



**INTERNATIONAL COMMISSION OF JURISTS' SUBMISSION TO THE
UNIVERSAL PERIODIC REVIEW OF TURKEY**

Statement at pre-sessions

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists works for the legal protection of human rights and the promotion of the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

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The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the pre-sessions of the Universal Periodic Review (UPR) of Turkey.

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists works for the legal protection of human rights and the promotion of the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems.

In reaction to the attempted military *coup* of 15 July 2016, a nation-wide state of emergency was declared. Shortly afterwards, 32 emergency Decree Laws were issued. All were eventually enacted into permanent laws. The state of emergency lapsed on 19 July 2018, but some of its measures were given permanent effect in legislation, leading to systematic limitations on human rights protections.

Following the attempted *coup*, around 30 percent of active judges and prosecutors were summarily dismissed, based on unclear grounds of association with terrorism.

The vague and overbroad nature of this language creates a very great potential for the arbitrary dismissal of judges in violation of guarantees of judicial independence.

The power of the Council of Judges and Prosecutor to dismiss judges and prosecutors based on criteria featured under emergency legislation was maintained for a further three years with the approval of Law no. 7145. Since then at least 17 judges and prosecutors have been dismissed.

During the state of emergency there was a wave of arrests of judges, prosecutors and lawyers purportedly in connection with "terrorism" offences under Act no. 3173, often on grounds that were unclear, with little evidence provided as to the reasons for arrest. Many judges, prosecutors and lawyers remain in detention awaiting trial.

The ICJ understands that, since the beginning of the state of emergency, more than 2,000 judges and prosecutors have been detained, and that at least 500 of them are still in detention.

On 16 April 2017 a constitutional reform modified the composition and appointment of the Council of Judges and Prosecutors (CJP). Out of its 13 members, six are now effectively appointed by the President of the Republic. The remaining seven members are appointed by the National Assembly. None of the members of the Council is appointed by judges or public prosecutors.

Since the CJP is responsible for all appointments, promotions, suspensions and dismissals of judges, as well as for all disciplinary proceedings, it is capable of having a significant impact on the independence of the judiciary. In addition, except for dismissal decisions, decisions on appointments, promotions and suspensions are not subject to judicial review.

In light of the above, the ICJ considers that Turkey's judicial system fails to meet international standards on the independence and accountability of the judiciary and of prosecutors.

Furthermore, the ICJ is concerned that no effective remedies are in place in Turkey against the mass dismissals that occurred in the public sector under emergency decrees, and that have continued since then under Law no. 7145.

Finally, some emergency measures that have become permanent law considerably restrict the capacity of lawyers to effectively represent clients:

- the ability of prosecutors to prevent lawyers' access to their clients to a maximum of 24 hours from the beginning of detention.
- authorities are still allowed to record and monitor all communications between lawyers and their clients.

A Justice Reform Strategy has been presented by the Turkish authorities. The ICJ and IHOP have assessed it. While certain purported reforms seem to go in the right direction, both organisations have found that none of them is able to restore judicial independence without more structural reforms.

Therefore, with regard to the situation of the justice system in Turkey, the ICJ recommends to:

- 1. Abolish the Commission on State of Emergency Measures, and provide direct access to administrative courts in compliance with due process guarantees, full legal representation, access to all files, and the opportunity to have a hearing with an adversarial procedure.**
- 2. Amend constitutional provisions on the appointment of members of the Council of Judges and Prosecutors to ensure that a majority of the members of the Council be elected by their peers. Provide for judicial review of all decisions of the CJP relating to discipline and suspension, and not only dismissal, of a judge or prosecutor. Authorize individual complaints to the Constitutional Court against the decisions of the CJP.**
- 3. Abolish Article 26 of Law no. 7145, which essentially extended the emergency powers over judges and prosecutors for a further three years (see paragraphs 3 and following).**
- 4. Reform the Anti-Terrorism Law no. 3713 and related counterterrorism legislation in order to provide a definition of terrorism that is clear and in line with principles of legality and international human rights and counter-terrorism standards (see paragraph 7).**
- 5. Ensure access to a lawyer from the very beginning of detention of anyone arrested under criminal law.**