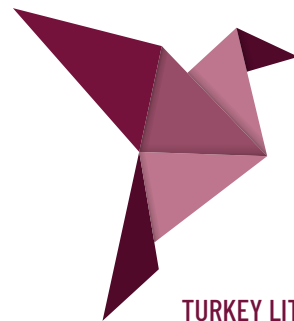


May 2026

DISMANTLING HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW IN TÜRKIYE (I)

Judicial Independence and Court Capture



TLSP
TURKEY LITIGATION SUPPORT PROJECT

The Turkey Human Rights Litigation Support Project (TLSP)

TLSP supports those challenging systemic human rights violations linked to democratic backsliding and state capture in Türkiye—ranging from concerns around judicial independence and shrinking civic space to the arbitrary use of counter-terrorism laws and the targeting of critical voices. We work with litigators, human rights defenders, civil society and international organisations, offering legal expertise, strategic support, collaborative spaces and international linkage to advance strategic human rights litigation, ensure effective remedies for those whose rights have been violated, and reinforce engagement with regional and international human rights mechanisms. We aim to contribute to long-term democratic resilience by supporting efforts to uphold the rule of law, protect fundamental rights, and keep avenues for civic and legal action open despite a shrinking civic space. TLSP was founded in 2018 and is hosted by the School of Law of Middlesex University.

May 2026

TABLE OF CONTENTS

Executive summary	ii
Introduction	1
I. Türkiye's obligation to respect and ensure judicial independence	3
1. <i>Judicial independence in regional and international law</i>	4
2. <i>Core aspects of judicial independence</i>	6
2.1 Judicial councils	6
2.2 Judicial administration	7
2.3 Adequate and effective guarantees against outside pressures	8
2.4 Appearance of independence	10
2.5 Prosecutorial independence	11
II. The capture of Türkiye's judicial system	12
1. <i>The Council of Judges and Prosecutors</i>	12
2. <i>Judicial administration</i>	15
3. <i>Guarantees against outside pressure</i>	18
4. <i>Appearance of independence</i>	24
5. <i>Prosecutorial independence</i>	26
6. <i>The Constitutional Court</i>	28
Conclusion	31

Executive summary

This report by the Turkey Human Rights Litigation Support Project (TLSP) sets out the systematic capture of Türkiye's judiciary by President Erdoğan and allied power networks. It is part of a planned series documenting and analysing the erosion of human rights, democracy and the rule of law in Türkiye during President Erdoğan's time in power.

Under international and regional human rights law, Türkiye has an obligation to respect and ensure judicial independence, which is an indispensable precondition for the protection of fundamental rights, the separation of powers, and the accountability of those exercising public authority. Key aspects of judicial independence include standards on judicial councils, judicial administration, guarantees against outside pressure, the appearance of independence of the judiciary, and prosecutorial independence. Each of these has been strategically circumvented, in law and in practice, to allow the AKP and its allies to gain access to the power both to administer the courts and to administer justice.

Constitutional and legislative changes have increased executive control over the body responsible for judicial governance, the Council of Judges and Prosecutors (CJP), placing appointments, promotions, case assignments, transfers, dismissals and disciplinary powers effectively in the hands of the executive. Judicial administration by the CJP has been used to facilitate the placement of loyalist judges and prosecutors in strategic positions while penalising those who apply the law impartially, creating a climate of fear and submission.

Safeguards against outside pressure have been systematically defied or circumvented. Following the 2016 coup attempt, over 4,000 judges and prosecutors were dismissed without individual reasoning, adequate due process, or effective judicial review — in clear breach of the guarantees of security of tenure and the right to a fair trial. Exceptions to procedural immunities protecting members of the judiciary from arbitrary investigation and arrest were reinterpreted in manifestly unreasonable terms, enabling widespread arrests and detention. The rights to freedom of expression and association within the judiciary have been suppressed through misuse of criminal law, judicial administration measures, and emergency decree powers.

During Recep Tayyip Erdoğan's presidency, Türkiye's judiciary has appeared increasingly partial, damaging the confidence that courts in a democratic society must inspire in the public. Proceedings against individuals perceived as threats to the interests of President Erdoğan and his allies have included indictments and judgments echoing presidential rhetoric and retroactive criminalisation of lawful conduct, reliance on anonymous testimony instead of concrete evidence, and politically motivated detention. Finally, the independence and effectiveness of the Constitutional Court, the supreme domestic avenue for redress for human rights violations, has been undermined through politicised appointments, a selective approach to cases favouring the interests of President Erdoğan and his allies over human rights protection, and repeated non-implementation of rights-compliant judgments.

The dismantling of judicial independence, and therefore the separation of powers, has been central to widespread violations of human rights in Türkiye. Achieving judicial independence,

and ending long-standing impunity for those in power, requires profound reform to address the structural conditions this report documents.

Introduction

2026 marks ten years since the failed coup d'état reportedly plotted by the Gülen network in Türkiye,¹ leading to mass repression against hundreds of thousands of individuals. Waves of dismissals, arrests and prosecution for alleged links to proscribed organisations, well beyond actual coup plotters, dramatically reshaped Türkiye's public service, civil society, academia, media and other sectors of society.²

These events did not occur in a democratic system in good standing.³ By the mid-2010s, earlier signs of democratic and human rights improvements in Türkiye gave way to the violent crackdown on the 2013 Gezi Park protests⁴ and extended urban curfews, civilian deaths, injuries and other grave human rights violations in the context of a collapse of the Kurdish peace process and renewed armed conflict in the south-east in 2015-2016.⁵ Meanwhile the judiciary, the media and political opposition faced growing executive pressure. Against this backdrop, systematic human rights violations against government critics and perceived dissenters after the 2016 failed coup evidenced an acceleration of democratic backsliding and a shift towards an increasingly authoritarian regime.⁶

Central to these human rights violations has been a dismantling of safeguards protecting the independence of the judiciary, leading to the effective capture of the courts by the executive. As a general principle of law recognised by the international community,⁷ judicial independence ensures the fair administration of justice and allows the judiciary to act as a check on the power of the political branches of government and the legislature as well as economic

¹ The Gülen network refers to followers of late Fethullah Gülen, a Turkish preacher. Allied with the AKP in the first decade of the 2000s, the movement ran a large number of schools in Türkiye and many Gülen followers rose to influential State roles, before the Gülen network and the AKP fell out in the early 2010s (See Al Jazeera, 'Fethullah Gülen: From Presidential Ally to Turkey's Alleged Coup Mastermind', *Al Jazeera* (21 October 2024) <https://www.aljazeera.com/news/2024/10/21/fethullah-gulen-from-presidential-ally-to-turkeys-alleged-coup-mastermind>).

² BBC News, 'Turkey Post-Coup Purges Convulse Society' (3 October 2016) <https://www.bbc.co.uk/news/world-europe-37517735>; Amnesty International, 'Turkey: No End in Sight: Purged Public Sector Workers Denied a Future in Turkey' (22 May 2017) <https://www.amnesty.org/en/documents/eur44/6272/2017/en/> .

³ In 1999, the Center for the Independence of Judges and Lawyers, established by the International Commission of Jurists, observed that 'Turkey is, in far-reaching ways, not a democratic State', despite being formally organised along the lines of democracy, due to the military's influence and 'authoritarian limitations on free speech' (Centre for the Independence of Judges and Lawyers, 'The Independence of Judges and Lawyers in the Republic of Turkey', Report of a mission: 14-25 November 1999, *International Commission of Jurists*, pp. 13-14, 180, and 185). While the early 2000s were viewed as a period of democratisation, signs of a democratic reversal began to appear even before 2010 and deepened under Erdoğan's presidency from 2014 (see European Commission, 'Turkey 2015 Report' SWD(2015) 216 final (10 November 2015); and Meltem Müftüler-Baç, 'Backsliding into Authoritarianism in Turkey: The European Union Accession Process and the Limits of Political Conditionality' in *The State of Democracy in Turkey: Institutions, Society and Foreign Relations*, LSE Middle East Centre (2015), pp. 24-31).

⁴ Amnesty International, 'Gezi Park Protests: Brutal Denial of the Right to Peaceful Assembly in Turkey' (2 October 2013) <https://www.amnesty.org/en/documents/eur44/022/2013/en/>

⁵ OHCHR, 'Report on the Human Rights Situation in South-East Turkey: July 2015 to December 2016' (February 2017) https://www.ohchr.org/sites/default/files/Documents/Countries/TR/OHCHR_South-East_TurkeyReport_10March2017.pdf

⁶ See 'Turkey: Country Profile', Freedom House, <https://freedomhouse.org/country/turkey> .

⁷ Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/11/41 (24 March 2009), para. 14.

actors.⁸ It is a core component of the rule of law and the separation of powers,⁹ democracy and good governance,¹⁰ and combatting corruption.¹¹ Reflecting this principle, Türkiye's Constitution provides that judicial powers must be exercised by members of the judiciary independently and impartially and "in accordance with the Constitution, laws, and their personal conviction conforming with the law".¹² Yet, as observed by the United Nations Special Rapporteur on the independence of judges and lawyers, Türkiye's courts have been placed under executive or legislative control that undermines their independence and legitimacy along with their capacity to act as a check on political power.¹³

Since its creation in 2018, TLSP has addressed the human rights impacts of attacks on judicial independence under President Recep Tayyip Erdoğan, including the executive's increasing control over dismissals, disciplinary proceedings, detention, prosecution, and other measures that have affected thousands of judges and prosecutors.¹⁴ This undue influence on the judiciary by the executive has been described as forming part of a process of 'State capture'¹⁵ – the situation in which state institutions come under a level of influence or control by specific individuals or groups that allows these to consolidate their political power and advance their private economic interests at the expense of the public interest.¹⁶ In the context of long-standing dominance of government by the Justice and Development Party (AKP), founded by President Erdoğan in 2001, the anti-corruption NGO Transparency International has documented how the courts have been instrumentalised by the ruling party and its allies for political and private interests.¹⁷ This is consistent with widespread corruption reported in Türkiye, including at the

⁸ Helen Duffy, Elina Hammarström and Karolína Babická, *Justice Under Pressure: Strategic Litigation of Judicial Independence in Europe*, International Commission of Jurists and Human Rights in Practice (January 2025), p. 7.

⁹ European Court of Human Rights (ECtHR), *Grzęda v Poland* [GC], App no. 43572/18, 15 March 2022, paras. 298 and 308; *Guðmundur Andri Ástráðsson* [GC], App no. 26374/18, 1 December 2020, para. 239.

¹⁰ Report of the Special Rapporteur on the independence of judges and lawyers, 25 March 2010, para. 17, A/HRC/14/26.

¹¹ United Nations Convention Against Corruption (2004), Article 11(1).

¹² Article 9 and Article 138 of the Constitution of 1982 (available in English at: https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf).

¹³ Report of the Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, *Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy*, A/HRC/56/62 (21 June 2024), paras. 36 and 23. See further Esen, Berk. 2025. "Judicial Transformation in a Competitive Authoritarian Regime: Evidence from the Turkish Case." *Law & Policy* 47(1); and Dilek Kurban, 'Authoritarian Resistance and Judicial Complicity: Turkey and the European Court of Human Rights', *EJIL* (2024), Vol. 35 No. 2, 355–387, p. 383.

¹⁴ See for example Rule 9.2 submission to the Council of Europe's Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 26 January 2024, paras. 26-42, [https://hudoc.exec.coe.int/ENG?i=DH-DD\(2024\)263E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2024)263E).

¹⁵ Nieves Zúñiga, 'Examining State Capture: Undue Influence on Law-Making and the Judiciary in the Western Balkans and Turkey', Transparency International (2020).

¹⁶ Cheryl Saunders and Katrina Malone, 'State Capture: How to Recognize and React to It' (International Institute for Democracy and Electoral Assistance (International IDEA) 2025), p. 3; see also 'Examining State Capture', Transparency International (supra), p. 6. The term has been used in national contexts including former Soviet Union and Eastern Europe countries (Joel S Hellman, Geraint Jones and Daniel Kaufmann, 'Seize the state, seize the day: state capture and influence in transition economies', World Bank Institute, Policy Research Working Paper 2444 (2000)) and South Africa (Haroon Borat and others, 'Betrayal of The Promise: How South Africa Is Being Stolen', State Capacity Research Project (May 2017)).

¹⁷ 'Examining State Capture', Transparency International (supra note 15). These allies include private economic actors: see Mustafa Kutlay and Kerem Yıldırım, 'Authoritarian populist turn and market capture in Turkey: The political economy of public procurement', *Competition & Change*, 2024, Vol. 0(0) 1–20, p. 15. An elite of "crony capitalists" loyal to the party secure AKP votes in exchange for special benefits like government contracts and leniency from law enforcement (Merve Tahiroğlu, 'Cronies in Crisis: Economic Woes, Clientelism, and Elections in

highest levels of government and within the judiciary.¹⁸ Providing an overview of over a decade of attacks on judicial independence, the present report lends weight to the assessment that Türkiye's judicial system has been repurposed by these actors to consolidate their power and allocate state resources to narrow groups free of accountability.¹⁹

This report analyses the dismantling of judicial independence in Türkiye as a violation of international human rights law and principles of the rule of law, playing a central part in court capture by the ruling AKP and its allies. In a first part, the report sets out Türkiye's obligations regarding judicial independence under international law and provides an overview of specific standards. In a second part, it describes the strategic circumvention of these standards, in domestic law and practice, to repurpose the judicial system towards advancement of President Erdoğan and his allies' interests. Although the report focuses specifically on judges and prosecutors, attacks on the legal profession have also been instrumental to shaping a "justice" system that is neither independent and effective, nor just.²⁰

I. Türkiye's obligation to respect and ensure judicial independence

Judicial independence is indispensable for the effective protection of all human rights, including the right to a remedy to protect other rights, and lies at the heart of the adequate and effective investigation, prosecution and, where appropriate, punishment of human rights violations.²¹ Türkiye, as a state party to the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR), has a binding obligation to guarantee to everyone within its jurisdiction the right to a fair trial by an independent and impartial tribunal. Judicial independence is a prerequisite for the enjoyment of the right to a remedy, and the judicial protection of the range of other rights binding on Türkiye. The independence of the judiciary is also a key condition for becoming a member of the European Union (EU), and therefore an important aspect of the accession negotiations between Türkiye

Turkey', Heinrich Boell Foundation (2022), pp. 3-6). In particular, five Turkish conglomerates with close ties with the AKP and President Erdoğan, who seem to be the main beneficiaries of the country's public tenders, have been popularly referred to as the "gang of five" (Duvarenglish, "The gang of five": Nepotism, corruption and tender-rigging in Erdoğan's Turkey' (10 February 2021), <https://www.duvarenglish.com/the-gang-of-five-nepotism-corruption-and-tender-rigging-in-erdogans-turkey-news-56200>).

¹⁸ Freedom House, 'Freedom in the World 2025: Turkey' (<https://freedomhouse.org/country/turkey/freedom-world/2025>).

¹⁹ See Elizabeth David-Barrett, 'State Capture and Development: A Conceptual Framework' (2023) 26 *Journal of International Relations and Development* 224, p. 3 and p. 7; and Borat and others' report on State capture in South Africa under the presidency of Jacob Zuma in the 2010s, which describes a "repurposing" of State institutions by the "Zuma-centred power elite" away from their formal mandate and towards "looting" and "consolidating political power to ensure longer-term survival, the maintenance of a political coalition, and its validation by an ideology that masks private enrichment by reference to public benefit" (Bhorat and others, 'Betrayal of The Promise: How South Africa Is Being Stolen' (supra note 16), p. 5).

²⁰ See Amicus Curiae Brief by Turkey Human Rights Litigation Support Project and 11 other legal and human rights organisations in the Legal Proceedings Against the Istanbul Bar Association Executive Board (Case File No: 2025/96), 19 August 2025 (<https://www.turkeylitigationssupport.com/publications/turkiye-istanbul-bar-association-board-direct-assault-independence-legal-profession>).

²¹ See e.g. Report of the Special Rapporteur on the independence of judges and lawyers, 31 December 2003, para. 30, E/CN.4/2004/60.

and the EU. The specific requirements for a judicial body to be considered independent and impartial are laid out in the jurisprudence of the relevant human rights bodies and in multiple instruments adopted at the level of the Council of Europe and the United Nations.

1. Judicial independence in regional and international law

Article 6 of the European Convention on Human Rights (ECHR) guarantees the right to a fair trial before an independent and impartial tribunal established by law. This right applies in relation not only to criminal proceedings, but also to the determination of civil rights and obligations,²² which refers to proceedings that are decisive for the outcome of genuine and serious disputes relating to a legal right.²³ In addition, under **Article 5(3) ECHR**, any person who is arrested or detained must be “brought promptly before a judge or other officer authorised by law to exercise judicial power”. According to the European Court of Human Rights (ECtHR), the authority in question is subject to the requirement of independence.²⁴

Similarly, **Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR)** provides: “All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” General Comment 32 of the United Nations Human Rights Committee (HRC), the body charged with supervising the implementation of the ICCPR, specifies that “[t]he requirement of competence, independence and impartiality of a tribunal in the sense of article 14, paragraph 1, is an absolute right that is not subject to any exception”.²⁵

These binding legal instruments and their interpretation by the ECtHR and the HRC are complemented by a multitude of standards developed by international bodies, institutions and organisations that recognise, affirm and strengthen the right to a fair trial before an independent and impartial tribunal.²⁶ At the level of the Council of Europe, the **Committee of Ministers’ Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges**, which sets out recommendations regarding measures that governments should take to ensure judicial independence, affirms that the principle guarantees “every person the fundamental right to have their case decided in a fair trial, on legal grounds only and without any improper influence”²⁷ The Recommendation affirms that “the

²² Article 6(1) ECHR provides: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”

²³ See ECtHR *Grzęda v. Poland* [GC], App no. 43572/18, 15 March 2022, paras. 257-259.

²⁴ ECtHR, *Schiesser v Switzerland*, App no. 7710/76, 4 December 1979, para. 31.

²⁵ United Nations Human Rights Committee, General Comment 32: Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial, 23 August 2007, CCPR/C/GC/32, para. 19.

²⁶ See further ‘Justice Under Pressure’, International Commission of Jurists and Human Rights in Practice (supra note 8).

²⁷ Committee of Ministers of the Council of Europe, ‘Judges: independence, efficiency and responsibilities’, Recommendation CM/Rec(2010)12, 17 November 2010, Appendix, Point 3.

independence of individual judges is safeguarded by the independence of the judiciary as a whole” and that “judges should have unfettered freedom to decide cases impartially”.²⁸

The European Commission for Democracy through Law (**Venice Commission**), the Council of Europe’s advisory body on constitutional matters, has specified that judicial independence refers to independence from the executive, from the parties to judicial proceedings, and from the legislature except in so far as they are bound to apply the law; while impartiality is determined in relation to the circumstances of a particular case.²⁹ Similarly, the Consultative Council of European Judges (**CCJE**) – an advisory body of the Council of Europe on issues relating to the independence, impartiality and competence of judges – has affirmed that judicial independence, which involves freedom from inappropriate connections with and influence by the executive and the legislature, ensures accountability of the government and the administration and that duly enacted laws are enforced and comply with a State’s constitution or higher laws.³⁰

At the international level, the **United Nations Basic Principles on the Independence of the Judiciary** (UN Basic Principles) lay out overarching universal standards regarding judicial independence and impartiality.³¹ These Principles provide that “[t]he independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.”³² They have subsequently been complemented by the **Bangalore Principles of Judicial Conduct**,³³ adopted in 2006. The Bangalore Principles provide a framework for regulating judicial conduct based on independence, impartiality, integrity, propriety, equality, competence and diligence. They affirm that “[a] judge shall exercise the judicial function independently on the basis of the judge’s assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason”.³⁴

In addition, the **Special Rapporteur on the independence of judges and lawyers** (the Special Rapporteur), an independent human rights expert appointed by the United Nations Human Rights Council, is tasked with promoting and protecting the independence of the judiciary. The Special Rapporteur has emphasised that international standards oblige governments and other institutions not only to respect the independence of the judiciary but also “to adopt all appropriate measures to ensure that judges can decide matters before them impartially and

²⁸ Ibid., Points 4 and 5. See also Council of Europe, European Charter on the Statute for Judges (1998), DAJ/DOC (98) 23, Principle 1.1.

²⁹ Venice Commission, CDL-AD(2010)003, Joint Opinion on the Draft Law on the Judicial System and the Status of Judges of Ukraine by the Venice Commission and the Directorate of Co-operation within the Directorate General of Human Rights and Legal Affairs of the Council of Europe, §34.

³⁰ Consultative Council of European Judges (CCJE), Opinion No 1 (2001) for the Attention of the Committee of Ministers of the Council of Europe on Standards Concerning the Independence of the Judiciary and the Irremovability of Judges, Point 11.

³¹ United Nations, Basic Principles on the Independence of the Judiciary, 6 September 1985.

³² United Nations Basic Principles on the Independence of the Judiciary, Principle 1.

³³ Bangalore Principles of Judicial Conduct, adopted by the United Nations Economic and Social Council (ECOSOC) Res. 2006/23, July 2006.

³⁴ Ibid., Principle 1.1.

without any improper influences, pressures or interferences”.³⁵ The Rapporteur has highlighted the important role of judicial independence in securing participatory rights, among other rights, stressing that “[i]f judges are not independent, they may struggle to apply the law equally to powerful political actors or to uphold fundamental democratic rights in the face of governmental pressure”.³⁶

Finally, although Türkiye is not a member of the EU, EU standards on judicial independence are relevant to Türkiye insofar as it remains a **candidate country to the EU**. According to **Article 2 of the Treaty on European Union (TEU)**, democracy, the rule of law and respect for human rights are among the EU’s founding values. **Article 49 TEU** provides that a country must respect these values to apply for membership of the EU. Moreover, according to the **Copenhagen Criteria** for EU accession, “[m]embership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities [...]”. The Criteria also include the ability to take on and implement effectively the rights and obligations binding on all EU member states,³⁷ including those set out in the **EU Charter on Fundamental Rights**. Article 47 of the Charter guarantees the right a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

2. Core aspects of judicial independence

Elements central to determining if a judicial body can be considered independent include the manner of appointment of its members, their security of tenure, the existence of adequate and effective guarantees against outside pressures, and whether the body presents an appearance of independence.³⁸ As affirmed by the Special Rapporteur, “[t]o be independent, a tribunal must be insulated from political interference by the government”.³⁹ Indeed, “[j]ustice systems that are structurally and functionally dependent on political bodies are at greater risk of political capture”.⁴⁰ Furthermore, prosecutors’ independent and impartial discharge of their functions is essential to the fair administration of justice.

2.1 Judicial councils

Judicial councils are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the judiciary and of individual judges and thereby to promote

³⁵ Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/38/38, 2 May 2018, para. 9.

³⁶ Special Rapporteur on the independence of judges and lawyers, ‘Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy’ (supra note 13), para. 11.

³⁷ European Commission, ‘Chapters of the Acquis’ (Directorate-General for Enlargement and Eastern Neighbourhood), https://enlargement.ec.europa.eu/enlargement-policy/conditions-membership/chapters-acquis_en

³⁸ ECtHR, *Campbell and Fell v the United Kingdom*, Apps nos. 7819/77 and 7878/77, 28 June 1984, para. 78; United Nations Human Rights Committee, CCPR General Comment 32 (2007), para 19; OSCE/ODIHR, Legal Digest of International Fair Trial Rights (2012), p. 59.

³⁹ Special Rapporteur on the independence of judges and lawyers, ‘Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy’ (supra note 13), para. 11.

⁴⁰ Ibid.

the efficient functioning of the judicial system.⁴¹ The underlying rationale for their creation is the need to insulate the judiciary and judicial career processes from external political pressure, mainly from the executive branch.⁴²

Judicial councils have increasingly been recognised as playing an essential role in guaranteeing the independence and the autonomy of the judiciary.⁴³ The ECtHR has thus emphasised judicial councils' role as a bulwark against political influence over the judiciary and the need to protect their autonomy from encroachment by legislative and executive powers.⁴⁴ Their independence is essential to safeguard the integrity of decisions affecting judges' career.⁴⁵ Thus, the ECtHR found violations of fair trial rights in relation to judicial appointments by a national judicial council that lacked independence from the executive and the legislature.⁴⁶

According to regional standards, the majority of members of judicial councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary.⁴⁷ In addition, judicial councils should not interfere with the independence of individual judges.⁴⁸ They should, on the contrary, protect members of the judiciary from arbitrariness by legislative and executive powers.⁴⁹

2.2 Judicial administration

Assigning cases to specific judges who could potentially rule in favour of particular interests constitutes a possible means to control the outcome of a case.⁵⁰ The UN Basic Principles therefore provide that “[t]he assignment of cases to judges within the court to which they belong is an internal matter of judicial administration”.⁵¹

⁴¹ Committee of Ministers of the Council of Europe, ‘Judges: independence, efficiency and responsibilities’, Recommendation CM/Rec(2010)12, 17 November 2010, para. 26.

⁴² Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/38/38, 2 May 2018, para. 84.

⁴³ *Ibid.*; Consultative Council of European Judges (CCJE), Opinion no.10(2007) on the Council for the Judiciary at the service of society, para. 8.

⁴⁴ ECtHR, *Grzęda v. Poland* [GC], app no. 43572/18, 15 March 2022, para. 346.

⁴⁵ *Ibid.*, para. 307; International Association of Judges, Universal Charter of the Judge (1999) (updated in 2017), Articles 2-3.

⁴⁶ E.g. ECtHR, *Reczkowicz v. Poland*, App no. 43447/19, 22 July 2021; ECtHR, *Juszczyszyn v. Poland*, App no. 35599/20, 6 October 2022.

⁴⁷ Committee of Ministers, Appendix to Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges (*supra* note 27), Article 27; CCJE, Opinion No. 24 (2021): Evolution of the Councils for the Judiciary and their role in independent and impartial judicial systems, CCJE(2021)11, para. 30; CCJE, Magna Carta of Judges (Fundamental Principles) (2010), para. 13; Venice Commission, Report on Judicial Appointments, CDL-AD(2007)028, para. 29. See also, at the international level, International Association of Judges, Universal Charter of the Judge, Articles 2-3; Report of the Special Rapporteur on the independence of judges and lawyers, UN Doc. A/HRC/38/38, 2 May 2018, para. 66.

⁴⁸ Committee of Ministers, Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges (*supra* note 27), para. 29.

⁴⁹ ECtHR, *Grzęda v. Poland* [GC], App no. 43572/18, 15 March 2022, paras. 327 and 347; see also Venice Commission, Rule of Law Checklist, March 2016, CDL-AD(2016)007, p. 20, 22.

⁵⁰ International Commission of Jurists, ‘International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioners Guide no. 1’ (2007), p. 22.

⁵¹ United Nations Basic Principles on the Independence of the Judiciary, Principle 14.

Persons selected for judicial office must be individuals of integrity and ability with appropriate training or qualifications in law.⁵² **Judicial appointments** must be made on the basis of merit, including technical competence and moral integrity.⁵³ According to Article 10 of the Basic Principles, discrimination on any basis, including on grounds of political or other opinion, is prohibited in selecting judges; while methods of selection must **safeguard against appointments for improper motives**.⁵⁴ If judges' appointment by the legislature or the executive is not as such incompatible with judicial independence, appointees must be free from influence or pressure when carrying out their adjudicatory role⁵⁵ and other official functions they may be called upon to perform that are closely connected with the judicial system.⁵⁶

Furthermore, the employment relationship between judges and the State must be understood in light of the guarantees required for their independence: **judges do not have a duty of trust and loyalty to holders of State power, but to the rule of law and democracy**; they must be able to render decisions based on the requirements of law and justice, without fear or favour.⁵⁷ Therefore, adequate and effective guarantees should exist concerning the conditions of promotion, transfer, suspension and cessation of their functions.⁵⁸

Judges' **promotion** should be based on ability, integrity and experience,⁵⁹ while judicial officers' independent decision-making **should not result in any detriment to their conditions of service**.⁶⁰ There must be clear procedures and objective criteria established by law for the remuneration, promotion, suspension and dismissal of members of the judiciary.⁶¹ Judges have a right to protection against **arbitrary transfer** or appointment.⁶² The imposition of **sanctions** including disciplinary measures (and *a fortiori* criminal sanctions) upon a judge for purported errors in judicial decision-making threatens judicial independence.⁶³ As a rule, the interpretation of the law, assessment of facts or weighing of evidence carried out by judges to determine cases should not give rise to liability, except in cases of malice (for civil, disciplinary, or criminal liability) and gross negligence (civil or disciplinary liability only).⁶⁴

2.3 Adequate and effective guarantees against outside pressures

⁵² *Ibid*, Principle 10.

⁵³ ECtHR, *Guðmundur Andri Ástráðsson* [GC], App no. 26374/18, 1 December 2020, para. 220.

⁵⁴ United Nations Basic Principles on the Independence of the Judiciary, Principle 10; see also ECtHR, *Bakradze v. Georgia*, App no. 20592/21, 7 November 2024, para. 85.

⁵⁵ ECtHR, *Campbell and Fell v. the United Kingdom*, App nos 7819/77 and 7878/77, 28 June 2014, para. 79; *Maktouf and Damjanović v Bosnia and Herzegovina*, App no. 2312/08, 18 July 2013, para. 49; *Flux (no. 2) v Moldova*, App no. 31001/03, 3 July 2007, para. 27.

⁵⁶ ECtHR, *Grzęda v. Poland* [GC], App no. 43572/18, 15 March 2022, para. 303.

⁵⁷ *Ibid.*, para. 264.

⁵⁸ United Nations Human Rights Committee, CCPR General Comment 32 (2007), para. 19.

⁵⁹ United Nations Basic Principles on the Independence of the Judiciary, Principle 13.

⁶⁰ See OSCE/ODIHR, *Legal Digest of International Fair Trial Rights* (2012), p. 59.

⁶¹ United Nations Human Rights Committee, CCPR General Comment 32 (2007), para. 19.

⁶² ECtHR, *Bilgen v Turkey*, App no. 1571/07, 9 March 2021, para. 63.

⁶³ United Nations Human Rights Committee's Concluding Observations on Vietnam (2002), para. 10, CCPR/CO/75/VNM and Uzbekistan (2001), para. 14, CCPR/CO/71/UZB.

⁶⁴ Committee of Ministers, Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges (*supra* note 27), paras. 66-71.

Security of tenure ensures that judicial officers can make independent decisions without fear of removal.⁶⁵ The removal, or threat of removal, of a judge from a judicial council during their term of office may affect the personal independence of that member in the exercise of their duties; by extension, the judicial council's mission to safeguard judicial independence may also be adversely affected, raising a number of rule-of-law issues.⁶⁶ **Irremovability and protection against premature termination of judges' duties** is therefore key for the maintenance of judicial independence.⁶⁷ Thus, the removal of judges by a minister of justice was found in breach of the principle of irremovability by the ECtHR.⁶⁸ According to General Comment no. 32 of the HRC:

“Judges may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the constitution or the law. The dismissal of judges by the executive, e.g. before the expiry of the term for which they have been appointed, without any specific reasons given to them and without effective judicial protection being available to contest the dismissal is incompatible with the independence of the judiciary. The same is true, for instance, for the dismissal by the executive of judges alleged to be corrupt, without following any of the procedures provided for by the law.”

In addition, where domestic law grants **judicial protection** to members of the judiciary in order to safeguard the independent exercise of their functions, judicial independence requires that such arrangements be properly complied with.⁶⁹ As observed by the Special Rapporteur, rescinding judges' and prosecutors' immunity can be a “strategy to secure impunity”, targeting those that have worked on cases concerning public corruption or government violations of human rights.⁷⁰ Even though seemingly unrelated to their professional work, criminal proceedings against judges and prosecutors can also be motivated by political ends more broadly, transforming the prosecutorial function into a tool of repression.⁷¹

Crucially, **freedom of expression and association** of members of the judiciary is a key aspect of the protection of judicial independence.⁷² Free expression ensures confidence in the administration of justice and enhances understanding of the context of judicial decision-making.⁷³ Judges' ability to participate in public discussions and debate on matters affecting judicial independence and the functioning of the justice system is crucial to the independent and impartial exercise of their professional duties and thus benefits from a high level of protection.⁷⁴ For example, where disciplinary proceedings were motivated by a judge's public statements

⁶⁵ OSCE/ODIHR, Legal Digest of International Fair Trial Rights (2012), p. 59.

⁶⁶ ECtHR, *Grzęda v. Poland* [GC], App no. 43572/18, 15 March 2022, para. 300.

⁶⁷ ECtHR, *Baka v. Hungary*, App no. 20261/12, 23 June 2016, para. 172.

⁶⁸ ECtHR, *Brudnicka v Poland*, App no. 54723/00, 3 March 2005 (final 3 June 2005), para. 41.

⁶⁹ ECtHR, *Baş v Turkey*, App no. 66448/17, 3 March 2020 (final 7 September 2020), para. 144.

⁷⁰ Special Rapporteur on the independence of judges and lawyers, ‘Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy’ (supra note 13), para. 36.

⁷¹ *Ibid.*

⁷² See United Nations Basic Principles on the Independence of the Judiciary, Principles 8 and 9.

⁷³ ‘Justice Under Pressure’, International Commission of Jurists and Human Rights in Practice (supra note 8), p. 27.

⁷⁴ ECtHR, *Kozan v. Turkey*, App no. 16695/19, 1 March 2022, paras. 61-64; ECtHR, *Miroslava Todorova v. Bulgaria*, App no. 40072/13, 19 October 2021, para 172; ECtHR, *Baka v. Hungary*, App. No. 20261/12, 23 June 2016, para. 167.

criticizing senior judges and government ministers for corruption and lack of independence, the ECtHR found a violation of the judge's right to freedom of expression.⁷⁵ Furthermore, judges' right to freedom of expression may be transformed into a **duty to speak out in defence of the rule of law and judicial independence** when those fundamental values come under threat.⁷⁶ The HRC has affirmed that measures to avoid conflicts of interest and to safeguard judicial independence must not be instrumentalized to preclude the ability of judges to participate in public affairs.⁷⁷ Closely related to freedom of expression is judges' right to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.⁷⁸ The right should be limited only to the extent required to maintain their independence and impartiality.⁷⁹

Safeguards against measures threatening judicial independence **must be adequate and effective in practice**.⁸⁰ In particular, decisions affecting judges' career must be open to review by an independent and impartial judicial body, unless there are weighty reasons exceptionally justifying the absence of such a review⁸¹.

2.4 Appearance of independence

The requirement of **appearance of independence** refers to "the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused".⁸² For example, in *Belilos v Switzerland*, a police board composed of a single municipal civil servant had powers to prosecute and punish minor offences. The ECtHR found that the civil servant was liable to return to other departmental duties and the ordinary citizen would tend to see him as a member of the police force subordinate to his superiors and loyal to his colleagues.⁸³ Therefore, the applicant could legitimately have doubts as to the independence and organisational impartiality of the police board, entailing a violation of Article 6(1) ECHR.⁸⁴

This element of judicial independence is closely related to the obligation of impartiality, which the ECtHR has defined as "the **absence of prejudice or bias**".⁸⁵ Harsh or critical statements by

⁷⁵ ECtHR, *Miroslava Todorova v. Bulgaria*, App no. 40072/13, 19 October 2021, paras. 173-181.

⁷⁶ ECtHR, *Zurek v. Poland*, App no. 39650/18, 10 October 2022, para. 222; 'Justice Under Pressure', International Commission of Jurists and Human Rights in Practice (supra note 8), pp. 44-45. See further UN Special Rapporteur on the independence of judges and lawyers, Report on freedom of expression, association and peaceful assembly of judges, 24 June 2019, para. 102; CCJE, Opinion no. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, para. 41.

⁷⁷ United Nations Human Rights Committee, General Comment 25, UN Doc CCPR/C/Rev.1/Add.7, 1996, para. 16.

⁷⁸ United Nations Basic Principles on the Independence of the Judiciary, Principle 9.

⁷⁹ Committee of Ministers, Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges (supra note 27), paras. 19, 21 and 25.

⁸⁰ See, for instance, ECtHR, *Eminağaoğlu v Turkey*, App no. 76521/12, 9 March 2021; ECtHR, *Baş v Turkey*, App no. 66448/17, 3 March 2020, para. 144.

⁸¹ ECtHR, *Eminağaoğlu v Turkey*, App no. 76521/12, 9 March 2021, para 150; ECtHR, *Bilgen v Turkey*, App no. 1571/07, 9 March 2021, para. 96.

⁸² ECtHR, *Şahiner v. Turkey*, App no. 29279/95, 25 September 2001, para. 44.

⁸³ ECtHR, *Belilos v Switzerland*, App no. 10328/83, 29 April 1988, para. 67.

⁸⁴ *Ibid.*

⁸⁵ ECtHR, *Kyprianou v Cyprus [GC]*, App no. 73797/01, 15 December 2005, para. 118.

public authorities – including government officials – concerning judicial authorities or a party to judicial proceedings may undermine judicial authorities’ appearance of impartiality, regardless of actual proof of influence or pressure on judges.⁸⁶ Repeated interference by State authorities with judicial proceedings “reveal a lack of respect for the judicial office itself and justify [...] fears as to the independence and impartiality of the tribunals”.⁸⁷

Judges must be free from undue influence **not only from outside the judiciary, but also from within**, including directives and pressure from fellow judges.⁸⁸ A situation where the executive is able to control or direct the judiciary is incompatible with the notion of an independent tribunal.⁸⁹ Furthermore, instructions given by a judicial superior to individual judges to reconsider their decision violates the principle of internal independence.⁹⁰

In addition, public confidence in the courts requires “the executive, the legislature and any other State authority, regardless of its level, to **respect and abide by the judgments and decisions of the courts, even when they do not agree with them**”.⁹¹ Similarly, the authority of the judiciary must be protected against destructive attacks – such as criticism of judges – which are essentially unfounded.⁹²

2.5 Prosecutorial independence

Prosecutors are essential agents of the administration of justice.⁹³ In criminal proceedings, they play an active role in instituting prosecutions, and in many jurisdictions, they have a role in supervising the legality of criminal investigations, supervising the execution of court decisions, and the exercise of other functions as representatives of the public interest.⁹⁴

Prosecutors must be able to play their roles independently, impartially, objectively and in a transparent manner in the discharge of their functions.⁹⁵ The ECtHR has affirmed that whatever the prosecution system and procedural rules adopted by a State, the latter must guarantee, in law and in practice, the investigation's independence and objectivity in all circumstances and regardless of whether those involved are public figures.⁹⁶ In addition, the

⁸⁶ See ECtHR, *Ivanovski v. the former Yugoslav Republic of Macedonia*, App no. 29908/11, 21 January 2016, paras. 143-151.

⁸⁷ ECtHR, *Agrokompleks v Ukraine*, App no. 23465/03, 6 October 2011, paras. 133-134; ECtHR, *Dolińska-Ficek and Ozimek v. Poland*, App nos 49868/19 and 57511/19, 8 November 2021, para. 329.

⁸⁸ ECtHR, *Agrokompleks v Ukraine*, App no. 23465/03, 6 October 2011, para. 137; Bangalore Principles of Judicial Conduct, adopted by the United Nations Economic and Social Council (ECOSOC) Res. 2006/23, July 2006, Article 1.4.

⁸⁹ United Nations Human Rights Committee, *Oló Bahamonde v Equatorial Guinea*, HRC Communication 468/1991, UN Doc CCPR/C/49/D/468/1991 (1993), para 9.4.

⁹⁰ ECtHR, *Agrokompleks v Ukraine*, App no. 23465/03, 6 October 2011, paras. 138-139.

⁹¹ *Ibid.*, para. 136.

⁹² ECtHR, *Di Giovanni v Italy*, App no. 51160/06, 9 July 2013, para. 81; ECtHR, *Kudeshkina v. Russia*, App no. 29492/05, 14 September 2009, para. 86.

⁹³ Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, A/HRC/20/19, 7 June 2012, para. 93.

⁹⁴ United Nations Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990), para. 11.

⁹⁵ *Ibid.*, para. 24.

⁹⁶ ECtHR, *Kolevi v. Bulgaria*, App no. 1108/02, 5 November 2009, para. 208.

United Nations Guidelines on the Role of Prosecutors make clear that States have an obligation to ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.⁹⁷

As highlighted by the Special Rapporteur, for the independence of the judicial system to be safeguarded:

“(a) The prosecutor and the prosecution service should be functionally autonomous from the legislative and executive branches, irrespective of the institutional structure; in this regard, States must ensure that prosecutors can perform their duties in an independent, objective and impartial manner so that criminal justice is not instrumentalized in service of Government aims; (b) Prosecutors must be insulated from politically motivated punishment or reward for undertaking their professional duties; the security of tenure of prosecutors be ensured by law and guaranteed; the promotion of prosecutors be based on objective factors and decided through fair and impartial processes; the transfer of prosecutors to other posts not be used as a threat; and the dismissal of prosecutors be based on law or regulations and subject to independent review.”⁹⁸

II. The capture of Türkiye’s judicial system

Prior to the AKP’s rise to power, structural deficiencies in the functioning of Türkiye’s judiciary already undermined its independence, with judges and prosecutors facing undue influence and pressure from the executive in the exercise of their professional duties.⁹⁹ Legislative changes introduced during then Prime Minister Erdoğan’s premiership, though presented as reforms, did not constitute genuine steps to ensure its independence and break with the tradition of politicising the administration and controlling the judiciary.¹⁰⁰ From the 2010s onwards, and particularly after Mr. Erdoğan became president, the separation of powers between the judiciary and the executive was eroded to a new end: the suppression, dilution, evasion of or disregard for safeguards protecting judicial independence allowed a transformation of the judiciary in his and his allies’ interests.

1. The Council of Judges and Prosecutors

⁹⁷ United Nations Guidelines on the Role of Prosecutors (supra note 94), para. 4.

⁹⁸ Special Rapporteur on the independence of judges and lawyers, ‘Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy’ (supra note 13), para. 72.

⁹⁹ International Commission of Jurists Centre for the Independence of Judges and Lawyers, ‘The Independence of Judges and Lawyers in the Republic of Turkey’, Report of a mission: 14-25 November 1999, pp. 109-110.

¹⁰⁰ See Venice Commission, Opinion on the Draft Law on Judges and Prosecutors of Turkey, Opinion No. 610/2011, CDL-AD(2011)004 (29 March 2011), para. 5; Venice Commission, Interim Opinion on the Draft Law on the High Council for Judges and Prosecutors (of 27 September 2010) of Turkey, CDL-AD(2010)042, Opinion no. 600/2010, (20 December 2010), para. 18.

Türkiye's judicial council, the Council of Judges and Prosecutors (CJP), is the main self-governing body of the judiciary, with powers of admission to the profession, appointment and transfer, promotion, disciplinary sanctions, suspension, and other acts of judicial administration.¹⁰¹ It is also responsible for the election of members to the supreme criminal and administrative courts, namely the Court of Cassation and the Council of State.¹⁰² The CJP is meant to constitute one of the most crucial guarantees of judicial independence and a key institution, alongside the Constitutional Court, in the protection of the rule of law.¹⁰³

Important powers of the Ministry of Justice over the CJP (then 'High Council of Judges and Prosecutors' or 'HCJP') before Mr. Erdoğan's premiership implied that the CJP was not independent from political influence.¹⁰⁴ In 2010, constitutional reforms introduced a partly electoral system within the CJP (then 'High Council of Judges and Prosecutors') and established its administrative and budgetary autonomy from the executive.¹⁰⁵ These changes were welcomed by the Venice Commission as 'a considerable improvement on the existing situation,' while noting concerns about whether the new system would in practice operate independently of political control.¹⁰⁶ These concerns were echoed by others, who criticised the amendments as informally increasing executive control and as a strategy of alliance with junior judges against senior judges perceived as anti-government.¹⁰⁷ In addition, several of the reforms were subsequently reversed by legislative amendments adopted in 2014, which re-asserted ministerial control over the Council – coinciding with the AKP's split with the Gülen network and the start of its purge of judges claimed to be part of it.¹⁰⁸ **The 2014 amendments allowed the Minister of Justice to appoint key personnel to the Council and to determine the composition of its chambers, while 2014 elections by senior judges and prosecutors were heavily influenced by the Ministry of Justice and allowed the Government to secure the support of a large majority of elected members of the Council.**¹⁰⁹

In 2017, new constitutional amendments, which remain the basis of the current system, radically altered the composition and selection procedure of the CJP under Article 159 of the Constitution. The number of CJP members was drastically reduced, from 22 to 13. Previously, nearly half of the CJP members were elected by the judiciary (10/22), in line with regional standards.¹¹⁰ Under the new system, appointments are made by the President (4/13), filled by

¹⁰¹ Article 4(b) of Law no. 6087 on the Council of Judges and Prosecutors, adopted on 11 December 2010 (available in English at <https://www.coe.int/en/web/venice-commission/-/t%C3%BCrkiye-law-on-the-council-of-judges-and-prosecutors-2-1>).

¹⁰² Ibid., Article 4(d).

¹⁰³ Fahri Bakırcı, 'On the Election of Members to the Council of Judges and Prosecutors and the Constitutional Court in Ensuring Independence of the Judiciary', 15 December 2021, DergiPark, p 4.

¹⁰⁴ See International Commission of Jurists Centre for the Independence of Judges and Lawyers, 'The Independence of Judges and Lawyers in the Republic of Turkey', Report of a mission: 14-25 November 1999, p. 97.

¹⁰⁵ See International Commission of Jurist, 'Turkey: the Judicial System in Peril: A briefing paper' (2016), p. 12.

¹⁰⁶ Venice Commission, Interim Opinion on the Draft Law on the High Council for judges and Prosecutors (of 27 September 2010) of Turkey (20 December 2010), CDL-AD(2010)042, para. 28, 82, and 84.

¹⁰⁷ Başak Çalı and Betül Durmuş. "Judicial Self-Government as Experimental Constitutional Politics: The Case of Turkey." *German Law Journal* 19.7 (2018): 1671–1706, 1701.

¹⁰⁸ International Commission of Jurist, 'Turkey: the Judicial System in Peril' (supra note 105), p. 10 and pp. 12-13. As noted by the ICJ, the provisions were annulled by the Constitutional Court in April 2014, however the Court's judgment had no retroactive effect and could not alter the administrative decisions already made by the Minister to terminate existing positions and make new appointments (p .13).

¹⁰⁹ International Commission of Jurist, 'Turkey: the Judicial System in Peril' (supra note 105), p. 13.

¹¹⁰ See Part I, Section 2.1 above.

the Minister of Justice and the Undersecretary of Justice (2/13), or through election by Parliament (7/13). International human rights bodies including the Venice Commission expressed serious concerns regarding these changes and their impact on the CJP's independence.¹¹¹ **In an Opinion of December 2024, the Venice Commission confirmed that the composition and functioning of the CJP deprives that body of independence from the Government and has enabled its politicisation.**¹¹²

The CJP's composition and the election of its members in practice since 2017 provide clear indicia validating concerns of lack of independence, including **key roles being attributed to judges and prosecutors close to the Government and/or with a track record of misuse of anti-terrorism and national security laws against perceived government critics and opposition figures as well as non-implementation of Constitutional Court and ECtHR judgments.**¹¹³ Moreover, the election of 7 CJP members by Parliament has inevitably followed a party-logic and has failed to ensure the independence of those members from the ruling AKP/MHP coalition.¹¹⁴ The election process has been highly politicised and has repeatedly circumvented constitutional safeguards.¹¹⁵

In the context of rule of law concerns in Poland, the ECtHR affirmed that the main objective of reforms depriving Poland's judiciary of the right to nominate and elect judicial members of the national judicial council – in “non-compliance with the principle of the separation of powers and the independence of the judiciary” – was to give the executive and legislature a decisive influence on the council's composition, which in turn allowed these powers to interfere with appointments of judges by the council and impaired “the very essence” of the right to a tribunal established by law.¹¹⁶ **Similarly to Poland, successive changes to the composition and functioning of Türkiye's CJP have enabled its repurposing away from guaranteeing judicial independence and towards consolidating undue influence over the judiciary;** contributing to a “climate of fear and submission” among judges and prosecutors.¹¹⁷

Reinforcing concerns about the politicisation of the CJP, prosecutor and former judge Akin Gürlek – one of the most prominent figures in the prosecution and conviction of opposition politicians, human rights defenders and other perceived dissenters — was appointed Minister of Justice on

¹¹¹ Venice Commission, 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, No. 875/2017, 13 March 2017, para. 119. See also ECtHR, *Selahattin Demirtaş v Turkey (no.2)*, App no. 14305/17, 22 December 2020, para. 434; *Yüksekdağ Şenoğlu and others*, App no. 14332/17 and 12 others, 8 November 2022, paras. 637-638.

¹¹² Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members, 141st Plenary Session (Venice, 6-7 December 2024), CDL-AD(2024)041.

¹¹³ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, Third Party Intervention in *Kavala (no. 2) v Türkiye* (App no. 2170/24) before the Grand Chamber of the European Court of Human Rights (10 February 2026), para. 6 (available at https://www.turkeylitigationssupport.com/files/ugd/9265a1_209ab72f30e74e18bb7f207b980344b9.pdf).

¹¹⁴ Venice Commission, Türkiye, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (supra note 112), para. 33.

¹¹⁵ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, Third Party Intervention in *Kavala (no. 2) v Türkiye* (App no. 2170/24) before the Grand Chamber of the European Court of Human Rights (supra note 113), para. 6.

¹¹⁶ ECtHR, *Reczkowicz v. Poland*, App no. 43447/19, 22 July 2021, paras. 266-277; ECtHR, *Juszczyszyn v. Poland*, App no. 35599/20, 6 October 2022; *Grzęda v. Poland [GC]*, App no. 43572/18, 15 March 2022, para. 348.

¹¹⁷ Venice Commission, Opinion on the composition of the Council of Judges and Prosecutors and the procedure for the election of its members (2024) (supra note 112), para. 35.

11 February 2026, and in that capacity presides over the CJP under Article 159 of the Constitution.¹¹⁸

2. Judicial administration

Judicial administration has a history of politicisation in Türkiye.¹¹⁹ **After the 2010s, it became geared towards securing loyalty and submission to the AKP and its allies.** Under Law No. 2802 on Judges and Prosecutors, the recruitment of judges and prosecutors involves a written exam followed by an oral exam (mülakat), governed by the Ministry of Justice (Articles 8, 9 and 9A). Members of the board conducting the interviews are either members of the executive or under its effective control, including several officials from the Ministry of Justice, one representative from the Justice Academy – a state institution under the Ministry’s control – and the General Secretary of the CJP, who is appointed by the Minister of Justice. Rather than being based on objective criteria, the interviews lack transparency and multiple judicial actors have expressed concern that their outcome is pre-determined on the basis of whether candidates have been informally approved by the ruling political parties.¹²⁰

After July 2016, while thousands of judges and prosecutors were dismissed under the state of emergency following the coup attempt,¹²¹ close to 10,000 judges and prosecutors were reportedly recruited.¹²² From 2017 to 2018, when most were recruited, a presidential decree lifted the requirement to achieve a minimum score (at least 70/100) in the written exam, effectively allowing appointments to be made solely on the basis of interviews. Available testimonies from candidates who were not recruited despite performing well on the written exam suggest their interviews lasted no more than two or three minutes and involved no substantial questions.¹²³ **In just a few years, thousands of new judges and prosecutors were recruited**

¹¹⁸ Bianet English, ‘Erdoğan Replaces Justice, Interior Ministers’, 11 February 2026 (<https://bianet.org/haber/erdogan-replaces-justice-interior-ministers-316582>).

¹¹⁹ See International Commission of Jurists Centre for the Independence of Judges and Lawyers, ‘The Independence of Judges and Lawyers in the Republic of Turkey’, Report of a mission: 14-25 November 1999, pp. 98-99; Venice Commission, Interim Opinion on the Draft Law on the High Council for judges and Prosecutors (of 27 September 2010) of Turkey (20 December 2010), CDL-AD(2010)042, para. 50.

¹²⁰ See statements made by former Istanbul Bar Association President Mehmet Durakoğlu in 2020, available at <https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357> ; and statements by former Court of Cassation prosecutor Ömer Faruk Eminağaoğlu in 2022, available at <https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akp-nin-yargidaki-kadrolasmasinin-temeli-mulakatlari-402250> .

¹²¹ Over 4,000 judges, or one third of the judiciary, was dismissed (Human Rights Joint Platform (IHOP), ‘Updated Situation Report - State of Emergency in Turkey (21 July 2016 - 20 March 2018)’, April 2018, p. 37 (http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf).

¹²² Communication to the Turkish authorities by the Special Rapporteur on the independence of judges and lawyers, AL TUR 3/2024, 21 June 2024.

¹²³ See (in Turkish) Gazetememur, ‘Türkiye’s runner-up eliminated in 3 minutes’ , 7 July 2024 [‘Türkiye 2’ncisi 3 dakikada elendi: Mülakat mülkün temeli’] at https://gazetememur.com/kpss/turkiye-2ncisi-3-dakikada-elendi-mulakat-mulkun-temeli,NOZqN1Ubsk29H7qTqX_q6Q; Duvar, ‘Controversy over ‘interviews’ in the judge-prosecutor exam’, 5 September 2019 [‘Hâkim-savcı sınavında ‘mülakat’ tartışması’] (<https://www.gazeteduvar.com.tr/gundem/2019/09/05/hakim-savci-sinavinda-mulakat-tartismasi>); Duvar, ‘Prosecutor candidate obtains interview document: I didn’t expect this much disgrace’, 12 October 2022 [‘Savcı adayı mülakat belgesine ulaştı: Bu kadar rezilliği tahmin etmezdim’] (<https://www.gazeteduvar.com.tr/savci-adayi-mulakat-belgesine-ulasti-bu-kadar-rezilligi-tahmin-etmezdim-haber-1584495>) .

based on their previous association with or support for the ruling coalition parties,¹²⁴ with vastly detrimental consequences on the integrity, ability and independence of the judiciary.

Through the executive's control over the CJP, particularly since the constitutional amendments of 2017, President Erdoğan and his allies have also been able to shape the composition of Türkiye's top courts in line with their interests. Indeed, under Article 154 of Türkiye's Constitution, the members of the highest court for civil and criminal proceedings – the Court of Cassation – are appointed by the CJP. Similarly, the CJP appoints three quarters of the members of the last instance administrative court – the Council of State – under Article 155 of the Constitution. Under Article 146 of the Constitution, 5 out of 15 members of the Constitutional Court are appointed from the Court of Cassation and the Council of State. Thus, the CJP's appointments to the Court of Cassation and the Council of State play a determinant role in the makeup of the Constitutional Court.

In addition, **executive control over the CJP has allowed tactical assignment of cases to judges and prosecutors aligned with the Government's interests.** For instance, in the context of criminal proceedings initiated in 2019 against opposition politician and İstanbul mayor Ekrem İmamoğlu – considered one of President Erdoğan's main rivals and challengers – for 'insulting public officials' in the context of his criticism of the cancelling of the İstanbul mayoral elections, the CJP replaced two out of three judges scheduled to examine his appeal of his conviction and sentence, terminating their permanent appointment without providing any objective justification.¹²⁵ In subsequent proceedings against him on separate charges, a judge who convicted Mr. İmamoğlu in yet another set of proceedings was assigned to the panel hearing the appeal against his acquittal.¹²⁶ The different sets of proceedings against Mr. İmamoğlu have been widely criticised as politically motivated, characterised by a denial of his fair trial rights – including arbitrary detention of his lawyer¹²⁷ – that evidences the instrumentalization of the judicial system to prevent him from democratically challenging President Erdoğan's hold on power.¹²⁸

¹²⁴ In 2018 an opposition MP presented a list of over 100 newly recruited judges and prosecutors who had held active roles within the ruling AKP party (<https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/>).

¹²⁵ Alican Uludag, 'The CJP changed the appeals panel that will hear the İmamoğlu case' [*HSK, İmamoğlu davasına bakacak istinaf heyetini değiştirdi*], 25 August 2023 (<https://www.dw.com/tr/hsk-i-CC%87mamo%C4%9Flu-davas%C4%B1na-bakacak-istinaf-heyetini-de%C4%9Fi%C5%9Ftirdi/a-66628426>).

¹²⁶ Engin Deniz Ipek, 'Assignment to the 'tender case' in which Ekrem İmamoğlu was acquitted draws attention: That judge was assigned to the case', 16 December 2025 [*Ekrem İmamoğlu'nun beraat ettiği 'ihale davasına' yapılan atama dikkat çekti: Dosyaya o hâkim geldi*] at <https://www.cumhuriyet.com.tr/siyaset/ekrem-imamoglu-nun-beraat-ettigi-ihale-davasina-yapilan-atama-dikkat-cekti-dosyaya-o-hakim-geldi-2461778>.

¹²⁷ Joint Statement on Unlawful Detention of Lawyer Mehmet Pehlivan and Escalating Repression of the Legal Profession in Turkey by TLSP and 20 other legal and human rights organisations, 1 July 2025.

¹²⁸ Council of Europe Congress of Local and Regional Authorities, 'Mayor İmamoğlu's Detention Is an Assault on Democracy; He Must Be Released', 23 March 2025 (<https://www.coe.int/en/web/congress/-/council-of-europe-congress-mayor-imamo%C4%9Flu-s-detention-is-an-assault-on-democracy-he-must-be-released>); Parliamentary Assembly of the Council of Europe, 'PACE calls for the 'immediate release' of the Mayor of İstanbul, whose arrest and detention 'appear politically-motivated'', 9 April 2025 (<https://pace.coe.int/en/news/9851/pace-calls-for-the-immediate-release-of-the-mayor-of-istanbul-whose-arrest-and-detention-appear-politically-motivated->); Human Rights Watch, 'Turkey: Court Convicts İstanbul Mayor Ekrem İmamoğlu', 14 December 2022 (<https://www.hrw.org/news/2022/12/14/turkey-court-convicts-istanbul-mayor-ekrem-imamoglu>); Pen Norway,

Influence over case assignment and the composition of judicial panels has been deployed in cases against key public figures, including in the criminal proceedings against human rights defender Osman Kavala from 2017 onwards, against Selahattin Demirtaş and Figen Yüksekdağ Şenoğlu – the former co-leaders of the pro-Kurdish opposition party HDP – since 2016, and against human rights lawyer Selçuk Kozağaçlı, convicted for ‘membership of a terrorist organisation’ based on his professional activities.¹²⁹ All of these proceedings are characterised by the involvement, in various roles, of judge/prosecutor turned Justice Minister Akın Gürlek.¹³⁰

Similarly, the CJP’s powers to determine promotion criteria and to decide on promotions have been instrumentalised to position judges and prosecutors sympathetic to the ruling coalition at the top echelons of the justice system. In 2020, the CJP modified its rules on the promotion of judges and prosecutors, adding an ambiguously worded requirement to “take into account” whether decisions by the relevant judge or prosecutor led to any findings of violations in judgments of the ECtHR or the Constitutional Court.¹³¹ In practice, however, **judges’ and prosecutors’ failure to abide by ECtHR and Constitutional Court judgments and to conform to these courts’ case-law did not prevent their promotion; instead, promotion seems to have been used to reward such practices, even after 2020.**¹³²

Conversely, **involuntary transfers to different courts and districts, disciplinary investigations and sanctions, as well as the threat of criminal proceedings**¹³³ have been used to discipline judges and prosecutors complying with human rights standards in cases involving perceived dissent, opposition, and rivals of President Erdoğan and his allies.¹³⁴ For example, already in 2013, judges and prosecutors were arbitrarily reassigned in response to a corruption investigation implicating senior government officials and members of their families.¹³⁵

In *Kavala v Türkiye* (Proceedings under Article 46 § 4), the ECtHR noted that judges who acquitted human rights defender Osman Kavala – before his acquittal was quashed – had faced a

¹²⁹ An analysis of the indictment against Istanbul’s Mayor Ekrem İmamoğlu’, 28 September 2023 (<https://norskpen.no/eng/an-analysis-of-the-indictment-against-istanbuls-mayor-ekrem-imamoglu/>).

¹²⁹ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, Third Party Intervention in *Kavala* (no. 2) v *Türkiye* (App no. 2170/24) before the Grand Chamber of the European Court of Human Rights (supra note 113), para. 7.

¹³⁰ Ibid., see further Bianet, ‘Who is Akın Gürlek, the top judicial official dubbed as ‘mobile guillotine’ by Turkey’s opposition?’, 7 November 2024, at <https://bianet.org/haber/who-is-akin-gurlek-the-top-judicial-official-dubbed-as-mobile-guillotine-by-turkeys-opposition-301532>.

¹³¹ Article 6(1)(j) of the Principle Decision on the Grade Promotion of Judges and Prosecutors, no. 675/1, 5 April 2017, as amended by decision 31009 of 15 January 2020.

¹³² Rule 9.2 submission to the Council of Europe’s Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, paras. 34-36.

¹³³ The Court of Cassation threatened criminal proceedings against judges of the Constitutional Court who held that the rights of MP Can Atalay, co-defendant in the Gezi Park trial case, had been violated (<https://www.bbc.com/turkce/articles/c72q6d5d9j2o>).

¹³⁴ Rule 9.2 submission to the Council of Europe’s Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of Kavala v. Türkiye (Application No. 28749/18), 26 January 2024, paras. 37-38; International Commission of Jurist, ‘Turkey: the Judicial System in Peril: A briefing paper’ (2016), pp.17-18.

¹³⁵ Human Rights Watch, ‘Turkey’s Human Rights Rollback’, 29 September 2014 at <https://www.hrw.org/report/2014/09/29/turkeys-human-rights-rollback/recommendations-reform>.

potential disciplinary investigation.¹³⁶ This supported its conclusion that the national authorities had not complied with their obligation to act in good faith in executing its final binding judgment in *Kavala v Turkey* and releasing Osman Kavala from his politically motivated detention.¹³⁷ Subsequently to these findings, a judge who dissented to the sentencing of Mr. Kavala to aggravated life imprisonment was subject to an involuntary transfer by the CJP.¹³⁸

Other cases in which judges and prosecutors have faced potential or actual punitive measures for rights-compliant practices and for holding State authorities accountable abound, evidencing the instrumentalisation of judicial administration to “increase and maintain the power of the ruling political party and its close networks”.¹³⁹ **The resulting climate of fear and submission has played a critical role in the circumvention of Türkiye’s human rights obligations.**¹⁴⁰

3. Guarantees against outside pressure

Article 139 § 1 of Türkiye’s Constitution guarantees the security of tenure of judges and prosecutors. It provides that “[j]udges and public prosecutors shall not be dismissed, or unless they request, shall not be retired before the age prescribed by the Constitution; nor shall they be deprived of their salaries, allowances or other rights relating to their status, even as a result of the abolition of a court or a post”.¹⁴¹ Under Article 139 § 2, exceptions may be provided by law for “those convicted for an offence requiring dismissal from the profession, those who are definitely established as unable to perform their duties because of ill-health, or those determined as unsuitable to remain in the profession”. In practice, however, the constitutional guarantee of security of tenure has been entirely by-passed through the widespread exercise of extraordinary state of emergency powers between 2016 and 2018, based on an arbitrary interpretation of unsuitability to remain in the profession.

Already before the attempted coup d’état of July 2016, legislative measures adopted in 2014 and 2016 to ‘restructure’ the judiciary terminated many judges’ term prematurely without access to judicial review – leading to findings of violations of over a hundred judges’ fair trial rights

¹³⁶ ECtHR, *Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye* (28749/18), 11 July 2022, para. 168.

¹³⁷ *Ibid.*

¹³⁸ Duvar, ‘Turkey’s top judiciary body relocates judge who voted in favor of Osman Kavala’s release’, 18 July 2023 (<https://www.duvarenglish.com/turkeys-top-judiciary-body-relocates-judge-who-voted-in-favor-of-osman-kavalas-release-news-62749>). See further Rule 9.2 submission to the Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (*supra* note 14), para. 38.

¹³⁹ ‘Examining State Capture’, Transparency International (*supra* note 15), p. 30.

¹⁴⁰ See further Joint briefing by Human Rights Watch, International Commission of Jurists, Turkey Human Rights Litigation Support Project, ‘Flouting the European Court of Human Rights and Bringing Domestic Courts to Heel: Türkiye’s Collision Course with the Council of Europe’ (January 2025) (<https://www.hrw.org/news/2025/01/24/flouting-european-court-human-rights-and-bringing-domestic-courts-heel>).

¹⁴¹ Article 139 of the Constitution (available in English at https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf).

by the ECtHR.¹⁴² After the coup attempt, the declaration of a state of emergency was followed by President Erdoğan's issuing of Decree Law no. 667 of 22 July 2016, enacting the procedures of dismissal of public servants, judges and prosecutors and closure of legal entities considered as belonging to, connected to or having contacts with the Gülen network.¹⁴³ The Decree Law no. 667 entrusted to the High Council of Judges and Prosecutors (at the time) the power to dismiss prosecutors and lower court judges and granted the top courts the power to dismiss their members.¹⁴⁴

By 2018, over 4,000 judges and prosecutors were dismissed, the vast majority by the CJP on the basis of Decree Law no. 667 and the remainder directly by emergency decrees (adopted by the Council of Ministers under the chairmanship of the President of the Republic, without parliamentary input), to which lists of names of public servants were attached.¹⁴⁵ No specific reasoning or evidence on the individual situation of each judge or prosecutor was provided.¹⁴⁶ As emphasised by the Venice Commission, the mass dismissals – rather than suspension – constituted permanent measures, going beyond a temporary state of emergency.¹⁴⁷ The notion of ‘connections’ to the Gülen network or other organisations considered “terrorist” was loosely defined and did not require a meaningful connection with such organisations.¹⁴⁸ The Office of the United Nations High Commissioner for Human Rights emphasised that the collective dismissals, as well as suspensions, were “largely arbitrary” and that “appropriate procedures were not followed, including respect for the fundamental principle of presumption of innocence, the provision of specific evidence, and individual reasoning of the case, or the ability to present a defence”.¹⁴⁹

In addition to the violation of minimum due process standards in the dismissal proceedings, dismissed judges and prosecutors were denied meaningful and effective remedies and access to justice. First, Article 148 § 1 of the Constitution in principle precludes constitutional review of emergency decree laws.¹⁵⁰ This provision was already criticised prior to Mr. Erdoğan's premiership, given the extremely wide powers emergency decree laws were used to confer.¹⁵¹

¹⁴² See ECtHR, *Olçay and others v Türkiye*, App no. 59481/16 and 29 others, 11 February 2025; ECtHR, *Tosun and others v Türkiye*, App no. 60220/16 and 83 others, 11 February 2025; ECtHR, *Kartal v Türkiye*, App no. 54699/14, 26 March 2024.

¹⁴³ International Commission of Jurists, ‘Justice Suspended: Access to Justice and the State of Emergency in Turkey’ (2018), p. 24.

¹⁴⁴ Article 3 of Decree Law no. 667 of 22 July 2016.

¹⁴⁵ Human Rights Joint Platform (IHOP), ‘Updated Situation Report - State of Emergency in Turkey (21 July 2016 - 20 March 2018)’, 17 April 2018, p. 37 (http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf/); Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East, January – December 2017 (March 2018), para. 8.

¹⁴⁶ Venice Commission, Turkey: Opinion On Emergency Decree Laws Nos. 667-676 Adopted Following The Failed Coup Of 15 July 2016, No. 865/2016 (CDL-AD(2016)037), 12 December 2016, paras 132-140; Amnesty International, ‘Turkey: No end in sight: Purged public sector workers denied a future in Turkey’ (EUR 44/6272/2017, 22 May 2017), p. 7.

¹⁴⁷ *Ibid.*, Venice Commission, Opinion No. 865/2016, p. 48.

¹⁴⁸ *Ibid.*

¹⁴⁹ Office of the United Nations High Commissioner for Human Rights, Report on the impact of the state of emergency on human rights in Turkey (supra note 145), para. 50.

¹⁵⁰ “No action shall be brought before the Constitutional Court alleging unconstitutionality as to the form or substance of decrees having the force of law issued during a state of emergency [...]”

¹⁵¹ International Commission of Jurists Centre for the Independence of Judges and Lawyers, ‘The Independence of Judges and Lawyers in the Republic of Turkey’, Report of a mission: 14-25 November 1999, p. 62.

However, the Constitutional Court had partly remedied this blind spot by interpreting Article 148 § 1 as allowing review of emergency decree laws exceeding the scope of the state of emergency *rationae temporis* and *rationae loci*.¹⁵² Nevertheless, it declared itself incompetent to review Emergency Decree Law no. 667 – which was challenged for introducing permanent measures exceeding the scope of the state of emergency – thereby departing from its pre-2016 approach to state of emergency decrees.¹⁵³

Second, in the case of judges and prosecutors dismissed by the CJP or the top courts based on emergency decrees, reconsideration requests were almost systematically rejected and the Council of State, competent to hear appeals,¹⁵⁴ failed to deliver a single decision by 2018.¹⁵⁵ According to data provided by the Ministry of Justice in 2024, out of over 3,000 applications filed, only 387 judges and prosecutors were reinstated by the Council of State.¹⁵⁶ Moreover, after President Erdoğan publicly criticised the Council of State's decision, stating that the ruling coalition could not 'remain silent', the CJP started new investigations into the judges and prosecutors which the Council of State reinstated.¹⁵⁷ There is no reliable evidence to date concerning the total number of judges and prosecutors effectively returned to their duties.

Third, in response to international criticism of the absence of any judicial review mechanism for dismissals directly by emergency decree, the Government established a 'State of Emergency Inquiry Commission' to review relevant complaints.¹⁵⁸ Based on an extensive review of the Commission's decisions and interviews with lawyers and legal experts, TLSP found that the Commission did not provide an effective remedy for challenging state of emergency dismissals, given a lack of independence, an excessively lengthy processing time, violations of the presumption of innocence and other fair trial rights, the retroactive criminalisation of lawful acts, reliance on weak or non-existent evidence, and rejection of applications on vague grounds of

¹⁵² Venice Commission, Opinion No. 865/2016 (supra note 146), paras. 189.

¹⁵³ Ibid., paras. 189-190.

¹⁵⁴ Article 11(2) of Law no. 7075 On the Amendment of the Decree Law on the Establishment of the Inquiry Commission on State of Emergency Measures, adopted on 1 February 2018.

¹⁵⁵ International Commission of Jurists, 'Justice Suspended: Access to Justice and the State of Emergency in Turkey' (2018), p. 17.

¹⁵⁶ Ministry of Justice of Türkiye, "Minister of Justice Yılmaz Tunç Answered Questions on Live Broadcast", 24 February 2024 (https://www.adalet.gov.tr/adalet-bakani-yilmaz-tunc-canli-yayinda-sorulari-yanitladi_94526); Sabah, 'Justice Minister Yılmaz Tunç commented on the Council of State's decision: We will not compromise in the fight against FETÖ!', 25 February 2024, ['Adalet Bakanı Yılmaz Tunç Danıştay kararını değerlendirdi: FETÖ ile mücadelede taviz vermeyiz!'] (<https://www.sabah.com.tr/galeri/gundem/adalet-bakani-yilmaz-tunc-danistay-kararini-degerlendirdi-feto-ile-mucadelede-taviz-vermeyiz/2>).

¹⁵⁷ Cumhuriyet, "'It is impossible for us to remain silent' Erdoğan had said... HSK launches review of 387 judges and prosecutors reinstated by the Council of State', 17 February 2024, [Erdoğan 'Sessiz kalmamız mümkün değil' demişti... HSK'den, Danıştay'ın göreve iade kararı verdiği 387 hakim ve savcı hakkında inceleme] (<https://www.cumhuriyet.com.tr/siyaset/erdogan-sessiz-kalmamiz-mumkun-degil-demisti-hskden-danistayin-2176354>).

¹⁵⁸ Article 2 of the Emergency Decree Law No. 685 on the Creation of the Inquiry Commission (issued on 2 January 2017) provides: "(1) The Commission shall carry out an assessment of and render a decision on the following acts established directly through the decree-laws under the state of emergency: a) Dismissal or discharge from the public service, profession or organization being held office [...] (2) The scope of duty of the Commission shall also contain acts that do not fall within the scope of paragraph 1 and that are directly regulated with respect to the legal status of natural or legal persons by the decree-laws that are brought into force under the state of emergency. (3) In relation to the acts mentioned in this article, no separate application shall be lodged for the additional measures introduced by decree-laws put into force under the state of emergency and for the acts subject to judicial review."

“affiliation” or “link” with a terrorist organisation.¹⁵⁹ Out of 109,332 applications submitted until the end of the Commission’s mandate in January 2023, 86% were rejected.¹⁶⁰ Furthermore, TLSP found that judicial review of Commission decisions also failed to provide dismissed public servants with an effective domestic remedy, given unreasonably prolonged delays in the examination of cases and various serious shortcomings in administrative courts’ review such as lack of reasoning, application of overly broad and vague criteria for review, and retroactive characterisation of lawful practices as criminal behaviour, depriving the applicants of a reasonable prospect of success.¹⁶¹

Thus, under the cover of legitimate derogations to judges’ and prosecutors’ security of tenure to protect national security, denial of their rights to a fair trial and to an effective remedy undermined the very essence of this core safeguard of judicial independence. Two major consequences resulted from the dismissal of one third of the judiciary during this period. First, it created a vacuum to be filled with judges and prosecutors loyal or subordinate to President Erdoğan and his allies. Second, the resulting “atmosphere of fear” among remaining members of the judiciary increased their susceptibility to external pressure and influence.¹⁶²

This climate of fear was deepened even further through the by-passing of legal protections against arbitrary criminal proceedings and detention of judges and prosecutors. Indeed, domestic law affords procedural immunity to judges and prosecutors in order to ensure judicial independence. Under Law no. 2802, ordinary judges and prosecutors cannot be arrested or questioned, unless caught committing an offense *in flagrante delicto* (in Turkish “suçüstü” and in colloquial English “being caught red-handed”) falling within the jurisdiction of the assize courts.¹⁶³ Judges and prosecutors at the level of the Court of Cassation, Council of State and Constitutional Court, whose detention and questioning must be authorised by the court to which they are attached, may also be investigated according to ordinary law only in cases of discovery *in flagrante delicto* falling within the jurisdiction of the assize courts.¹⁶⁴ Under Article 2 of the Code of Criminal Procedure, an “*in flagrante delicto*” offence is one in the process of being committed, that has just been committed, or committed by an individual apprehended in possession of items or evidence indicating that the act was carried out very recently.¹⁶⁵ **After**

¹⁵⁹ Turkey Human Rights Litigation Support Project, ‘Access to Justice in Turkey? A Review of the State of Emergency Inquiry Commission’ (October 2019) (https://www.turkeylitigationssupport.com/files/ugd/9265a1_ed4096de736d407abe35524f25eb564f.pdf); See also Amnesty International, ‘Turkey: No end in sight: Purged public sector workers denied a future in Turkey’ (EUR 44/6272/2017, 22 May 2017), p. 18.

¹⁶⁰ European Commission, Türkiye 2023 Report, 8 November 2023, SWD(2023) 696 final, p. 30; Turkey Human Rights Litigation Support Project, ‘Access to Justice for Dismissed Public Servants in Türkiye (Volume II): An Analysis of Judicial Review of Decisions of the State of Emergency Inquiry Commission’ (August 2023), p. 10 (https://www.turkeylitigationssupport.com/files/ugd/9265a1_0221a5d743264a0e9cd2a07b5b50ffb5.pdf).

¹⁶¹ Ibid, Turkey Human Rights Litigation Support Project, ‘Access to Justice for Dismissed Public Servants in Türkiye (Volume II)’.

¹⁶² ECtHR, *Demirtaş and others v. Turkey*, App no. 14305/17 and 11 others, Third party intervention by the Council of Europe Commissioner for Human Rights, Doc. CommDH(2017)33, 2 November 2017, para. 35.

¹⁶³ Section 88 of Law no. 2802 on Judges and Prosecutors, adopted on 24 February 1983.

¹⁶⁴ Section 46 of the Court of Cassation Act (Law no. 2797), Sections 76 and 82 of the Council of State Act (Law no. 2575), and sections 16 and 17 of Law no. 6216 on the establishment and rules of procedure of the Constitutional Court (The relevant legal provisions were set out in ECtHR, *Turan and others v Turkey*, App no. 75805/16 and 426 others, 23 November 2021, paras. 30-31 and ECtHR, *Alparslan Altan v Turkey*, App no. 12778/17, 16 April 2019, para. 49).

¹⁶⁵ Article 2 of the Code of Criminal Procedure (Law no. 5271), adopted on 4 December 2004.

2016, “*in flagrante delicto*” exceptions were subject to a manifestly unreasonable reinterpretation, to circumvent the immunity of judges and prosecutors perceived as threats or obstacles to the interests of the AKP and its allies. ‘Suspicion’ of membership of the Gülen network became inexplicably equated by domestic courts and the CJP to discovery “*in flagrante delicto*”.¹⁶⁶

According to available information, criminal investigations were opened against approximately 4,370 judges and prosecutors, of whom 2,431 were arrested and 1,311 were placed in pre-trial detention for their alleged links with the Gülen network.¹⁶⁷ **The mere allegation of a connection with the said network, even in the absence of any meaningful evidence, was held to signify that a judge or prosecutor had been caught *in flagrante delicto*.** In several cases, including one that involved more than 400 detained judges and prosecutors, the ECtHR found that the courts’ new interpretation and application of “*in flagrante delicto*” “negate[d] the procedural safeguards which members of the judiciary are afforded in order to protect them from interference by the executive”,¹⁶⁸ and that it was both problematic in terms of legal certainty and ‘manifestly unreasonable’.¹⁶⁹ The Court found that the detention of judges and prosecutors on this basis had not taken place in accordance with a procedure prescribed by law and violated their right to liberty and security (Article 5 of the ECHR).

Already before the attempted coup, arrests and prosecution were wielded as a tool against judges and prosecutors who stood in the way of power consolidation and enrichment of the AKP and its allies. Indeed, the CJP is responsible for investigating potential offenses by members of the judiciary in connection with or during the exercise of their duties. To do so, it must receive prior authorisation by the Minister of Justice.¹⁷⁰ In 2015, two judges were arrested and suspended after they ordered the release of police officers detained for investigating corruption allegations against relatives of high-ranking members of the government.¹⁷¹ No prior authorisation was obtained for their investigation, on the purported basis that any delay in launching the investigation would be prejudicial. The ECtHR found that the judges’ arrests violated their right to liberty and security (Article 5 ECHR), given the CJP’s failure to show that the conditions for applying this exception were met.¹⁷² In addition, there was no evidence that an offence had been committed.¹⁷³ The same year, four prosecutors and one judge were

¹⁶⁶ CJP, Decision no. 2016/426, 24 August 2016, p. 4; ECtHR, *Alparslan Altan v Turkey*, App no. 12778/17, 16 April 2019, paras. 108-111.

¹⁶⁷ Letter to the Turkish authorities by the United Nations Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, AL TUR 3/2024, 21 June 2024.

¹⁶⁸ ECtHR, *Alparslan Altan v Turkey*, App no. 12778/17, 16 April 2019, para. 112; ECtHR, *Baş v Turkey*, App no. 66448/17, 3 March 2020 (final 7 September 2020), para 153; *Turan and others v Turkey*, App no. 75805/16 and 426 others, para. 84.

¹⁶⁹ ECtHR, *Alparslan Altan v Turkey*, App no. 12778/17, 16 April 2019, para. 115; ECtHR, *Baş v Turkey*, App no. 66448/17, 3 March 2020 (final 7 September 2020), para. 156.

¹⁷⁰ Article 4(c) of Law no. 6087 on the Council of Judges and Prosecutors, adopted on 11 December 2010 (available in English at <https://www.coe.int/en/web/venice-commission/-/t%C3%BCrkiye-law-on-the-council-of-judges-and-prosecutors-2-1>); Section 82 of Law no. 2802 on Judges and Prosecutors, adopted on 24 February 1983.

¹⁷¹ International Commission of Jurist, ‘Turkey: the Judicial System in Peril: A briefing paper’ (2016), p. 16.

¹⁷² ECtHR, *Başer and Özçelik v Türkiye*, App no. 30694/15 and 30803/15, 13 September 2022, paras. 148-160.

¹⁷³ *Ibid* para 202.

dismissed by the CJP for their involvement in a corruption case concerning persons close to the AKP; two of these were subject to an arrest warrant.¹⁷⁴

Furthermore, the rights to freedom of expression and to freedom of association of members of the judiciary have been tactically repressed through the weaponisation of criminal proceedings and judicial administration. **Judges and prosecutors legitimately expressing themselves on matters of public interest – including by voicing concerns about judicial reforms weakening the independence of the judiciary – have faced forced transfers, disciplinary proceedings, suspension, and even criminal proceedings.**¹⁷⁵ For instance, judge Ibrahim Kozan was subject to disciplinary proceedings for posting an article in a private social media group on measures taken against members of the judiciary for their role in the 2013 corruption proceedings involving suspects close to then Prime Minister Erdoğan.¹⁷⁶ The ECtHR held that the judge's right to freedom of expression (Article 10 of the ECHR) was violated, stressing that the article formed part of a debate of particular interest for members of the judiciary, since it concerned the impartiality and independence of judges vis-à-vis the executive, a crucial area of their professional life.¹⁷⁷

Another judge, Ayşe Sarısu Pehlivan, was subject to criminal proceedings for criticising the reform of the CJP in 2017, leading the ECtHR to find a violation of her right to freedom of expression.¹⁷⁸ Shortly after this judgment, in clear disregard for its findings, she was subject to a forced transfer to a distant province.¹⁷⁹ Notably, Ayşe Sarısu Pehlivan was President of the Magistrates' Union ('Yargıçlar Sendikası'), an association of judges and prosecutors promoting respect for the rule of law, human rights and judicial independence.¹⁸⁰ Similarly, the President of the independent Association for the Union of Judges and Prosecutors ('YARSAV'), former Constitutional Court rapporteur Murat Arslan, was arrested and detained in 2016 for alleged links with the Gülen network, and convicted and sentenced to 10 years' imprisonment in 2019 for 'membership of a terrorist organisation'. His arrest and the proceedings against him were strongly condemned by judges' associations and human rights bodies as an attack on judicial independence and for violating due process.¹⁸¹ YARSAV, which played an active role in

¹⁷⁴ International Commission of Jurist (ICJ), 'Turkey: the Judicial System in Peril: A briefing paper' (2016), p. 16; see also Venice Commission Declaration on Interference with Judicial Independence in Turkey (20 June 2015), at <https://venice.coe.int/files/turkish%20declaration%20June%202015.pdf>.

¹⁷⁵ See ECtHR, *Kozan v. Turkey*, App no. 16695/19, 1 March 2022; ECtHR, *Sarısu Pehlivan v Türkiye*, App no. 63029/19, 6 June 2023.

¹⁷⁶ ECtHR, *Kozan v. Turkey*, App no. 16695/19, 1 March 2022.

¹⁷⁷ *Ibid.*, paras. 62-64.

¹⁷⁸ ECtHR, *Sarısu Pehlivan v Türkiye*, App no. 63029/19, 6 June 2023.

¹⁷⁹ *Cumhuriyet*, 'İzmir Bar Association objects to CJP decree: 'It violates the principle of separation of powers' (18 July 2023) [*HSK kararnamesine İzmir Barosu'ndan itiraz: 'Kuvvetler Ayrılığı' ilkesine aykırı*] (https://www.cumhuriyet.com.tr/turkiye/hsk-kararnamesine-izmir-barosundan-iraz-kuvvetler-ayriligil-ilkesine-aykiri-2100527#google_vignette). See Rule 9.2 submission to the Committee of Ministers by Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (*supra* note 14), para. 38.

¹⁸⁰ See the statute of the Magistrates' Union at <https://www.yargiclar SENDIKASI.org/tuzuk>.

¹⁸¹ United Nations Office of the High Commissioner for Human Rights, 'Turkey Must Ensure Fair Appeal for Judge Murat Arslan after Gross Attack on Judicial Independence, Says UN Expert', 6 February 2019 (<https://www.ohchr.org/en/press-releases/2019/02/turkey-must-ensure-fair-appeal-judge-murat-arslan-after-gross-attack>); Parliamentary Assembly of the Council of Europe, 'PACE rapporteur deeply concerned about Murat Arslan's conviction', 22 January 2018 (<https://pace.coe.int/en/news/7331/pace-rapporteur-deeply-concerned-about-murat-arslan-s-conviction>); Stockholm Center for Freedom, '4 judges associations in Europe send letter to

upholding judicial independence and the role of law and holding the executive accountable, was shuttered by state of emergency decree in 2016.¹⁸² **Such measures have curbed the judiciary's ability to defend judicial independence and suppressed its resistance to capture.**

Finally, except for dismissals, decisions regarding judges and prosecutors' careers are excluded from judicial review under Article 159 of Türkiye's Constitution. ECtHR case-law suggests that judicial authorities must have access to judicial review by an independent judicial body concerning all decisions affecting them. The ECtHR has thus held, in relation to Türkiye, that the absence of judicial review of a CJP decision to transfer a judge to another court in a lower judicial district impaired the very essence of the right of access to a court under Article 6 of the Convention.¹⁸³ Similarly, it has found that the inability of a candidate judge, after completion of training, to seek judicial review of a decision refusing to appoint him to judicial office entailed a violation of the right to a fair trial.¹⁸⁴

4. Appearance of independence

Under the rule of the AKP and its allies, courts' appearance of independence has been undermined increasingly openly. The lack of independence of the CJP, the instrumentalisation of judicial administration and criminal proceedings to control judges and prosecutors, and the dismantling of safeguards against outside pressure have been closely associated with visibly partial judicial decisions, severe pressure on members of the judiciary for decisions perceived as undermining the governing coalition's interests, and repeated non-implementation of such decisions.

Clear markers of partiality include the wording and content of indictments and judgments concerning perceived dissenters and opponents to President Erdoğan and his allies. The ECtHR thus noted a close correlation between speeches by President Erdoğan portraying human rights defender Osman Kavala as an enemy of the nation and a supporter of terrorism due to his alleged involvement in the 2013 Gezi Park protests, and the language subsequently used in the indictment against him in 2019.¹⁸⁵ This correlation helped establish that his detention aimed to reduce him to silence (violation of Article 18 of the Convention in conjunction with Article 5).¹⁸⁶ The partiality of the Court of Cassation's subsequent decision to uphold Osman Kavala's conviction, in 2023, is equally striking. Ignoring international standards on the protection of human rights defenders and the ECtHR's findings, it harshly criticised the non-profit organisation

Turkish justice minister for release of jailed jurist', 1 May 2024 (<https://stockholmcf.org/4-judges-associations-in-europe-send-letter-to-turkish-justice-minister-for-release-of-jailed-jurist/>); Council of Europe Newsroom, 'Václav Havel Human Rights Prize 2017 awarded to Murat Arslan', 9 October 2017 (<https://www.coe.int/en/web/portal/-/vaclav-havel-human-rights-prize-2017-awarded-to-murat-arslan>).

¹⁸² See Ahmet Taşyurt and Mehmet Ruşen Gültekin, 'Brief information on Yarsav', MEDEL (Magistrats européen pour la démocratie et les libertés), 2012, <https://medelnet.eu/wp-content/uploads/2012/02/YARSAV-EN.pdf>.

¹⁸³ ECtHR, *Bilgen v. Turkey*, App no. 1571/07, 9 March 2021, para. 97.

¹⁸⁴ ECtHR, *Oktay Alktan v Türkiye*, App no. 24492/21, 20 June 2023. The Court made similar findings regarding disciplinary proceedings in *Sarisu Pehlivan v Türkiye*, App no. 63029/19, 6 June 2023, para. 50.

¹⁸⁵ ECtHR, *Kavala v. Turkey*, App no. 28749/18, 10 December 2019, para. 229.

¹⁸⁶ *Ibid.*, para. 232.

co-founded by Kavala for allegedly causing dissent and protest against the government.¹⁸⁷ Similarly, after Istanbul opposition mayor and potential presidential candidate Ekrem İmamoğlu was arrested and detained in March 2025, his indictment portrayed him as “the leader of a criminal organisation” described as “an octopus with many tentacles”, words mirroring an expression used repeatedly by President Erdoğan when commenting on the investigation.¹⁸⁸ **In both cases, judges and prosecutors have appeared to act as the guardians of the ruling party’s power rather than in the public interest.**

Systematic and intentional breaches of core aspects of the right to a fair trial and the right to liberty and security in cases against perceived dissenters constitute another indicator of the judiciary’s lack of impartiality.¹⁸⁹ The ECtHR’s finding of multiple violations by Türkiye of Article 18 of the Convention (prohibition of restrictions on rights for ulterior purposes) – a rarity in the ECtHR’s case-law – due to politically motivated detentions after 2016 attest to the intentional misuse of detention powers against perceived opponents of the AKP and its allies.¹⁹⁰ Furthermore, judges and prosecutors routinely rely on ‘secret witness’ evidence against journalists, lawyers, opposition politicians and other perceived dissenters, in the absence of any other evidence that an offence was committed.¹⁹¹ In multiple judgments, the ECtHR has found Türkiye in breach of the right to a fair trial (Article 6 of the Convention) due to judicial authorities’ reliance on ‘anonymous testimony’ as decisive evidence to prosecute and convict individuals, in the absence of good reasons to do so and of sufficient procedural safeguards to offset the handicap caused to the defence by the lack of a direct confrontation with the witness.¹⁹²

Similarly, judicial authorities have retroactively criminalised lawful activities, including lawyers’ professional activities.¹⁹³ In mass criminal trials following the coup attempt, activities such as the

¹⁸⁷ Court of Cassation, File no. 2023/12611, Decision of 28 September 2023, p. 8. See further Rule 9.2 submission to the Committee of Ministers by Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (supra note 14), para. 24.

¹⁸⁸ Human Rights Watch, ‘Timeline of Key Actions Since 2024 against Ekrem İmamoğlu and the Republican People’s Party’, 3 March 2026 (<https://www.hrw.org/video-photos/interactive/2026/03/03/timeline-of-key-actions-since-2024-against-ekrem-imamoglu-and>).

¹⁸⁹ See (in Turkish) Kerem Altıparmak & Ali Rıza Çoban, *The Secret Weapon of Censorship: Procedural Violations in Freedom of Expression Trials*, Freedom of Expression Association (İFÖD) (January 2026) [*İfade Özgürlüğü Derneği (İFÖD), ‘Sansürün Gizli Silahı: İfade Özgürlüğü Davalarında Usul İhlalleri’*].

¹⁹⁰ ECtHR, *Kavala v. Turkey*, App no. 28749/18, 10 December 2019; ECtHR, *Selahattin Demirtaş v Turkey (no.2)*, App no. 14305/17, 22 December 2020; ECtHR, *Yüksekdağ Şenoğlu and others*, App no. 14332/17 and 12 others, 8 November 2022; ECtHR, *Selahattin Demirtaş (no. 4) v Turkey*, App no. 13609/20, 8 July 2025; ECtHR, *Tuğluk v Türkiye*, App no. 71757/17, 14 October 2025.

¹⁹¹ See e.g. Amnesty International, ‘Türkiye: Politically-motivated prosecution of Istanbul mayor raises serious fair trial concerns’, 6 March 2026 (<https://www.amnesty.org/en/latest/news/2026/03/turkiye-politically-motivated-prosecution-of-istanbul-mayor-raises-serious-fair-trial-concerns/>); International Federation for Human Rights, ‘Turkey: Sentencing and continued judicial harassment of human rights lawyer Sevda Özbıngöl Çelik’, 15 June 2021 (<https://www.fidh.org/en/issues/human-rights-defenders/turkey-sentencing-and-continued-judicial-harassment-of-human-rights>); Bianet, ‘Journalist Sedat Yılmaz, detained for 7 months based on secret witness statements: “Where are those ‘serious crimes?’”, 11 March 2024 (<https://bianet.org/haber/journalist-sedat-yilmaz-detained-for-7-months-based-on-secret-witness-statements-where-are-those-serious-crimes-292950>).

¹⁹² ECtHR, *Süleyman v Turkey*, App no. 59453/10, 17 November 2020; ECtHR, *Balta and Demir v Turkey*, App no. 48628/12, 23 June 2015.

¹⁹³ Joint Statement by the International Legal and Human Rights Community on Unacceptable Attacks on the Legal Profession in Turkey, TLSP and 29 other international legal and human rights organisations, 14 April 2025; ‘Turkey: Urgent call to UN Special Rapporteurs to address the prosecution and conviction of lawyers and human rights defenders in Turkey’, by 13 national and international lawyers’ and human rights organisations.

opening of a bank account with a legal bank allegedly used by the Gülen network, membership of lawful organisations, or subscription to lawful publications were used as evidence of membership of the Gülen network. The ECtHR found that such acts were merely circumstantial, did not give rise to a suspicion of having committed the offence, and enjoyed a presumption of legality unless supported by additional elements.¹⁹⁴

In *Yüksel Yalçınkaya v Türkiye*, concerning a conviction based decisively on the defendants' use of the lawful encrypted messaging application ByLock, the ECtHR's Grand Chamber ruled that domestic courts had failed to take adequate measures to ensure the overall fairness of the proceedings against him, undermining 'the confidence that courts in a democratic society must inspire in the public'.¹⁹⁵ As domestic court's characterisation of the use of ByLock affected a great number of persons, it held that implementation of its judgment required general measures to fix this issue.¹⁹⁶ Subsequently, in open defiance of the ECtHR's judgment, new mass arrests occurred based on the use of the messaging application.¹⁹⁷

In addition to these serious structural deficiencies in judicial proceedings, interference by the executive and pressure from within the judiciary itself – for instance, through virulent public criticism and threats of criminal proceedings against judges whose decisions do not align with the governing coalition's interests – have further undermined the appearance of independence of Türkiye's judiciary.¹⁹⁸ Finally, executive, legislative and judicial authorities' repeated non-implementation of judgments upholding the rights of perceived dissenters has contributed significantly to damaging public confidence in Türkiye's courts.¹⁹⁹

5. Prosecutorial independence

Public prosecutors play a central role in Türkiye, particularly during the pre-trial phase of criminal proceedings.²⁰⁰ Their duties include investigating potential crimes, gathering and securing evidence for and against suspects, and filing an indictment if there is sufficient suspicion of a crime.²⁰¹ Under Article 138 of Türkiye's Constitution, the principle of judicial independence applies only to judges. Nevertheless, **the Constitution and ordinary legislation provide protections for public prosecutors – those working in civil and criminal jurisdictions –**

¹⁹⁴ ECtHR, *Taner Kılıç v Türkiye* (no 2), App no. 208/18, paras. 104-105; ECtHR, *Tüzemen and others v Türkiye*, App no. 66683/16 and 116 others, para. 13. See also Letter to the Turkish authorities by the United Nations Special Rapporteur on the independence of judges and lawyers, Margaret Satterthwaite, AL TUR 3/2024, 21 June 2024, pp. 4-6.

¹⁹⁵ ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023, para. 345.

¹⁹⁶ *Ibid.*, para. 414.

¹⁹⁷ Human Rights Foundation of Türkiye (TIHV), 28 January 2026 HRFT Documentation Center Daily Human Rights Report, 28 January 2026 (<https://en.tihv.org.tr/documentation/28-january-2026-hrft-documentation-center-daily-human-rights-report/>).

¹⁹⁸ Rule 9.2 submission to the Committee of Ministers by the Türkiye Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (supra note 14), paras. 47-51 and 54-57.

¹⁹⁹ *Ibid.*, paras. 45-51.

²⁰⁰ International Commission of Jurist, 'Turkey: the Judicial System in Peril' (supra note 105), p. 8.

²⁰¹ Articles 160, 161 and 170 of the Code of Criminal Procedure (Law no. 5271), adopted on 4 December 2004.

against political interference and undue influence, including security of tenure.²⁰² Under Article 140 of the Constitution, decisions concerning judges' and prosecutors' careers must comply with 'the principle of independence of the courts'. Yet, as described in the previous sections, prosecutors have been exposed, alongside judges, to undue interference and politically motivated punishment or reward in relation to the exercise of their duties. This has resulted from a combination of factors, including a failure of the legal framework to ensure prosecutors' functional independence,²⁰³ the CJP's politically motivated decisions regarding prosecutors' career, and the absence of judicial review of these decisions.

The career advancement of Akın Gürlek provides a striking example of political interference with prosecutors' exercise of their duties in Türkiye. As a judge, Akın Gürlek presided over a court responsible for politically motivated convictions of high-profile opposition figures and government critics for 'terrorism' and 'national security' related offences, in disregard for ECtHR and Constitutional Court judgments.²⁰⁴ Mr Gürlek also served as Undersecretary of Justice, and therefore *ex officio* CJP member. In October 2024, the CJP appointed him to Chief Public Prosecutor of Istanbul. Shortly after, a wave of arbitrary arrests and detention were initiated by the Prosecutor's Office, including of opposition figure and Istanbul mayor Ekrem İmamoğlu.²⁰⁵ Subsequently, Mr Gürlek was appointed Justice Minister.²⁰⁶

Similarly, Can Tuncay, another prosecutor involved in high profile 'terrorism' related cases, was appointed Deputy Justice Minister by President Erdoğan on 20 February 2026.²⁰⁷ As Istanbul Deputy Chief Prosecutor responsible for terrorism and organised crime investigations, Mr Tuncay was one of the prosecutors who signed off on two separate indictments against Mr İmamoğlu on 10 February 2026.²⁰⁸ Mr Tuncay was previously reported to have ordered the detention of a man suspected of 'links with the Gülen terrorist organisation', who died in prison shortly after from suspected torture.²⁰⁹ In a complaint brought by his spouse, the HRC found that the

²⁰² Article 139 of the Constitution (available in English at: https://www.anayasa.gov.tr/media/7258/anayasa_eng.pdf).

²⁰³ Mustafa Paksoy, 'The matter of independence of public prosecutors' [*Cumhuriyet savcısının bağımsızlığı meselesi*], *Erzincan Üniversitesi Sosyal Bilimler Enstitüsü Dergisi (ERZSOSDE)* VII – 1 : 45-66 [2014].

²⁰⁴ Rule 9.2 submission to the Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (supra note 14), para. 34.

²⁰⁵ Rule 9.2 submission to the Council of Europe's Committee of Ministers by the Turkey Human Rights Litigation Support Project, Human Rights Watch, and the International Commission of Jurists concerning the case of *Kavala v. Türkiye* (Application No. 28749/18), 26 May 2025, paras. 20-22 ([https://hudoc.exec.coe.int/ENG?i=DH-DD\(2025\)646E](https://hudoc.exec.coe.int/ENG?i=DH-DD(2025)646E)).

²⁰⁶ Daren Butler and Ezgi Erkoyun, 'Erdogan names prosecutor who led opposition crackdown as Turkey justice minister', Reuters, 11 February 2026 (<https://www.reuters.com/world/turkeys-erdogan-appoints-new-justice-interior-ministers-2026-02-11/>).

²⁰⁷ T24, 'Newly appointed Istanbul Chief Prosecutor Fatih Dönmez bid farewell to Deputy Ministers Can Tuncay and Burak Ceyhan with flowers' [*İstanbul Başsavcılığı'na yeni atanan Başsavcı Fatih Dönmez, Bakan Yardımcıları Can Tuncay ve Burak Ceyhan'ı çiçeklerle uğurladı*], 20 February 2026 (<https://t24.com.tr/video/istanbul-bassavciligina-yeni-atanan-bassavci-fatih-donmez-bakan-yardimcileri-can-tuncay-ve-burak-ceyhani-ciceklerle-ugurladi,68503>).

²⁰⁸ Human Rights Watch, 'Timeline of Key Actions Since 2024 against Ekrem İmamoğlu and the Republican People's Party', 3 March 2026 (<https://www.hrw.org/video-photos/interactive/2026/03/03/timeline-of-key-actions-since-2024-against-ekrem-imamoglu-and>).

²⁰⁹ United Nations Human Rights Committee, *Açikkollu v. Türkiye* (Views of 25 October 2022) Communication No. 3730/2020, UN Doc. CCPR/C/136/D/3730/2020, para. 2.3; Levent Kenez, 'Prosecutor accused of overseeing torture sessions appointed Turkey's deputy justice minister', *Nordic Monitor*, 24 February 2026

deceased had not been promptly informed of the charges against him and the reason for his arrest, that his detention did not meet the criteria of reasonableness and necessity, and that the authorities failed to conduct a thorough and impartial investigation into the allegations of torture.²¹⁰ **The cases of Can Tuncay and Akin Gürlek reveal a pattern of career advancement for prosecutors loyal to the AKP and its allies' interests.**

6. The Constitutional Court

Türkiye's Constitutional Court is the supreme domestic avenue for judicial review of measures undermining judicial independence and impartiality. It examines the constitutionality of laws, presidential decrees and the Rules of Procedure of the Grand National Assembly of Türkiye.²¹¹ Since 2012, it also rules on individual applications by individuals alleging violations of their rights under the ECHR and the Constitution.²¹² It therefore has the power to examine applications by judges and prosecutors whose rights have been violated, as well as individuals subject to captured judicial decision-making. Decisions of the Constitutional Court are binding on legislative, executive, and judicial organs, on administrative authorities, and on persons and corporate bodies.²¹³ **Within the architecture of Türkiye's judicial system, the Constitutional Court thus theoretically occupies a preeminent place in preventing and addressing the judiciary's capture by political or private interests.**

Combined with constitutional reform effected under President Erdoğan's government, the method of appointment of the Constitutional Court has precluded its institutional independence from the executive. Under Article 146 of the Constitution, Türkiye's President appoints 12 out of 15 Constitutional Court members, while remaining members are elected by Parliament.²¹⁴ As the Venice Commission pointed out, the constitutional amendments of 2017 allowed the President to no longer be a neutral figure but to remain a member of his political party, creating a significant risk of partisan decisions.²¹⁵ Simultaneously, the reforms led to 'an excessive concentration of executive power in the hands of the President and the weakening of parliamentary control of that power'.²¹⁶ In practice, a significant portion of Constitutional Court members appointed by

(<https://nordicmonitor.com/2026/02/prosecutor-accused-of-overseeing-torture-sessions-appointed-turkeys-deputy-justice-minister/>).

²¹⁰ Ibid., *Açikkollu v. Türkiye*.

²¹¹ Article 148 of the Constitution.

²¹² Amendments introduced by Law No. 5982 of 12 September 2010, entered into force in 2012.

²¹³ Article 153 of the Constitution.

²¹⁴ Under Article 146 of the Constitution, three Constitutional Court members are appointed by Parliament, and "the President chooses three members of the Court of Cassation and two members of the Council of State among three candidates nominated by their General Assembly for each vacancy from among their Chairmen and Members; three members, of which at least two lawyers, from among three candidates nominated by the Council of Higher Education from among faculty members working in the fields of law, economics and political sciences of higher education institutions that are not its members; and four members from among senior executives, freelance lawyers, first-class judges and prosecutors, and rapporteurs of the Constitutional Court who have served as rapporteurs for at least five years".

²¹⁵ Venice Commission, 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, No. 875/2017, 13 March 2017, paras. 51-53, 94 and 119.

²¹⁶ Ibid. para 47

President Erdoğan have held government positions previously.²¹⁷ Multiple members elected by Parliament were also found to have had previous affiliations with either the government or the ruling party.²¹⁸ Furthermore, one third of the Constitutional Court's members are appointed from the Court of Cassation and from the Council of State.²¹⁹ Through its control over the CJP, which elects the members of both courts, the ruling political coalition has been able to strategically promote certain judges to the top courts and then to the Constitutional Court.²²⁰ Appointments to the Constitutional Court have thus become highly politicised.

The composition of the Constitutional Court with loyal judges has ensured its repurposing from upholding judicial independence and constitutionally guaranteed human rights to legitimising the judicial harassment of dissidents and other individuals and groups perceived as threatening the interests of President Erdoğan and his allies. In a third party intervention to the ECtHR in the case of *Osman Kavala v Türkiye* (no. 2) in February 2026, TLSP, Human Rights Watch and the International Commission of Jurists observed that:

*“despite the ECtHR’s rare finding of a violation of Article 18 ECHR due to the arbitrary detention of Osman Kavala, the TCC failed to find that his continued detention violated his rights. More recently, the TCC similarly found no violation of prominent human rights defender Şebnem Korur Fincancı’s right to liberty and security regarding her detention for her professional assessment of reported human rights abuses by Türkiye’s armed forces, in clear contravention of the ECtHR’s well-established case-law. The TCC has repeatedly failed to find violations in cases relating to arbitrary detention and ill-treatment, torture or unlawful death of alleged “members of terrorist organisations” in detention. It has arbitrarily denied requests for release from detention of political prisoners with serious health issues. Beyond non-violation findings, the TCC often interprets its jurisdiction exceedingly restrictively to avoid ruling on issues of strategic interest to the ruling coalition.”*²²¹

The repurposing of the Constitutional Court is evidenced by a strategic combination of rights-compliant and non-compliant decisions depending on the strategic interests of the AKP and its allies.²²² As highlighted in the third party intervention in *Kavala* (no. 2),

“[c]ases relating to the use of the encrypted communication application ByLock provide a striking example of this selective approach to compliance with human rights standards and ECtHR case-law. In Yalçınkaya v Türkiye, the ECtHR found a violation of Articles 6 and 7

²¹⁷ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, Third Party Intervention in *Kavala* (no. 2) v *Türkiye* (App no. 2170/24) before the Grand Chamber of the ECtHR (supra note 113), para. 12.

²¹⁸ Ibid.

²¹⁹ Article 146 of the Constitution.

²²⁰ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, Third Party Intervention in *Kavala* (no. 2) v *Türkiye* (App no. 2170/24) before the Grand Chamber of the ECtHR (supra note 113), para. 12.

²²¹ Ibid., para. 13. See also Rule 9.2 submission to the Committee of Ministers by Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists on *Kavala v. Türkiye*, 26 January 2024 (supra note 14), para. 41.

²²² Ibid., para. 14.

*ECHR in relation to the use of ByLock as criminal evidence and ordered that Türkiye undertake general measures under Article 46. Yet, the President of the TCC expressed disagreement, stating “ultimately, the courts in Türkiye will make the decision”. In several cases, the TCC has failed to comply with the ECtHR judgments or ruled that it lacked jurisdiction *rationae materiae* to review lower courts’ refusal to grant affected persons a retrial following the ECtHR’s judgment. The court has also been significantly delaying rulings on related cases, seemingly as a means to avoid implementing *Yalçınkaya*.”²²³*

Judgments by the Constitutional Court in ByLock cases reveal a strategic circumvention of human rights standards including the ECtHR’s case-law. To support its findings that mass dismissals targeting alleged users of ByLock (a lawful application at the time) were justified restrictions of the right to private life, the Constitutional Court cites passages from *Yalçınkaya* in which the ECtHR acknowledges that using ByLock “could prima facie suggest some kind of connection with the Gülen movement” and recognises “the urgency and severity of the situation that the authorities and courts had to grapple with in the aftermath of the coup attempt”.²²⁴ Yet it entirely omits the critical next step of the ECtHR’s reasoning, in which the latter qualifies these statements by holding that treating the mere use of ByLock as automatically evidencing membership of a terrorist organisation was incompatible with the requirements of legality and foreseeability and the right to a fair trial (paras. 263-267 and paras. 345-346). The Constitutional Court has thus wilfully ignored the essence of the ECtHR’s reasoning. In doing so, it has also failed to apply the key findings of the ECtHR’s judgment of *Pişkin v Turkey*,²²⁵ establishing violations of the right to a fair trial and the right to respect for private life due to inadequate judicial review of the dismissal of a public sector worker under state of emergency legislation.

The Constitutional Court’s lack of a transparent prioritisation policy has contributed to its selectivity and facilitated interference with the exercise of its duties.²²⁶ While some cases have been concluded quickly, others, particularly those involving politically sensitive issues or government critics, have faced unreasonable delays, precluding an effective remedy.²²⁷

Finally, while judgments of the Constitutional Court that are both timely and unfavourable to the government have become increasingly rare, repeated refusal by lower courts and other State actors to implement these, combined with covert and overt pressure on the Constitutional Court judges involved, has served as a powerful deterrent to Constitutional Court judges inclined to rule against the interests of President Erdoğan and his allies.²²⁸

²²³ Ibid.

²²⁴ ECtHR, *Yüksel Yalçınkaya v Türkiye* [GC], App no. 15669/20, 26 September 2023, paras. 259 and 269. See Constitutional Court, *N. E.*, App no. 2022/62466, 29 May 2025 [Plenary], paras. 73-74; *A.S.*, App no. 2023/30928, 29 May 2025 [Plenary], paras. 75-76; *Erkan Sezgin*, App no. 2022/86339, 16 July 2025, paras. 60-61.

²²⁵ ECtHR, *Pişkin v. Turkey*, App no. 33399/18), 15 December 2020.

²²⁶ Turkey Human Rights Litigation Support Project, Human Rights Watch and the International Commission of Jurists, *Third Party Intervention in Kavala (no. 2) v Türkiye* (App no. 2170/24) before the Grand Chamber of the ECtHR (supra note 113), para. 15.

²²⁷ Ibid.

²²⁸ Ibid., para. 16.

Conclusion

As affirmed by the United Nations Special Rapporteur on the independence of Judges and lawyers, judicial independence must be regarded as ‘a guarantee of truth, freedom, respect for human rights and impartial justice free from external influence’.²²⁹ The State’s obligation to respect and ensure judicial independence is an essential component of the right to a fair trial and is necessary for the separation of powers and to hold the powerful accountable.

Focusing on the authoritarian turn in Türkiye after the first decade of the twenty-first century, this report has described the strategic dismantling of domestic legal safeguards regarding five key areas of judicial independence: judicial councils, judicial administration, guarantees against outside pressure, the appearance of independence of the judiciary, and prosecutorial independence. The report has further outlined judicial practices tactically bypassing domestic and international standards protecting judicial independence, and the lack of effective judicial review of such practices. The dismantling of institutional and procedural safeguards for judicial independence in Türkiye has allowed for the capture of the courts by the AKP and its allies, facilitating systematic violations of human rights.

Several key findings emerge from this report. First, an important focus of efforts to eliminate checks and balances on the ruling parties’ power has been the capture of Türkiye’s CJP and Constitutional Court, because of their key role in ensuring judicial independence. Second, thanks to their control over the CJP and the Constitutional Court, the AKP and its allies have gained access to the power to administer the courts as well as the power to administer justice. These powers have been systematically deployed against judges and prosecutors standing in the way of increased power and enrichment, and in favour of judges and prosecutors facilitating these twin goals. The lack of independence of the CJP and the Constitutional Court has thus had a knock-on effect on the independence of the entire judiciary. Third, misuse of counter-terrorism laws and state of emergency powers – and the dominant political narrative marginalising government critics by arbitrarily labelling them as ‘terrorists’ – has facilitated the bypassing of safeguards protecting judges and prosecutors from undue interference and pressure. Fourth, large-scale misuse of judicial powers of decision-making and internal administration have successfully led to a repurposing of Türkiye’s judiciary towards guarding the interests of President Erdoğan and his allies. Finally, this judicial capture has benefitted from an entrenched tradition of executive influence and pressure over the judiciary.

While maintaining a formal illusion of separation of powers, Türkiye’s judiciary is subject to executive control and cannot be regarded as independent. Individuals tied to the ruling AKP and allied groups have been attributed key positions within the judicial system and have fostered a climate of fear and submission throughout that system. Instead of providing an effective remedy for human rights violations, the judiciary perpetrates such violations against perceived opponents of the ruling AKP and its allies. Extensive reform is needed to reverse the capture of the judiciary and to bring Türkiye into line with its international obligations. Without

²²⁹ Report of the Special Rapporteur on the independence of judges and lawyers, A/HRC/38/38, 2 May 2018, para. 7.

such a reversal, there can be no meaningful protection for human rights or the rule of law in Türkiye.

Beyond Türkiye, this report demonstrates the need for adequate and robust domestic legal safeguards for judicial independence, reflecting regional and international standards, to prevent court capture. A structurally independent judicial council and timely and effective judicial review of measures threatening judicial independence are at the forefront of such safeguards. In a regional and global context of increasing attacks on judicial independence,²³⁰ the process of capture of Türkiye's courts provides an important warning. Without independent and effective courts, and without respect for the separation of powers, those in power can violate human rights for their own gain without accountability.

²³⁰ International Commission of Jurists and Human Rights in Practice, 'Justice Under Pressure', (supra note 8), pp. 8-15; Special Rapporteur on the independence of judges and lawyers, 'Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy' (supra note 13); WJP Rule of Law Index 2025 Global Press Release, World Justice Project, 28 October 2025 (<https://worldjusticeproject.org/news/wjp-rule-law-index-2025-global-press-release>).