

OSCE/ODIHR  
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## **WRITTEN STATEMENT**

### **Lack of Access to Justice in Turkey**

(1) Lack of access to justice in Turkey is of great concern, particularly in the aftermath of the controversial coup attempt of July 15, 2016. In today's Turkey, the judicial system has hit rock bottom. The courts have totally lost their independence and impartiality. The power of judiciary has been usurped by the country's authoritarian/autocratic rulers. Judges and prosecutors have become the minions of executive power in their policy of crackdown on dissidents.

(2) Ongoing massive purges are being used to intimidate all civil servants. Judges and public prosecutors are not exempt from this Sword of Democles hanging over their head. Since the attempted coup, nearly 5.000 judges and prosecutors have been dismissed. In addition to purge waves, judges and prosecutors have been arrested and even put in solitary confinement. Their children/ family members have been placed under custody and their private properties have been confiscated.

(3) Judges, who released some so-called FETO arrestees, have been suspended from their duties with the accusation of being a FETO member. There are cases in which judges were arrested even in the court room. Some of presiding judges openly confessed that they had received a clear instruction from the Ministry of Justice to rule on the pre-trial detention of the so-called FETO suspects. Under this climate of fear, arbitrary detention and arrestation decisions were issued, violating the principle of fair trial.

(4) The government continues to violate basic democratic and human rights of those who are profiled as dissidents. Although the judiciary is totally under the control of the executive power, the Turkish government has still been trying to prevent dissident groups from having access to the justice system. In so doing, the Turkish government gives due respect neither to its national legislation nor to the international conventions to which Turkey is also a signatory.

### **Barriers on the Legislative Level**

(5) In post-July 15 era, the government misappropriated the legislative function of the parliament through the state of emergency (SoE) decrees and started regulating every field of life from winter tires to TV dating shows with this decrees.

(6) Furthermore, article 148 of the Turkish Constitution prohibits judicial remedy for SoE decrees. Yet, never-ending SoE rule, which was is in fact set forth as a temporary measure, constitutes the major obstacle for accessing to justice. This situation gives way to deprivation of millions of people who lost their jobs, savings, schools, hospitals, associations, social security rights, etc. from seeking their rights in court.

(7) Upon numerous (thousands of) individual applications, the President of Turkish Constitutional Court acknowledged that the SoE decrees are out of constitutional review.

(8) Another legislative barrier is the establishment of a sham commission which has the jurisdiction over the decisions of purges in public sector and closings of private entities. From its organisational structure to the selection of its members, it can be easily understood that said commission has been established in order to gain time, and has nothing to do with ending the breaches of law. What deserves attention is that the European Court of Human Rights (ECHR) has accepted this commission as a domestic remedy which should be exhausted before filing application to the ECHR.

(9) In addition to this, the article 9 of the SoE Decree no:667 provides a full immunity for officials who executed provisions of the SoE decrees, which gave them a free hand to grossly violate fundamental rights.

### **Barriers on the Judicial Level**

(10) People, who are just suspects in the eyes of the government and its supporters, have been held behind the bars, without being able to bring their cases before a court. Thousands of people who have been arrested for months, have yet to see accusations about them. Nearly 200.000 people have been under investigation since July 15, 2016, and around 60.000 of them are being (HAVE BEEN) arrested.

(11) There have been abductions of individuals affiliated with dissident groups, most likely cartied by the Turkish Intelligence (MIT). So far , more nearly twenty enforced dissapearnces have been reported. In such cases even the families were not able to reach the abducted individuals, let alone accessing to justice.

Significant evidence, as reported by human rights organizations, suggests that the abducted individuals were heavily tortured leaving permanent physical and mental traces.

### **Violation of The Right to Defense**

(12) One of the most striking and severe problems of victims, in terms of accessing to justice, is the restrictions imposed on their right to defense. These victims are being deprived from one or more of their fundamental rights and one of the most core principles of law: They are not able to make a proper defense before an independent court.

(a) Many people are unable to reach indictments, evidence, witness statements or expert reports about their own cases. It is quite often that these files and evidence are declared confidential by the courts.

(b) Police officers, who intimidated or even tortured the victims during interrogation, continue their intimidation by attending the hearings in courts. The sole reason for this is to prevent the victims to testify against them. No effective investigation or prosecution have been carried out against the perpetrators of torture, abuse and inhumane treatment. Thus, impunity for torture has become a reality.

(c) There has been huge pressure on the lawyers in order to discourage them to take the cases of the so-called FETO, a derogatory term invented by the government to label the members of the Gulen Movement. This pressure has been exerted from the highest level, Turkish President Recep Tayyip Erdogan. So far, nearly 700 lawyers have been arrested in order to prevent these people from preparing proper defense files. The rest of the lawyers either do not accept the cases of alleged coup and terror suspects or demand astronomical fees. Sometimes the amount of money they ask for equals to the price of a car or even a house. Moreover, several Bar Associations have made it clear that they will not assign lawyers to those who are not in position to have one.

(d) The prison officers violate attorney-client privacy by attending or recording their meetings.

(e) Thousands of detainees who are accused of involving coup attempt or having link to the Gulen community are unable to give power of attorney to hire a lawyer since notary intranet is connected to police intranet, and thus give way to police capture.

(f) It is common that the government aims to intimidate arrestees to change their testimonies by threatening with their families. In some cases the relatives of the suspects were arrested, which reminds the Nazi practice of Sippenhaft.

### **Turkish Media: Watchdog of democracy or Official Propaganda**

(13) In democracies, media has a crucial role as part of checks and balances system for governments and law enforcement agencies. By shaping public opinion, a free media is the watchdog of democratic order and fundamental rights.

(14) However, the executive organ in Turkey succeeded to establish almost full control over the Turkish media. Consequently, they can manipulate the public opinion, and led the way for forming false perceptions. Today, there is no standing power in Turkey, except some individual voices, be it pro-government, nationalist, liberal or secular, to oppose the official narrative. As a result, Gulen-followers and other opponents of the government have been easily declared scapegoats and terrorists including judges, academics, journalists, human rights defenders and foreign nationals living in Turkey. Those raising critical voices can be spotted and targeted as terrorists by the pro-government media. This situation constitutes a natural barrier for the access to justice as well as immense social and psychological pressure over the victims.

### **Conclusion**

(15) Above all, we underscore, time and again, the fact that the right to access to justice is a basic principle of the rule of law. The State of Emergency rule cannot be used as a pretext to neglect this principle. With this understanding, we call on the government of Turkey to respect human dignity and to remain adherent to the core international human rights instruments to which Turkey is a party. We appeal to the OSCE countries not to let the Turkish Government exploit international law and international agencies to oppress the dissidents. We also strongly urge international community to exert pressure on the Turkish Government to lift all the barriers before the access to justice and to end the violations of the right to defense.