

Juria

## Current Situation of the Judiciary in Turkey

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Even before the latest coup attempt, for the last 3–4 years Turkey was moving away from democracy, rule of law, freedom of expression and freedom of the media and losing its vision of EU membership. President Erdoğan gradually took control of all government institutions. To create his single man regime, he wanted to control not only the legislative and administrative power, but also the judiciary, the media, universities and even civil society.

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[Rz 1] After the great corruption investigation on 17 and 25 December 2013, involving four cabinet members and their sons and also close circle and some family members of President Erdoğan, the ruling AKP government decided to tie the judiciary to the executive power. At the beginning of 2014, the structure of the High Board of Judges and Prosecutors (HSYK) was changed and by the new regulation, the Minister of Justice was given broad authority to send away current judges, public prosecutors and judicial inspectors, to appoint new ones and to start disciplinary proceedings. Even though this new regulation was cancelled by the Constitutional Court, new appointments haven't been withdrawn. The new election of HSYK was won by the government supported Platform of Union at the Judiciary. That association is openly supported by the government<sup>1</sup>, they never hid their loyalty to the government and they promised to work in line with the government.<sup>2</sup>

[Rz 2] Later, the government created new courts known as «criminal justice of peace» which were described as project courts to carry out further purging<sup>3</sup>. These new single judge courts are being criticised on the grounds that they are against the principle of the natural judge and the right to a fair trial because of their closed circuit trial system. These courts are authorised to carry out investigations against terror organisations and organised crime and during these investigations they are mandated to assess the demands of search, capture, seizure, measures, judicial control and arrest. But there is no way to appeal to higher courts against their decision and all objections will be treated by the next criminal justice of peace.

[Rz 3] Since he has taken control of the judiciary, in recent years President Erdoğan has arbitrarily closed opponent newspapers, removed thousands of judges, prosecutors, police officers and public officials from their positions just because they did their job properly. He has declared his dissidents enemies of the state and spies of foreign intelligent services.

[Rz 4] To control high courts, on 13 June 2016 the Government submitted a draft bill to the Turkish Grand National Assembly to annul the positions of high court members. (Later enacted as a Code Nr. 6723 Law and published at the Official Gazette on 23 July 2016<sup>4</sup>) According to this draft bill, the positions of members at the Council of State and also at the Court of Cassation (High Court of Appeal) shall be terminated, the number of the members of the High Courts shall be decreased and members who are not elected again are going to be appointed as a judge to one of the first instance courts or maybe as a rapporteur judge to the same institution. As a result, the acquired rights of current members of the High Courts, the principle of the natural judge and the security of tenure will be clearly violated. For this reason the draft is criticised by many academicians, jurists and bar associations<sup>5</sup>. Indeed when they were elected as members of the Council of State in March 2011, it was guaranteed by the Turkish Constitution that they were going to retain their position until the age of 65. This draft legislation was also in contradiction to the case law of ECtHR (Baka v. Hungary, App. No:20261/12).

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<sup>1</sup> <http://www.aljazeera.com.tr/haber/davutoglunu-sicil-affi-ziyareti> (all internet sources have been last visited on 16 August 2016).

<sup>2</sup> <http://www.aktifhaber.com/yargidaiktidarabiatgibiacklama1039357h.htm>.

<sup>3</sup> <http://www.siyasetcafe.com/Siyaset-Haberleri/6005-erdogan-operasyonu-yonettigini-agzindan-kacirdi>.

<sup>4</sup> <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/07/20160723m2.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/07/20160723m2.htm>.

<sup>5</sup> <http://www.sozcu.com.tr/2016/gundem/cubbemi-kimsenin-onunde-iliklemem-gerekirse-1294986/>.

[Rz 5] The ruling AKP member of Parliament Justice Commission Cahit Özkan<sup>6</sup> and also the Minister of Justice Bekir Bozda<sup>7</sup> openly declared that this proposal is a measure to purge all members of «Parallel State Structure – FETÖ Terror Organisation» in the high courts, but they didn't submit any proof to support their very serious accusations.

[Rz 6] A group of high court judges considered that this extraordinary and excessive interference to the judiciary by the executive power, shall severely harm the principle of legal certainty, the acquired rights of judges and the principle of separation of powers. Further to that, they issued a press release and demanded the Turkish Grand National Assembly to withdraw this bill<sup>8</sup>.

[Rz 7] Later they became a target of the government controlled media and were threatened to be dismissed from their profession<sup>9</sup>. At the same time, the administration of the Council of State and also the Court of Cassation started disciplinary procedures against them to show their loyalty to President Erdoğan<sup>10</sup>.

[Rz 8] In the midst of this stressful atmosphere, a failed coup d'état took place on the evening of July 15th around midnight in Turkey. When the coup attempt began, even before knowing who was behind the coup, Erdoğan immediately accused certain parts of society of being the instigators; in his term the «parallel structure», additionally he called the coup attempt «a gift from God». Erdoğan pledged to cleanse the country of the viruses and heralded the purge of all his opponents from government offices<sup>11</sup>.

[Rz 9] Early in the morning at 4:30 am, the government controlled media announced that 140 members of the Court of Cassation and 48 members of the Council of State would be detained by order of the Ankara Chief Prosecutor<sup>12</sup>. On the 17<sup>th</sup> of July, 140 members of the Court of Cassation and on the 18<sup>th</sup> of July, 48 members of the Council of State were dismissed from their profession in a single session and in a very short time without due process of law<sup>13</sup>. This was a miracle! Even before the coup plotters' names came to light, the chief prosecutor of Ankara identified the names of collaborative judges and found reliable and convincing proofs only within a few hours!

[Rz 10] Before the coup attempt took place, on 11 July 2016 on an anonymous twitter account<sup>14</sup> some Council of State members' names were listed as members of the so-called «Parallel Structure». This method became a usual way to stigmatize some people and later to dismiss them from their profession. Everybody in Turkey knows that those anonymous twitter and facebook accounts are established and financed by the ruling AK Party, that's why they are called AK Trolls. Actual-

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<sup>6</sup> <http://www.sabah.com.tr/gundem/2016/07/04/feto-yukse-yargidan-temizlenecek>.

<sup>7</sup> <http://www.yenisafak.com/gundem/yargida-pensilvanya-ile-irtibatli-kisiler-var-2481601>.

<sup>8</sup> <http://www.sozcu.com.tr/2016/gundem/yukse-yargi-sokaga-cikti-1309404/>; <http://www.haberlar.com/gundem/yargitay-uyeleri-cubbeleri-ile-aciklama-yapti-yasa-geri-cekilmeli-h41015.html>.

<sup>9</sup> <http://www.yenisafak.com/gundem/yargitayda-cubbeli-sov-2492848>.

<sup>10</sup> <http://www.yenisafak.com/gundem/o-sova-jet-sorusturma-2493244>.

<sup>11</sup> <http://www.bloomberg.com/news/articles/2016-07-17/coup-was-a-gift-from-god-says-erdogan-who-plans-a-new-turkey>.

<sup>12</sup> <http://www.haberler.com/ankara-cumhuriyet-bassavciligi-darbe-girisimine-8613640-haberi/>; <http://www.independent.co.uk/voices/turkey-coup-erdogan-purge-military-judges-criminals-getting-rid-of-secular-a7141556.html>.

<sup>13</sup> <http://www.karar.com/gundem-haberleri/48-danistay-uyesinin-gorevine-son-verildi-190740>.

<sup>14</sup> <https://twitter.com/paralelciler06/status/752489478619619328>; <https://twitter.com/paralelciler06/status/752489617673293824>.

ly, many of the members mentioned on those Twitter accounts were dismissed immediately after the coup attempt.

[Rz 11] Also, the following morning the High Board of Judges and Prosecutors immediately gathered and declared that 2745 first instance court judges and prosecutors were suspended<sup>15</sup> (later, thousands of them were either detained or arrested<sup>16</sup>). Obviously, the lists were ready months, even years before the coup and they were immediately used to purge all the independent, impartial and democrat judges and prosecutors, without any evidence of individual wrongdoing. President Erdoğan started the cleansing within the judiciary to eliminate further obstacles and to be able to carry out bigger cleansings in all parts of society. Even before the coup attempt took place, the deputy chairman of the Turkish High Board of Judges and Prosecutors (HSYK) Metin Yandrmaz declared in his statement to Hürriyet Daily on 6 March 2016 that they had identified approximately 5000 judges and prosecutors who were close to or members of the «Parallel State Structure – FETÖ Terror Organisation» according to information given by the Presidency of the Republic of Turkey and the Prime Minister’s Office. He said that they were making arrangements to dismiss and to judge them. He also confessed that the reports of the committee of inspection of HSYK were based on telephone records to reveal the organizational connection<sup>17</sup>. Metin Yandrmaz is a member of the Platform of Union at the Judiciary (YBP) which currently dominates the HSYK.

[Rz 12] The lists of the suspended judges and prosecutors, who allegedly supported the coup attempt, were issued on the official websites of the Turkish state broadcasting channel TRT and the state news agency AA<sup>18</sup>. At the same time, some other lists were also issued on different websites<sup>19</sup>. But in fact, the lists had been prepared months, even years before the coup. For this reason, the name of Prosecutor Ahmet Biçer was on the list despite the fact that he had died 2 months prior to the coup<sup>20</sup>. Besides, the HSYK had issued a message of condolence for the same prosecutor<sup>21</sup>. Similarly, the names of judges Metin Özçelik and Mustafa Baer were on the list of the suspended judges because of their alleged support to the coup attempt, despite having been already arrested<sup>22</sup> on 30 April 2015 and 1 Mai 2015. And also the names of prosecutors Süleyman Baryank, Aziz Takç, Özcan iman and Yaar Kavalcklolu were on the lists even though they had already been dismissed from their profession<sup>23</sup>. Probably the profilers of the lists forgot to update them. The columnist Burhanettin Duran at the government supporting Sabah Daily declared on 23 July 2016 that «The members of the Parallel Structure, whose names were deciphered by the

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15 <http://www.bloomberght.com/haberler/haber/1894912-hsyk-2745-hakim-ve-savciyi-aciga-aldi>; [http://www.cumhuriyet.com.tr/haber/turkiye/568472/Darbe\\_girisimi\\_sonrasi\\_yargi\\_operasyonu\\_2\\_bin\\_745\\_hakim\\_ve\\_savciya\\_gozalti.html](http://www.cumhuriyet.com.tr/haber/turkiye/568472/Darbe_girisimi_sonrasi_yargi_operasyonu_2_bin_745_hakim_ve_savciya_gozalti.html); <http://www.haberler.com/hsyk-da-olaganustu-durum-hsyk-2-dairesi-2-bin-8615331-haberi/>.

16 <http://www.kamusaati.com/gundem/gozalti-karari-cikarilan-648-hakim-ve-savcinin-isimleri-h11795.html>.

17 <http://www.hurriyet.com.tr/5-bin-hakim-savci-tespit-ettik-40064585>.

18 <http://www.trthaber.com/haber/gundem/hsyknin-aciga-aldigi-hakim-ve-savcilarin-isim-listesi-261380.html>; <http://aa.com.tr/tr/15-temmuz-darbe-girisimi/aciga-alinan-hakim-ve-savcilarin-isimleri-belirlendi/609286>.

19 <http://www.kamusaati.com/gundem/hsyk-nin-gorevden-aldigi-hakim-ve-savcilarin-isim-listesi-h10919.html>; <http://www.memurlar.net/haber/596706/>; <http://www.hurriyet.com.tr/2-bin-745-hakim-ve-savci-icin-gozalti-karari-cikti-40149496>.

20 <http://www.karar.com/gundem-haberleri/hali-sahada-kalp-krizi-geciren-savci-ahmet-bicer-yasamini-yitirdi-133654>.

21 <http://www.hsyk.gov.tr/DuyuruArsivi.aspx>.

22 <http://www.hurriyet.com.tr/hakim-metin-ozcelikin-ardindan-mustafa-baser-de-tutuklandi-28882854>.

23 <http://www.haberturk.com/gundem/haber/1180865-hsyk-5-savciyi-ihrac-etti>.

Turkish National Intelligence Organization in the last two years were being purged from the army, the judiciary, education, health and media.»<sup>24</sup> Deputy Prime Minister Mehmet imek has also admitted that the purging lists were already prepared upfront.<sup>25</sup>

[Rz 13] In the afternoon, the president of the Council of State invited all the members of the Council of State to issue a declaration to condemn the coup attempt via SMS. But at the same time, she also invited police forces into the courthouse. This was a shameful trap for the members. You can watch the video that shows few fanatic members accusing some other members of being collaborators of the coup plotters without proof and the administration of the Council of State inviting policemen in the Council of State's General Assembly Hall, in which there was a meeting to condemn the coup attempt<sup>26</sup>. Policemen stormed into the courthouse and detained 10 high court members<sup>27</sup> as if they were fugitives or mafia members. On Monday 18 July 2016, the Presidential Committee of the Council of State gathered and on the same day immediately dismissed 48 members of the Council of State from their job<sup>28</sup> in defiance of the law and without asking their defence. Even though there is no formal declaration on the website of the Council of State, the list of dismissed members was issued on some Internet news sites<sup>29</sup>. The number of detained high court members increased rapidly and as of the date of 20 July 2016, 112 members of the Council of State, the Court of Cassation, the Constitutional Court, and the High Board of Judges and Prosecutors were arrested and sent to jail<sup>30</sup>.

[Rz 14] Now let's look at the Code Nr. 2575 Council of State Act<sup>31</sup> to see how the disciplinary proceedings should have taken place:

[Rz 15] «**Disciplinary Proceedings**

**Section 67.** If the state or the activities of the President, Chief Advocate General, Vice-Presidents of the Council of State and the Presidents and Members of the Divisions are seen or reported to be incompatible with the dignity and honor of a supreme judge or to be causing disruptions to the work of the Council of State, disciplinary proceedings shall be carried out against them under the provisions of the present Act.

[Rz 16] **Transfer of the Issue to the High Board of Discipline**

**Section 68.** When the President, Chief Advocate General, Vice-Presidents of the Council of State and the Presidents and Members of the Divisions are seen or reported to be in a state written in the above Section, the transfer of the issue to the High Board of Discipline shall be assessed and decided by the Committee of the Presidency.»

(The Committee of the Presidency was established by the 8 August 2011 Statutory Decree 650/s.7 and recomposed by the 27 June 2013 Law 6494/s.9. Previously this authority belonged to the Committee of Presidents. While the Committee of the Presidents shall be composed of the President, Chief Advocate General and Vice-Presidents of the Council of State and Presidents of the

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<sup>24</sup> <http://www.sabah.com.tr/yazarlar/duran/2016/07/23/feto-tasfiyesinde-iki-kritik-husus>.

<sup>25</sup> <http://www.dw.com/tr/%C5%9Fim%C5%9Fek-isimleri-%C3%B6nceden-tespit-etmi%C5%9Ftik/a-19425396>.

<sup>26</sup> <https://www.youtube.com/watch?v=6pjX8fw4ArA>.

<sup>27</sup> <http://www.sozcu.com.tr/2016/gundem/yargitay-danistay-ve-sayistay-uyeleri-de-gozaltina-alindi-1317646/>.

<sup>28</sup> <http://www.karar.com/gundem-haberleri/48-danistay-uyesinin-gorevine-son-verildi-190740>.

<sup>29</sup> <http://www.kamusaati.com/gundem/danistay-da-gorevden-alinan-hakim-ve-savcilarin-listesi-tam-liste-h10930.html>.

<sup>30</sup> <http://www.haberler.com/2-aym-uyesi-de-dahil-113-yuksek-yargi-uyesi-8630350-haber/>.

<sup>31</sup> [http://www.legalisplatform.net/hukuk\\_metinleri/2575%20Nr.%20Code.pdf](http://www.legalisplatform.net/hukuk_metinleri/2575%20Nr.%20Code.pdf).

Divisions according to Section 19, the Committee of the Presidency shall be composed of the President, three Presidents of the Divisions and three members of the Council of State according to Section 19/A)

[Rz 17] **«Initiation of Disciplinary Proceedings**

**Section 69.** 1. The High Board of Discipline shall decide whether it is appropriate to initiate disciplinary proceedings, according to the evidence obtained and the nature of the state and activities. 2. If the Board decides to initiate the proceedings, it shall appoint three persons among the Presidents and Members of the Divisions other than the Members of the Board. If the person who is charged is also a member of the High Board of Discipline, he cannot participate in the sessions on this issue. Their places shall be filled according to the procedure shown in Section 20.

[Rz 18] **Form of the Investigation**

**Section 70.** 1. Those who are charged with the investigation shall notify the person concerned about the state and activities attributed to him, *hear his defence*, hear the testimony of others under oath when needed, gather information about the matter and ascertain the evidence. 2. All public bodies, organizations and institutions as well as natural and legal persons are obliged to answer the questions put by the investigators and to fulfill other requests. However, the provisions of Section 49 are reserved.

[Rz 19] **Submission of the Report**

**Section 71.** Investigators shall prepare a report about the inquiry that includes the information and evidence obtained and the opinion of the investigators on whether a disciplinary sanction should be imposed.

[Rz 20] **Procedure after Receiving the Report**

**Section 72.** 1. The report prepared according to the above Section shall be submitted to the High Board of Discipline. Those who have carried out the investigation cannot participate in this Board. 2. *The Chair of the Board shall notify the person concerned of the result of the investigation in writing and invite him to present his defence in a period determined by the Chair, which cannot be less than five days.* 3. The Chair of the Board shall assign the investigation file to one of the Members. 4. The Board shall review the matter on the bases of written evidence. If it deems necessary, it may decide to widen and deepen the investigation. 5. The person concerned may examine his file in the presence of the reporting Member.

[Rz 21] **Disciplinary Penalties**

**Section 73.** 1. If the High Board of Discipline concludes that the existence of the attributed state and activities has not been proven, it shall decide to strike the file out of the list. 2. If the Board concludes that the existence of the attributed state and activities have been proven, taking into account the nature and the gravity of the breach, it shall decide to issue a warning to the person concerned or invite him to resign or retire, depending on his service period. 3. If the decision of the Board is about the President of the Council of State, the Vice President, in all other cases, the President of the Council of State shall notify the decision to the person concerned.

[Rz 22] **Execution of Decisions**

**Section 74.** If the person concerned does not comply with the decision that invites him to resign or retire within a month after the notification, he shall be deemed resigned. He shall be deemed on vacation for the one-month period.

[Rz 23] **Legal Action against the Disciplinary Penalty**

**Section 75.** 1. The person concerned may file an action against the decision within fifteen days from the notification of the decision of the High Board of Discipline. This action shall be decided upon within three months after the defence is presented or after the period for the defence expired. Judicial recess shall not be taken into consideration in the calculation of this period. 2. Positions of the persons concerned shall not be filled until the case is finalized. 3. Those who have participated in the decision of the High Board of Discipline or carried out the investigation cannot take part in the deliberations of the cases concerning disciplinary penalties.»

[Rz 24] There is parallel regulation in Code Nr. 2797, the Court of Cassation Act section 43. But in the Act 2797, the member concerned shall be given ten days defence period instead of five.

[Rz 25] These legal procedures haven't been fulfilled neither in the Council of State nor in the Court of Cassation. All proceedings started and completed the same day. The Committee of Presidency of the Court of Cassation gathered one day after the coup attempt on Sunday 17<sup>th</sup> of July<sup>32</sup> and the Committee of Presidency of the Council of State gathered two days after the coup attempt on Monday 18<sup>th</sup> of July<sup>33</sup> and rendered decision the same day within a very short time.

[Rz 26] At the first stage of the proceeding, before the submission of the report to the High Board of Discipline, the investigators didn't notify the person concerned about the state and activities attributed to him, didn't hear his defence and didn't hear the testimony of others.

[Rz 27] The Chair of the High Board of Discipline didn't send a written notification to any member under proceeding about the result of the investigation and didn't invite any member to present his defence in a minimum five days period. The Chair of the Board didn't assign the investigation file to one of the Members, the Board didn't review anything and didn't widen and deepen the investigation. The members concerned were not allowed to examine their files. Because there was no investigation, no investigators, no investigation files and no proofs. Some members were already detained and some others were being searched. Members of the Committee of the Presidency and the High Board of Discipline were just following the order of President Erdoğan and sacrificing their judicial and human dignity.

[Rz 28] Besides, the High Board of Discipline doesn't have an authority to dismiss investigated members immediately. It can only issue a warning to the person concerned or invite him to resign or retire, depending on his service period. If the person concerned does not comply with the decision that invites him to resign or retire within a month after the notification, he shall be deemed resigned. He shall be deemed on vacation for the one-month period.

[Rz 29] The High Board of Discipline didn't send any notification to the members about the result of the proceedings. For that reason, a one month waiting period hasn't been started and the members cannot even be considered resigned. Since there is no immediate dismissal procedure in the Council of State Act or Court of Cassation Act, the decisions of the High Board of Discipline are invalid because of absolute nullity. No administrative or judicial organ shall use any power without having legal and constitutional base. As a result, every member of the Council of State and the Court of Cassation who participated in these shameful Disciplinary Proceedings has become a member of organized crime.

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<sup>32</sup> <http://t24.com.tr/haber/yargitay-gozalti-karari-bulunan-140-uyeyi-gorevden-aldi,350439>.

<sup>33</sup> <http://www.karar.com/gundem-haberleri/48-danistay-uyesinin-gorevine-son-verildi-190740>.

[Rz 30] On the other hand, if high court members are dismissed by decision of the Committee of the Presidency, as it is written in all the media outlets, the decision must be deemed invalid because of usurpation of function. Since the Committee of the Presidency is empowered by the Code Nr 667 Statutory Decree section 3/1 on the 23 July 2016, enacted after the coup attempt, it has no authority to dismiss high court members on 17 and 18 July 2016.

[Rz 31] President Erdoğan declared state of emergency. Immediately afterwards, more than 70,000 soldiers, police officers, judges, civil servants and teachers were suspended, detained, placed under investigation or arrested<sup>34</sup>. They are accused of collaborating with the coup plotters and being members of an armed terrorist group without a single proof. The biggest witch hunting in Turkish history is going on and every day the list of detained and arrested people is increasing<sup>35</sup>.

[Rz 32] There are clear evidences of torture and very ill-treatment<sup>36</sup>. Angry mobs have attempted to lynch some detained judges and prosecutors<sup>37</sup>. It is nearly impossible for the detainees to see their lawyers or even their families.

[Rz 33] The government issued a first Statutory Decree (Code Nr 667)<sup>38</sup> and thousands of private schools, hospitals, universities, dormitories, unions, foundations, associations were closed and their properties confiscated. The detention period was increased to one month. Dismissal of profession for public officers, especially for judges became very simple. People who are dismissed cannot be public officer again. Dismissed judges, prosecutors and public officials will be obliged to evacuate their public housing within 15 days.

[Rz 34] According to Code Nr. 667 Statutory Decree (section 4), academicians, civil or military public officials and workers, local administrations personnel will be dismissed by the administration of their institutions if they are considered to be member or to have somehow relationships to groups which are identified dangerous for national security by the **National Security Council**. The process will be very swift and will not require disciplinary proceedings or court order. Regarding the judiciary (section 3), the dismissal authority is given to the General Assembly of the Constitutional Court for its members, to the Committee of Presidency of Council of State and the Court of Cassation for their members, to the General Assembly of the High Board of Judges and Prosecutors for judges and prosecutors and to a special committee appointed by Auditor General of the Court of Accounts for commissioner of audits.

[Rz 35] According to article 118 of the Turkish Constitution<sup>39</sup>, **the National Security Council** shall be composed of the Prime Minister, the Chief of the General Staff, deputy prime ministers, ministers of Justice, National Defence, Internal Affairs, and Foreign Affairs, the commanders of the Land, Naval and Air Forces and the General Commander of the Gendarmerie, under the chairpersonship of the President of the Republic. The National Security Council shall submit to the Council of the Ministers the advisory decisions taken with regard to the formulation, determina-

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<sup>34</sup> <http://www.aksam.com.tr/ekonomi/hangi-kurumdan-kac-kisi-gorevden-alindi-feto-operasyonunda-son-durum/haber-537591>.

<sup>35</sup> <https://www.theguardian.com/commentisfree/2016/jul/22/biggest-witch-hunt-turkish-history-coup-erdogan-europe-help>.

<sup>36</sup> <https://www.amnesty.org/en/latest/news/2016/07/turkey-independent-monitors-must-be-allowed-to-access-detainees-amid-torture-allegations/>; <http://turkeypurge.com/graphic-torture-in-turkey-new-evidences>.

<sup>37</sup> <http://www.cnnturk.com/turkiye/gozaltindaki-hakim-ve-savcilara-linc-girisimi>.

<sup>38</sup> <http://www.resmigazete.gov.tr/main.aspx?home=http://www.resmigazete.gov.tr/eskiler/2016/07/20160723.htm&main=http://www.resmigazete.gov.tr/eskiler/2016/07/20160723.htm>.

<sup>39</sup> [https://global.tbmm.gov.tr/docs/constitution\\_en.pdf](https://global.tbmm.gov.tr/docs/constitution_en.pdf).



tion, and implementation of the national security policy of the State and its views on ensuring the necessary coordination.

[Rz 36] Obviously the National Security Council is just an advisory committee for security issues, composed of some politicians and military personnel. Neither the National Security Council nor the Council of the Ministers has any judicial power. It is not within their competence to label anyone or any group as terrorist. This authority solely belong to courts, and also the courts' decision must be approved by the Court of Cassation. In the Turkish Penal Code there is no identification of a crime called «Parallel State Structure» and there is no final court order about «Parallel State Structure» or «FETÖ Terrorist Organisation». For this reason, journalists Can Dündar and Erdem Gül are not sentenced for the accusation of aiding «FETÖ Terrorist Organisation – Parallel State Structure» (FETÖ-Fethullah Gülen Terör Örgütü/PDY-Paralel Devlet Yaplanmas) in the case of publishing pictures of arsenal being sent to Syria by the Turkish National Intelligence Service. Istanbul 14. Aggravated Felony Court ruled that there is no final court order for the mentioned Organisation<sup>40</sup>. Similarly, when the high court members are being dismissed there is neither personal court decisions about those members nor final court order about «FETÖ Terrorist Organisation – Parallel State Structure». This terrorist organisation is merely a personal invention of President Erdoğan to purge all his dissidents, even those who are independent or not loyal enough.

[Rz 37] Besides the definition of the crime in the Statutory Decree (Code Nr 667) is so vague and ambiguous that it is possible to punish everyone. According to this regulation it is possible to criminalise anyone who has the slightest tie to groups or organisations described as suspicious by the National Security Council. This means mass profiling and scrutinising of citizens, interference in private life and such a regime cannot be described as a democracy.

[Rz 38] On 4 August 2016, the Turkish Constitutional Court announced that the General Assembly of the Constitutional Court had dismissed two of its member according to Code Nr. 667 Statutory Decree (section 3). The high court didn't mention any personal wrong doing for the dismissed members and didn't submit any evidence why they could not continue their profession. Those two members (Alparslan Altan and Prof. Dr. Erdal Tezcan) were well known for their democratic stance, pro freedom of expression and right to fair trial decisions. Alparslan Altan used a dissenting vote in favour of the arrested journalist Mehmet Baransu<sup>41</sup>. In a nullity suit, they were both using dissenting vote against «criminal justice of peace». This is the best example of how high courts became puppets of the executive power and how they are far from European Court of Human Rights' standards. They sacrificed the reliability and independency of judiciary to satisfy the personal ambition of President Erdoğan.

[Rz 39] Alongside with the profiling activities of the National Intelligence Service, some government organisations encourage people to denounce the suspicious persons on their websites<sup>42</sup>, some public unions are forced to give information about public officials<sup>43</sup>, some public instituti-

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<sup>40</sup> <http://t24.com.tr/haber/can-dundar-ve-erdem-gulun-yargilandigi-mit-tirlari-davasinda-karar-durusmasi-yarin,339070>.

<sup>41</sup> <http://t24.com.tr/haber/aym-2-uyesini-meslekten-ihrac-etti,353377>.

<sup>42</sup> <http://t24.com.tr/haber/dicle-universitesinde-gulen-cemaatine-yakin-personel-icin-ihbar-sistemi-kuruldu,354256>.

<sup>43</sup> [http://www.cumhuriyet.com.tr/haber/ekonomi/580518/\\_Bana\\_cemaatci\\_bulun\\_.html](http://www.cumhuriyet.com.tr/haber/ekonomi/580518/_Bana_cemaatci_bulun_.html).

ons try to collect information through questionnaires<sup>44</sup>. One of the minister confessed that they will carry out mass purging by using the information collected through telephone taps, social media sharing and messages, names of private schools, dormitory and teaching institutions that public officials and their children attended, names of unions, organisations, associations, foundations and other NGOs they are affiliated to and names of financial institutions they made some transactions with<sup>45</sup>. None of those activities and relationships are illegal according to the current law. President Erdoğan called the citizens to denounce anyone without mercy, even if they are close relatives and friends, if they are somehow in connection with the Gülen Movement<sup>46</sup>. This is a typical characteristic of oppressive regimes such as the former USSR, East Germany, Syria, Iraq, Iran and North Korea.

[Rz 40] The Chief Prosecutor of Ankara demanded the court to confiscate all the properties of the suspended and detained judges and prosecutors<sup>47</sup>. This demand was unfortunately accepted by the so-called court within a few days<sup>48</sup>. It revealed that the government had been profiling all its dissidents for a long time and now by this pretext it wants to clear up all its dissidents from all the public offices, even the ones who are not loyal enough. President Erdoğan especially doesn't want independent and impartial judges because he considers them as an obstacle to his single man ambition. The army, the judiciary and all the state institutions were hollowed out by purges. Loyalty, not competence, became the test for advancement.

[Rz 41] Public officers who have green passports were forbidden to go abroad immediately after the coup attempt and later more ten thousand public officers' passports were cancelled and their exit forbidden. Since thousands of couples were arrested at the same time, their children remained unattended. Stigmatizing thousands of citizens according to Turkish Intelligence Service's (MIT) unlawful profiling lists, labelling them to be members of imaginative ARMED PARALEL STATE STRUCTURE without due court process, dismissing them in an extraordinary way, confiscating their properties and not allowing them to go abroad is clearly a HATE CRIME: President Erdoğan is copying the ways of the Nazi Regime and how they treated the Jews. People who are detained will stay in prison for an indefinite period of time and they will certainly be sentenced according to MIT's unlawful profiling lists by the kangaroo courts.

[Rz 42] Democratic and free countries should show their reaction and support for the rule of law and the independence of the judiciary in Turkey. President Erdoğan's dictatorial regime shouldn't be endured for the sake of refugee readmission agreement.

[Rz 43] The name of the author has to be kept anonymous out of security reasons. Name and personality of the author, however is known to the editors.

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<sup>44</sup> <http://www.sozcu.com.tr/2016/gundem/muharrem-ince-skandal-anketi-desifre-etti-1347030/>.

<sup>45</sup> <http://www.haberturk.com/gundem/haber/1270682-10-kriter-belirlendi-bakanliklar-tasfiyeyi-buna-gore-yapacak>.

<sup>46</sup> <http://www.cnnturk.com/turkiye/erdogan-o-camiadan-dostlarinizi-ihbar-edin>; <http://www.ensonhaber.com/erdogandanfetoculerhbaredncagrs20160810.html>.

<sup>47</sup> <http://www.sueddeutsche.de/politik/tuerkei-tuerkei-will-privatvermoegen-von-richtern-und-staatsanwaelten-beschlagnahmen-1.3099914>.

<sup>48</sup> <http://www.sozcu.com.tr/2016/gundem/hakim-savci-ve-valilerin-mal-varliklarina-tedbir-1335002/>.