's thumb. As such, it cannot be said that an independent or impartial judicial system exists within the country. This is evident in recent years by the treatment of judges, prosecutors, journalists, scholars, activists and others who show dissenting opinions. Concrete steps must be taken to restore judicial independence and impartiality in Tukey.

[115] http://haber.star.com.tr/yazar/can-dundar-yeniden-tutuklanmalidir-cunku-haindir/yazi-1092300