**The disciplinary, civil and criminal liability of judges in “Turkey”**

**Submitted to:** Special Rapporteur on the independence of judges and lawyers

**Submitted by**: Maat for Peace, Development and Human Rights (an organization in special consultative status with the UN Economic and Social Council).

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* **The disciplinary actions and types of misconduct within Turkish judicial system:**

The judicial system plays a major role in entrenching the values ​​of justice and human rights, so that the transition from the legitimate state to the state of law, in which governors and people governed are subject to the rule of law, remains dependent on the effectiveness of this judicial system, its independence and impartiality. The independence of the judiciary is an important guarantee for the judges to perform the tasks entrusted to them properly, and constitutes an impenetrable fortress that enables them to avoid any possible unethical behavior. Judges must act in accordance with moral principles to this end, and many countries have established clear codes of conduct and rules to regulate the judges’ moral behavior. These codes are frequently drafted by the judges themselves; however, sometimes governments contribute to the process of their development. At the international level, the Bangalore Principles of Judicial Conduct identify six core values of the judiciary – Independence, Impartiality, Integrity, Propriety, Equality, Competence and Diligence.​ ​ They are intended to establish standards of ethical conduct for judges and specify the grounds on which judges may be removed.

Here, it should be noted that a distinction must be made between judicial accountability related to professional performance, which is provided for in the rules of judicial conduct, and accountability for ordinary crimes that judges may commit in their personal capacity, in which case, they shall be criminalized and treated as any other criminal. Hence, judges should be held accountable for misconduct in the context of performing their duties, provided that accountability mechanisms are clearly articulated in the country’s law and constitution.[[1]](#footnote-1) In this context, the Bangalore Principles of Judicial Behavior indicate the need to have a set of moral codes to control judicial behavior, including the independence of the judiciary and its protection against any pressure or deliberate attempts, by other authorities in the state, to politicize and ruin the justice system. In this context, impartiality and objectivity play a crucial role in governing the judicial system behavior.[[2]](#footnote-2)

In the same framework, integrity is an essential quality that any judge must enjoy, and that is seen in avoiding deception, lying, fraud and accepting bribes, among other things, to issue unfair judicial rulings. Additionally, integrity represents probity, righteousness, avoiding personal interests, honesty, maintaining confidentiality, and ensuring equality for all in issuing Judgments, impartiality, competence, and knowledge of developments in various international and national laws. All these are important criteria for which judges are held accountable upon default.[[3]](#footnote-3)

In Turkey, the standards mentioned earlier in both the constitution and laws are reflected in varying degrees, ensuring that the rules of professional conduct in the Turkish judicial system are applied effectively; but at the practical level, they are not sufficiently activated and are misused to serve the goals and interests of the Turkish government, which will be clarified later on. If the Turkish constitution stipulates in Article IX that independence and impartiality must be a hallmark in the Turkish judicial system, while Article 138 stress the need for the independence of judges so that they can pass their rulings in accordance with the constitution and the laws. Moreover, Article 139 of the Constitution states that Judges and public prosecutors shall not be dismissed, or 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 court or post. According to these articles, it is not permissible to issue instructions to judges and interfere in their work, which achieves independence and objectivity in issuing various rulings[[4]](#footnote-4). On the other hand, the Turkish authorities have made amendments to the law of the Supreme Judicial Council, which gives the government more control over the Supreme Council of Judges and prosecutors who appoints senior judges, and among the amendments are transforming the mechanisms of electing senior judges and prosecutors. The old system allowed each voter to vote for more than candidate, but, now, after the new amendment, every voter has the right to vote only for one candidate. The authority to appoint the chairman of the State Inspection Committee, its deputies, and secretary-general also became in the hands of the Minister of Justice, who also had the final say in allowing investigations to be opened against judges and prosecutors. Based on these amendments, the judges and members of the Public Prosecution will be under the control of the Minister of Justice, and thus violating the constitution that depends on the principle of separation of powers, making the Turkish Constitutional Court cancel these amendments for violating the constitution.

These amendments made in the wake of the corruption scandal and the arrests campaign that targeted the sons of ministers from the ruling party, in an attempt to protect these figures and interfere in their investigations, not out of a sincere desire to solve the problems of the judicial system in Turkey.[[5]](#footnote-5)

In another context, the Turkish Law on State Employees No. (657) of 1965 imposes certain obligations of confidentiality on employees, including all judges and members of the Public Prosecution.[[6]](#footnote-6) Article 62 of Law 2802 provides various types of misconduct relating to the personal life of the judicial system members that should not be violated[[7]](#footnote-7). Articles 82-92 of the same law clarify the procedures for investigation and prosecution of crimes committed by members of the Turkish judicial system during the performance of their official work, while Article 93 of the same law relates to crimes committed by arbitrators and prosecutors in their personal capacity, under these provisions, save the cases of flagrante that fall within the jurisdiction of the criminal courts, judges and prosecutors suspected of committing a crime may not be arrested[[8]](#footnote-8).

Other relevant Turkish laws affirm that a member of the judicial system may not be arrested or imprisoned unless in cases of doing a murder or selling drugs or whatever deeds criminalized by law[[9]](#footnote-9), and despite this, the Turkish government has arrested a number of members of the judicial system, according to the state of emergency imposed after the attempted military coup, as well as in accordance with the terrorism law that was applied after ending the state of emergency, with the aim of politicizing judiciary and terrorizing its members to issue judgments serving the goals of the Turkish government. This was clearly demonstrated by the incident of re-arresting the journalist "Ahmed Altan" after he was released[[10]](#footnote-10), and in the case of the well-known activist "Osman Kavala", who was re-arrested after being released by court order, as the court that released him was threatened to be investigated with.[[11]](#footnote-11)

In this context, the incident of the activist Osman Kavla will be mentioned in detail along with the Turkish government attitude towards the court that firstly released and then re-arrested him. The Silivri Court near Istanbul acquitted the businessman and human rights defender Osman Kavala and 15 other who were involved in the case of supporting the anti-government demonstrations in the Gezi Park in Istanbul, which dates back to 2013. The judge said during the ruling that there is no concrete evidence against the suspects[[12]](#footnote-12), and after the issuance of the acquittal decision on February 18, 2020, the Istanbul Prosecution issued a decision ordering his arrest again on charges of purported connection with the movement suspected to behind the coup attempt in 2016. This comes in conjunction with the speech given in parliament on November 19, 2020, by the Turkish President Recep Tayyip Erdogan about Kavala who was considered as a traitor and a client aiming to ruin Turkey and a participant in the coup of July 15, 2016.

In this context, the Council of Judges and Public Prosecutors decided to investigate the members of the Istanbul Criminal Court Authority, which had acquitted Osman Kavala in the Gezi case. Those members included the chairman of the Court, Ghalib Muhammad Park, and two of its members, Ahmed Tariq Cevcioglu, a first member, and Talib Arjan a second member[[13]](#footnote-13). In this context, Kavala said that the Turkish President interferes with the work of the judiciary in order to keep him in prison[[14]](#footnote-14). Indeed, the context of this issue clarifies two things; the first is the Turkish government's insistence to threat the independence of the judiciary by intimidating judges, and the second is the continuous interference in the work of the judiciary in a manner that affects the independence, impartiality, and objectivity of the judiciary.

* **Procedures for filing disciplinary complaints against Turkish judges:**

The Supreme Council of Judges and Prosecutors (HSYK) is the main body responsible for investigating abuses by members of the judicial system in Turkey. Besides, the Council is responsible for the integrity of the judiciary and the application of judicial independence standards to ensure the achievement of the justice system. The Council also is responsible for appointing judges and public prosecutors, issuing rulings in cases related to professional misconduct, which are then subject to review and investigation, in accordance with Article 82 of Law No. 2802[[15]](#footnote-15), and these incidents shall be investigated by judicial inspectors with the permission of the Ministry of Justice, and the Minister of Justice may request opening an investigation in any incident of corruption.[[16]](#footnote-16)

The Supreme Judicial Council consists of 22 members, selected as follows: ten members are elected by judges and prosecutors, four members are appointed by the President of the Republic, and six members are selected by the various judicial bodies. As for the remaining two members, one of them is the Minister of Justice and the other is his advisor. This formation allows the Turkish government to interfere somehow in the work of the Council[[17]](#footnote-17), and despite repealing the amendments to Law No. 6087 regarding the competencies of the Council, which empowered the government and the Minister granting them more authority to interfere in the Council’s work in 2014, the administrative decisions taken by the government before repealing the amendments are still in effect because the decision is not applied retroactively and this affects the independence of the parliament.[[18]](#footnote-18)

Although the Supreme Judicial Council and the Minister of Justice are the authorities entrusted with investigating and dismissing judges in Turkey, due to the coup attempt that took place in July 2016, a state of emergency was imposed by which the judicial authority in Turkey was suppressed through a set of laws that were approved to deal with this stage, including the issuance of 32 laws by emergency decree for amending the legislation ranging from the Code of Criminal Procedure, the Law of International Protection and the Laws of Information. Consequently, many members of the judicial system have been arrested and imprisoned.[[19]](#footnote-19)

Among the laws that have been passed and the Judicial System is concerned with is Law No. 6749 and the Emergency Decree Law No. 667 of July 22, 2016. This law targets the independence of the judiciary by providing for the dismissal and removal of members of the judiciary if proven involved in activities against the state’s national security, including members of the Constitutional Court, the Court of Appeal, and lower court judges.[[20]](#footnote-20) Under this law and after ending the state of emergency, repression against judges continued under the Anti-Terrorism Law No. 7145 which gives the Turkish government the authority to continue to practice arbitrary dismissal of judges and other public sector employees who are believed to have links with Gulen Movement, which negatively impacts the independence of judiciary and forces judges to politicize their rulings, otherwise they will be dismissed[[21]](#footnote-21).

* **Disciplinary penalties that may be imposed on a judge in Turkish system:**

In Turkey, Law No. 2802 stipulates that “Judges and prosecutors may not be arrested except in the event they are charged with a felony with a severe penalty.” The law also regulates the penal procedures that are imposed on judges in the event that they are convicted of professional misconduct, but the procedures lack specific and subsidiary conditions through which penalties are imposed, as complaints and procedures against judges are handled by the complaints office, in the light of no clear provisions governing the process.[[22]](#footnote-22)

Although judges and prosecutors enjoy judicial immunity in accordance with Turkish law due to the sensitivity of their work, this did not prevent them from being arbitrarily arrested without reason or evidence. Although it is assumed that there are other legal guarantees protecting judges from being arbitrary dismissed to prevent the executive authority from involving in judiciary works, all these basic legal principles have been crushed and no longer exist in Turkey. Legal and administrative procedures are no longer respected, and the right of defense before the court is no longer supported, and many judges feel obligated to issue arrest orders against fellow judges, or not to release them so that they do not meet the same fate.

* **The number of judges who have been subjected to disciplinary actions over the past 10 years:**

Despite the increase in the number of employed judges and prosecutors dismissed from the Turkish judicial system that reached more than 3 thousand and 923 according to the Turkish Ministry of Justice[[23]](#footnote-23), the majority of these judges were dismissed or interrogated against the background of belonging to the "Hizmet" ("Service") Movement of Fethullah Gülen, and very few were dismissed and interrogated over corruption-related cases and abuse of judicial authorities. Among these cases, is suspending Judge Muhammed Yuelu from his duties in Istanbul in the aftermath of making statements criticizing the lawyer’s mini skirt, Tuji Cetin, during a judicial session. In his objection, he stated that the lawyer wore a mini skirt 15 cm above the knee, and after many objections by lawyers in Istanbul, the Judicial Council issued a decision to suspend the later from his duties in Istanbul[[24]](#footnote-24).

In this context, and instead of the Judicial Council and the Turkish government strengthening the independence of the judiciary and not interfering in its affairs, Omar Kara, chief inspector of the Supreme Council of Judges and Prosecutors in Turkey, demanded the removal of three prosecutors from their service against the background of uncovering the corruption and bribery scandal against 54 people, including the sons of three ministers and prominent figures from the Turkish ruling party. This comes after the governors supported by the Turkish government dominated the council and tried to intimidate the judges to issue decisions serving the political interests of the Turkish government by condoning the various issues of the ruling Justice and Development Party in Turkey, and using judiciary as a platform to target political opponents.[[25]](#footnote-25)

The Judicial Council focuses on issues related to the superficial religiosity of judges and their public morals in line with the Islamic political ideology of the current Turkish government while turning blind eye on corruption cases in the judiciary and avoid interfering in its affairs and investigating its members. Among the low-level cases that the Council focuses on is the investigation of a Turkish judge after the spread of an image showing her with the Turkish actor "Kivanc Tatlitug", although he appears before the court on charges of tax evasion, indicating that the Turkish government has neglected main issues and focused on sub-details. While the case of investigating the judge involved in bribery and has alleged relationship with the Service Movement explains that the Turkish government is interested in distorting political opposition more than their desire to reform and create judicial stability.[[26]](#footnote-26)

It is worth noting that Hashem Kulk, the former chairman of the Constitutional Court, was referred to retirement due to his criticism of Turkish President Erdogan.[[27]](#footnote-27)

* **Can a judge be subjected to civil and / or criminal responsibility as a result of exercising his powers? If so, in what cases?**

Law 2802 regulates the penal procedures that are imposed on judges in the event that they are convicted of professional misconduct, but the procedures lack specific and subsidiary conditions through which penalties are imposed, as complaints and procedures against judges are handled by the complaints office, in the light of no clear provisions governing the process.[[28]](#footnote-28)

* **The number of judges who have undergone civil / criminal liability procedures over the last decade:**

Since July 2016, more than 3 thousand and 923 members of the judicial authority were dismissed, according to the Turkish Ministry of Justice. The majority of these people were dismissed or interrogated against the background of belonging to the "Hizmet" ("Service") Movement of Fethullah Gülen. This, along with threating judges, investigating, and imprisoning them in an attempt to politicize the judiciary system and use it as a platform to target opposition and turn blind eye on the Turkish government or its members. [[29]](#footnote-29) In July 2016, the Council of Judges and Public Prosecutors in Turkey decided to temporarily suspend 2745 judges from their duties on the grounds of alleged affiliation to the Service Movement. It is worth noting that the Council dismissed 39 judges in June 2017 for the same reason[[30]](#footnote-30).

In July 2019, the Turkish government dismissed nine judges and prosecutors for allegedly belonging to the Gülen Movement[[31]](#footnote-31), and in January 2020, the Turkish government dismissed 20 public prosecutors over alleged terrorism-related charges, while a Turkish court issued a decision to imprison Murat Arslan, a former Chair of the Association of Judges and Prosecutors, for 10 Years over terrorism-related charges[[32]](#footnote-32), while a Turkish court issued a 15-year prison sentence against a former senior judge, on the grounds of alleged belonging to the Service Movement and another was sentenced to six years and 3 months[[33]](#footnote-33). Judge Osman Yurdakul was sentenced to 11 years, 9 months and 15 days in prison, and Turkish Judge Mohammed Tank was sentenced to 8 years and 4 months[[34]](#footnote-34). In this context, it was reported that Judge Aisha Nessi Gul is still being held.[[35]](#footnote-35)

**In conclusion**, it can be said that the Turkish government is interested in using the judiciary as a platform to target opposition and turn blind eyes over the government’s mistakes, by using tools and means of constant intimidation ignoring the law and the Turkish constitution. Accordingly, **Maat for Peace, Development and Human Rights** recommends the following: -

* The need to preserve the independence of judicial institutions while stop dismissing members of the judicial system or intimidating them by using terrorism law or the emergency law.
* The need for immediately release all detained judges, and review the rulings that have been issued against some of them, especially those related to membership in terrorist organizations.
* The need to clarify the disciplinary penalties that are applied to members of the judicial system in the event of misconduct.
* The necessity to reconsider the formation of the Supreme Council of Judges, while allowing decision-making process to be more independent, especially those related to corruption of the judicial system.
* Stop targeting judges who make decisions against the political interests of the Turkish government.
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