DISCRIMINATION IN EXECUTION PRACTICES IN PRISONS AND VIOLATIONS OF THE RIGHT TO TREATMENT

1. EXECUTIVE SUMMARY

Discrimination in execution practices in prisons and violations of the right to treatment are directly related to Article 3 (protection against torture and inhuman or degrading treatment or punishment) and Article 14 (prohibition of discrimination) of the ECHR. In this context, there are important judgments of the ECtHR in the cases of **Kudla v. Poland** and **Mouisel v. France on the** need to respect the human dignity of detainees and to provide appropriate health services. In Turkey's domestic law, Article 17 (inviolability of the person, material and spiritual existence), Article 10 (equality) and Article 56 (health services and protection of the environment) of the Constitution are relevant to prisoners' right to access health care and non-discrimination. Furthermore, Article 71 of the Law No. 5275 on the Execution of Sentences and Security Measures regulates the right of convicts to access health services. In this framework, it is necessary to prevent discriminatory practices against prisoners and violations of their right to treatment in prisons and to act in accordance with the requirements of national and international law.

2. THE EXTENT OF DISCRIMINATION IN EXECUTION PRACTICES IN PRISONS AND VIOLATIONS OF THE RIGHT TO TREATMENT

Article 2 of the Law No. 5275 on the Execution of Criminal and Security Measures in domestic law, entitled *"Basic principle in execution*", states that the rules regarding the execution of penalties and security measures shall be applied without discrimination and without privilege to anyone on the basis of race, language, religion, sect, nationality, color, sex, birth, philosophical belief, national or social origin, political or other ideas or opinions, economic power and other social status of convicts. Likewise, it is also stipulated in the article that cruel, inhuman, degrading and humiliating treatment shall not be used in the execution of penalties and security measures. The main purpose and struggle at this point is the humanization of execution. Likewise, in the doctrine, it is stated that in addition to these basic principles of

execution, the principle of continuity of execution and the principle of avoiding secrecy are also important[1] .

The principle stipulated in Article 14 of the European Convention on Human Rights, other international conventions and declarations of rights, and Article 10 of our Constitution that *"there shall be no discrimination among human beings on the grounds of sex, race, color, religion, sect, nationality, political or other opinion, national or social origin, belonging to a minority, wealth, birth or similar reasons*" applies to convicts and detainees as well. Considering this principle, which is also referred to as *"equality before the law"* in the Constitution, it is aimed that no convict in the same status during execution shall be privileged or treated differently on the grounds of race, color, religion, sect, nationality, political or other ideas and thoughts, national and social origin, belonging to a minority, birth, economic and other social positions and similar reasons. However, individualization based on the purpose of adapting the penalties and measures to the personality of the convict and the purpose of improving the convict cannot, of course, be considered contrary to the basic principle in this article. On the contrary, in order for the execution to yield the expected results, a good individualization program should be implemented for each convict

Under ECtHR case law, the provisions of the European Convention on Human Rights do not end at the prison gate. Convicted and detained persons generally continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention, with the exception of the right to liberty. Any restrictions on the rights set out in the Convention must be justified. However, such justification may be in the context of security concerns, such as the prevention of crime and the maintenance of order, which may arise from the circumstances of the conviction[2] .

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[1] Karakaş Doğan, (Execution Law), p.6-8; Demirbaş, Timur: "Evaluation of the Law No. 5275 on the Execution of Criminal and Security Measures (CGTIK) in terms of Contemporary Principles of Criminal Execution Law", Ceza Hukuku Dergisi, April 2008, (Principles), p.101

[2] Guide to the Case Law of the European Convention on Human Rights, Prisoner Rights, Ankara 2019, https://inhak.adalet.gov.tr/Resimler/Dokuman/482020134215mahpus%20haklar%C4%B1%20olarak%20de%C4%9Fi%C5%9Ftirelim%20ba%C5%9Fl%C4%B1%C4%9F%C4%B1.pdf, İET: 20/03/2023, p. 7

As a natural corollary of the principle of equality, the principles of non-discrimination must be fully taken into account in the execution of the sentence. The ECtHR has dealt with different complaints of alleged discrimination in relation to the application of a particular prison regime or other aspects of prison sentences which resulted in some categories of prisoners being treated differently from some other categories of prisoners. In this context, in Varnas v. Lithuania[3] , the Court held that the different treatment of prisoners compared to convicts with regard to conjugal visits was not justified under Article 14. The Court also did not accept the argument that the lack of appropriate facilities justified the denial of conjugal visits. In sum, the Court found that the authorities had failed to provide a reasonable and objective justification for the differential treatment of detainees compared to convicts, and had thus acted in a discriminatory manner and found a violation of rights.

Although national and international legislation states that the state must act in accordance with the principle of equality and non-discrimination in all areas, these principles have recently been ignored.

In Turkey, especially after the July 15 coup attempt, discriminatory practices were resorted to by the state in many areas. The Gülen movement is one of the main opposition groups subjected to discriminatory practices in this process. The systematic and planned discriminatory regime practices against the Gülen movement during the State of Emergency have continued to be applied in prisons. On July 20, 2016, under the pretext of the state of emergency declared on July 20, 2016, people were subjected to arbitrary, unlawful, systematic and planned isolation, ill-treatment, degrading and discriminatory behaviors and practices in prisons in violation of the principle of equality and the prohibition of discrimination regulated in Article 14 of the ECHR, which is not required by the state of emergency and goes beyond the principle of proportionality. All practices of hate policies have been brutally exhibited here.

Although their trials are still ongoing, from the first day they entered prison, they have been subjected to the same restrictions as those sentenced to aggravated life imprisonment on the grounds of the state of emergency. In this context;

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[3] ECtHR Varnas v. Lithuania, Application No: 42615/06, K.T: 09/07/2013; §§ 116-122; Prisoner Rights, p.70

- Restriction of the rights to written communication, telephone, and open meetings,
- Restriction of access to visitors and lawyers,
- Uniform shaving in the hallway and in front of the cameras,
- The ward courtyards were completely covered with fencing wire,
- Every time you go out of the ward, the guards take your arm,
- Prohibition of sitting next to visitors during open visits,
- Suspension of participation in collective cultural and social activities and sports activities, such as workshops, vocational training courses, training courses, use of the internet for educational purposes,
- Prohibition of possession of radios,
- Unjustified and arbitrary transfers to remote prisons,
- Deprivation of the right to probation and conditional release

They have been subjected to a series of unfair and inhumane practices and treatments.

In the prison version of the civilian death practices against the Gülen Movement, people were asked to wait for death in concrete walls. In order to devalue, intimidate and encourage people to become confessors, prison administrations, which go beyond normal practices and working principles, did not grant any of the rights of normal prisoners to those who were arrested or convicted under the state of emergency on the grounds that they are members of the Gülen Movement. These practices still continue despite the end of the State of Emergency.

These restrictions, which were originally applied exceptionally to convicts who were sentenced to disciplinary penalties, were applied as a rule to those arrested and convicted for alleged membership of the Gülen Movement. These arbitrary and unlawful practices, which have no definite duration, have become general practices. These practices also reveal that there are systematic discriminatory regime practices in prisons within the scope of hate policies created against the Gülen Movement. Instead of protecting the essence of the right and ruling accordingly, the local courts and the Constitutional Court have legitimized the administration's unjust, arbitrary and discriminatory regime practices.

Some of these practices were carried out in accordance with the provisions of the State of Emergency Decree Law and some of them were carried out by administrative decisions. Many people have been placed in solitary confinement cells without any justification as a punishment in advance. In this process, people have been subjected to severe unlawful practices

such as preventing them from meeting comfortably with their families and being transferred to prisons hundreds of kilometers away from their families against their will, again with the sole intention of punishing them in advance. At this point, appeals and exhaustion of domestic remedies have yielded no results.

3. DISCRIMINATION IN EXECUTION PRACTICES IN PRISONS AND VIOLATIONS OF THE RIGHT TO TREATMENT

1. Restriction of the Right to Visit and Communication

Executive Decree 667 stipulated that detainees can only be visited by their spouses, relatives by blood up to the second degree and relatives by marriage up to the first degree, and their guardian or trustee, and that detainees can only benefit from the right to telephone communication once every fifteen days and for no more than **ten minutes,** limited only to those persons who have the right to visit. In violation of the principle of equality and the prohibition of discrimination regulated in Article 14 of the ECHR, in many prisons, especially in Silivri Prison Execution Institution, people are banned from exchanging letters with their families until the SoE is concluded[4] . Communication with families has been ensured through 10-minute phone calls every two weeks and limited and restricted open and closed visits.

1. Audio or Video Recording of Interviews with a Lawyer by a Technical Device

Discriminatory practices contrary to universal law have also been introduced in order to prevent people arrested for a serious crime such as an armed terrorist organization from defending themselves, even though they have not committed any criminal act. Executive Decree 667 Article 6 introduced the practice of audio or video recording of detainees' meetings with their lawyers by means of a technical device and the presence of an officer to monitor the meetings of the lawyer, and limited the duration of the meetings with the lawyer. In the individual applications made to the Constitutional Court on this issue, the Court did not find the practice of recording the meetings with the defense counsel and/or having an officer present during the meeting or restricting the duration of the meeting and the exchange of documents

[4] ¨Journalists in prison: Ban on books and letters psychological torture", 04.12.2016, https://www.politikyol.com/hapisteki-gazeteciler-kitap-ve-mektup-yasagi-psikolojik-iskence/, İET: 07/06/2023

unlawful on the grounds that sufficient guarantees are provided in the Turkish criminal legislation and the conditions of the state of emergency[5] . As it can be seen, the Constitutional Court has once again given a so-called legitimacy to a discriminatory practice that leads to grave violations of rights. However, the ECtHR's judgment in Canavcı and Others v. Turkey confirmed the unlawfulness of this practice[6] .

2. Restriction of the Right to Education

Executive Decree No. 677[7] stipulates that those who are detained or convicted in penal institutions due to membership in terrorist organizations or crimes committed within the framework of the activities of these organizations cannot take central exams administered throughout the country and exams held or commissioned by all kinds of formal or non-formal education and training institutions and public institutions and organizations inside or outside the penal institution during the continuation of the state of emergency and during the period they are housed in the institution. Thus, with this practice against the Gülen Movement, which is known as the most educated community in Turkey, the freedom of education, especially bachelor's, master's and doctorate degrees, of the detainees was terminated and the members of the Gülen Movement were completely banned from taking exams based on this decree law during the SoE period.

3. Restriction of Out-of-Prison Transfers

[8] Article 16 of the Decree Law No. 674 added to the Law on the Execution of Criminal and Security Measures stipulates that the Chief Public Prosecutor's Office may restrict the ability of those arrested and convicted of terrorism and organization crimes to leave the penal execution institution if necessary. Accordingly, detainees and convicts may be prevented from leaving the penal institution by the decision of the Public Prosecutor's Office *"if it is assessed*

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[5] Constitutional Court **Yasin Akdeniz Decision,** Application No: 2016/22178, Decision Date: 26/2/2020, https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/22178, İET: 09/06/2023

[6] ECtHR Canavcı and Others v. Turkey, Application Nos: 24074/19, 44839/19 and 9077/20, K.T: 14.11.2023, Prg. 96-103.

[7] Decree Law No. 677 on Making Certain Regulations within the Scope of the State of Emergency, 22.11.2016, https://www.resmigazete.gov.tr/eskiler/2016/11/20161122-1.htm, İET: 09/06/2023

[8] Decree Law No. 674 on Making Certain Regulations within the Scope of the State of Emergency, 01.09.2016, https://www.resmigazete.gov.tr/eskiler/2016/09/20160901M2-2.htm, İET: 09/06/2023

that it may endanger the order of the penal execution institution and public security, that it may enable terrorist organization or other criminal organization members to carry out organizational activities and communication for organizational purposes, or that there may be security inconveniences on the road, in the penal execution institution where they will stay, or in the examination center or school". In this way, serious restrictions have been imposed on the rights of convicts and detainees, for example, to attend court hearings, to access hospitals for health care, and to take exams as part of their constitutional right to education.

4. Introducing the Uniform Dress Code

Article 103 of the State of Emergency Decree Law No. 696 stipulates that defendants accused of terrorism crimes must wear a uniform when leaving the institution, such as for trials, hospitalization or transfer. The President and other officials have been quoted in the media as saying ¨*...these are good days for FETÖ members. I also spoke to our Prime Minister the other day. From now on, when they (FETÖ defendants) appear in court, let's bring them out in uniforms like in Guantanamo. A uniform dress...",* clearly demonstrating the scope and purpose of the regulation[9] .

The fact that the uniform is only foreseen for defendants charged with a terrorist organization and that there is no reasonable explanation for this is an example of discriminatory regime practice, especially since it targets those in prison for allegedly being members of the Gülen Movement. A practice similar to the Hitler-era **yellow Star of** David-emblazoned dresses has been introduced in prisons for members of the Gülen Movement. Article 14 of the ECHR has been clearly violated due to this discriminatory and display-oriented practice. Although some chief public prosecutors' offices sent uniforms to prisons before the regulation on the implementation of the decree law was issued, this discriminatory practice has not been put into practice so far due to reactions from national and international public opinion[10] .

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[9] President Erdoğan: Let's bring FETÖ defendants to court in a uniform", 15.07.2017, https://www.ntv.com.tr/turkiye/cumhurbaskani-erdogan-feto-saniklarini-tek-tip-elbiseyle-mahkemeye-cikaralim,oGS4hJOzP0W1l8T2Tve0HQ, İET:09/06/2023

[10] ¨The uniforms have been sent! Here is the first image", 19.01.2018, https://www.hurriyet.com.tr/gundem/tek-tip-kiyafetler-gonderildi-iste-ilk-goruntu-40715211, İET:09/06/2023

5. Termination of the Membership of the Chairman and Members of the Monitoring Boards of Penal Execution Institutions and Detention Houses

On the other hand, with Executive Decree 673 Article 3, the membership of the chairmen and members of the monitoring boards of penal execution institutions and detention centers was terminated and the procedure of re-designating these boards was introduced. This regulation was basically made with the aim of redesigning these boards, which have the authority to deal with rights violations in prisons and detention houses, in line with their own views.

6. Deprivation of Probation and Conditional Release Rights

Discriminatory practices that started during the State of Emergency continued after the State of Emergency. The most obvious discriminatory practice after the State of Emergency is the discriminatory attitude in the execution of the sentences given to the members of the Gülen Movement and people are deprived of the rights to probation and conditional release even though they meet the conditions. On the basis of some regulations issued during the state of emergency, which are clearly contrary to the constitution and laws, people are not allowed to benefit from these rights on the grounds that they continue to have organizational ties or are not in good behavior.

It is necessary to determine the status of leaving the organization they belong to, which is sought as a prerequisite in Article 6/2-ç of the Regulation on Leaving to Open Prison. In practice, the issue of whether the convicts of organized crime or terrorism crimes have left the organization they belong to is determined by the decision of confirmation of sincerity, which includes the determinations and evaluations made by the prison administration and observation board[11] . For these persons, the determination of good conduct is not considered sufficient and a decision to leave the organization is also required. At this point, the prison administration and observation boards abuse this authority with a discriminatory practice and preventpeople

[11] Gökçe, p.313; Özdemir, Orhan: "The Separation of Convicts to Open Penal Execution Institutions after the Law No. 7242," Journal of Justice, Y. 2021, S. 67, p.386

from benefiting from the rights of probation and conditional release

Public officials motivated by hate politics have resorted to torture, ill-treatment and discriminatory practices against the inmates under the claim that they belong to the Gülen Movement. Although there are conditions for probation and conditional release due to conviction, people are systematically and deliberately denied these rights on the grounds that they are members of the Gülen Movement. Although the legal conditions are appropriate and they have not committed a single act in violation of the conditions of good behavior in prison, there are discriminatory practices against convicted citizens on the allegation of being a member of the Gülen Movement.

In this context, dismissed judge Mustafa Başer, who has been imprisoned in Sincan F1 Prison since May 1, 2015, is not benefiting from his right to probation, which he is legally entitled to, even though he was entitled to probation one year ago and has bladder cancer. After a serious surgery, he is now entitled to conditional release as of September 27, 2022, but he has not been allowed to benefit from this right either. Although thousands of prisoners in the same position in prisons benefit from probation and conditional release, dismissed judge Mustafa Başer does not benefit from these legal rights. The main reason for this is that Mustafa Başer ordered the release of the police officers who carried out the December 17/25 operations involving ministers of the current government. In the current situation, Mustafa Başer's cancer has relapsed for the third time[12] .

HDP Kocaeli MP Ömer Faruk Gergerlioğlu submitted a parliamentary question on the issue. In the case subject to the study, Mustafa Başer, a dismissed judge, is subjected to discriminatory and hateful practices because of his decision to release the police officers who carried out the December 17/25 operations involving ministers of the current government. It is not enough that he is unlawfully serving his sentence in solitary confinement, he is being left to die on purpose as a severe cancer patient out of revenge and hatred. The prison administration and members of the judiciary, who are in a position to decide on this issue, decide against him purely out of hatred. Although Başer is a stage three cancer patient, he is being deliberately left to die with this motive of hatred and is being deprived of his right to conditional release.

[12] His illness relapsed for the third time in prison: Başer's son calls on authorities to apply the law", 11.01.2023, https://www.shaber3.com/cezaevinde-hastaligi-3-kez-nuksetti-baser-in-oglu-yetkilileri-hukuku-uygulamaya-cagirdi-haberi/1404643/, İET:11/08/2023

7. Abandonment of Sick Prisoners to Death

With the post-July 15 hate speech, they have turned into revenge centers of the Erdoğan regime. Unlawful practices such as harboring arrested or convicted people in inhumane conditions, subjecting them to isolation in solitary cells, restricting their right to receive visitors and phone calls, depriving them of social and cultural activities, not providing adequate health facilities[13] , not allowing them to benefit from probation and conditional release despite their conditions, not postponing the execution of sick prisoners, not allowing them to benefit from health facilities are the most serious hate-motivated prison practices of this period.

While the Erdoğan regime encourages violence with its hate policies, it also leaves innocent people unlawfully imprisoned to physical death by subjecting them to discriminatory practices. As can be seen from the grave examples given above, sick people were arrested within the scope of the investigations launched against the Gülen Movement after the July 15 coup attempt, even though they did not have conditions. Thousands of people have fallen ill in prisons due to poor prison conditions or pressures in prison. Arrested people are deliberately left to die due to poor prison conditions or lack of treatment services.

As a result of the policy of hate in prisons, people have been left to die despite being ill. Although there are many examples, one of the most grave examples is the death in prison of **Mustafa Kabakçıoğlu,** a police officer who was dismissed from his job with a state of emergency decree and later arrested. Kabakçıoğlu died on August 29, 2020 on a white plastic chair in a solitary cell in Gümüşhane Prison, where he was held on FETÖ charges.

It has almost become an administrative practice to deny necessary medical aid and treatment to those detained in prisons for allegedly belonging to the Gülen Movement. Another grave case in this context is the death of Halime Gülsu, an English teacher with a state of emergency decree, who was detained in prisons for allegedly being a member of the Gülen Movement and left to die due to her illness.

English teacher **Halime Gülsu**, who was suffering from SLE (Systemic Lupus Erythematosus), was arrested on March 3, 2018 on the charge of making and selling meatballs for families whose spouses are detained by the state of emergency decrees, and died on April

[13] Aras, Bahattin: ¨The Right of Convicts and Detainees to Accommodation in Conditions Appropriate to Human Dignity¨, Yaşar Law Journal, Volume:4, Issue:2, Year:2022, p.5 vd

28, 2018 in Tarsus Women's Closed Prison, where she was being held because she was not given her medication, was not taken to infirmary and was not treated[14] .

Like hundreds of thousands of other innocent people, 84-year-old **Nusret Muğla was** first arrested, released after undergoing surgeries in prison, and then sentenced to 6 years and 3 months in prison as part of an investigation against him on charges of membership in the Gülen Movement for allegedly depositing money in Bank Asya, being a member of the Feza Association in Manisa, and forming a group called Nevbahar. Since Muğla's conviction was upheld by the Court of Cassation, he was arrested again and placed in Manisa T Type Prison. Muğla's requests for postponement of execution were not accepted despite the fact that he is 84 years old and takes 14 medications a day for heart, blood pressure, rheumatism, prostate, kidney problems and brain imbalance[15] .

Muğla[16] , who worked as a shoemaker in Manisa for years and was a close friend of Bülent Arınç, one of the founders of the AKP and former Speaker of the Grand National Assembly of Turkey, died shortly after contracting Covid pandemic in prison.

In another case, **Yusuf Bekmezci, an** 82-year-old philanthropic businessman from Izmir, was denied release while he was unconscious in intensive care and died soon afterwards in hospital. Bekmezci had gone to Izmir Katip Çelebi University Izmir Atatürk Training and Research Hospital for eye surgery on January 4, 2022 from Kırıklar F Type Prison where he had been imprisoned, but his heart stopped during the surgery and he was taken to intensive care. Despite the Forensic Medicine Institution's decision to 'postpone the execution' due to his treatment in intensive care, Izmir 2nd High Criminal Court rejected his request for release.

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[14] ¨Another apparent death in prison: teacher Halime Gülsu passed away¨, 28.04.2018, https://www.tr724.com/cezaevinde-goz-gore-gore-bir-olum-daha-halime-gulsu-vefat-etti, İET:11/08/2023

[15] ¨He was taking 14 medicines a day: 84-year-old Nusret Muğla died in prison¨,13.02.2022, https://kronos36.news/tr/gunde14-ilac-kullaniyordu-84-yasindaki-nusret-mugla-cezaevinde-hayatini-kaybetti/, ET:13/08/2023

[16] ¨Message from Arınç for his friend Nusret Muğla who died in prison at the age of 84: 'I couldn't be useful to you'¨, 14.02.2022, https://ahvalnews.com/tr/nusret-mugla/arinctan-84-yasinda-cezaevinde-olen-dostu-nusret-mugla-icin-mesaj-sana-faydali, İET: 13/08/2023

Bekmezci died on January 20, 2022 in the hospital where he was in intensive care without being released[17] .

The state, which has an obligation to protect people's right to life, instead develops unlawful practices to kill people in prisons. In this context, the Forensic Medicine Institution gave **Şerife Sulukan, a** paralyzed teacher and victim of both February 28 and July 15, a report stating that she "can stay in prison" because she does not have a permanent illness, disability or old age, even though she needs help in most of her daily life activities due to her 89 percent disability[18] . Sulukan is still in prison trying to hold on to life with the help of others.

In Manisa, 86-year-old bedridden **Mustafa Said Türk,** whose 10-year prison sentence was upheld by the Court of Cassation in the context of unlawful operations against the Gülen Movement, was denied his application for postponement of execution on the grounds of old age and severe illness. Türk was taken from his sick bed on a stretcher and taken to the prison and then hospitalized. 86-year-old philanthropist Mustafa Said Türk was released from Menemen R Type Prison after the Forensic Medicine Institution gave a report on postponement of execution after being transferred between prison and hospital for 25 days. Türk, who was taken to the prison on a stretcher, was brought back to his home on a stretcher[19] . When he was brought to his home, it was observed that his condition had become worse than before; his body was covered in wounds, and the hygiene and cleanliness required for a seriously ill patient was not provided. The Turk was almost left to die.

As can be seen, sick prisoners are left to die by a conscious choice within the framework of the Erdoğan regime's hate policies.

8. Judicial Officials Left to Die in Prison

[17] "Yusuf Bekmezci, who was not released even when he was unconscious, passed away", 20.02.2022, https://www.tr724.com/bilinci-kapali-haldeyken-bile-tahliye-edilmeyen-yusuf-bekmezci-hakka-yurudu/, İET:11/08/2023

[18] "Paralyzed and 89 percent disabled teacher Şerife Sulukan had a seizure in prison", 14.06.2022, https://www.boldmedya.com/2022/06/02/felcli-ve-yuzde-89-engelli-ogretmen-serife-sulukan-cezaevinde-nobet-gecirdi/, İET:11/08/2023

[19] "86-year-old paralyzed patient was carried on a stretcher to prison and then to hospital", 31.07.2023, https://www.boldmedya.com/2023/07/31/86lik-felcli-hasta-sedyede-cezaevine-oradan-hastaneye-tasindi/, İET:11/08/2023

Judge **Mustafa Erdoğan**, a member of the 15th and 23rd Chambers of the Court of Cassation, was arrested on February 3, 2017 by Antalya 3rd Criminal Court of Peace without any justification based on an arrest warrant issued against him while he was in hospital for brain tumor surgery. Erdoğan, who had undergone a major surgery, spent six months in the hospital's remand ward with half of his body paralyzed. Since the day of his arrest, Erdoğan has been requesting his release through his lawyers, citing his health condition, but these requests have been unsuccessful. Erdoğan's requests for release were rejected and his applications to meet with his family were also not responded to. Erdoğan's application to the Constitutional Court for his release on the grounds of health problems was also rejected on the grounds that *"the detainee is not in any danger"*. Erdoğan, who was ordered to be kept in solitary confinement until his death under these inhumane conditions, experienced a progression in his illness in August 2017 and was first taken to intensive care. Erdoğan, who was not allowed to meet with his family there either, was released on August 18, 2017 upon the request of the public prosecutor and the court's decision after he lost consciousness. However, after four days of unconsciousness in the intensive care unit, Erdoğan passed away on August 23, 2017[20] .

Similarly, former member of the Council of Judges and Prosecutors, Judge **Teoman Gökçe,** who had a heart attack in prison, died in prison due to lack of timely intervention[21] .

9. Arrest of Pregnant Women or Women with Minor Children

Thousands of women have been arrested as part of investigations into alleged membership of the Gülen Movement, despite being pregnant or having a newborn baby or a child in need of maternal care. Many women took their children to prison with them instead of leaving them outside. Although there are no conditions for arrest in the sense of Article 100 of the Code of Criminal Procedure for the arrested women and they have babies and children in need of care, they have been arrested by criminal judgeships of peace, which have turned into regime courts, in order to punish them in advance before the verdict. The most recent example

[20] "Persecution of a high judge by the Supreme Court and the courts: Detention until death", 24.08.2017, https://www.tr724.com/aym-mahkemeler-eliyle-bir-yuksek-yargica-yapilan-zulum-olene-kadar-tutuklama/, İET:11/08/2023

[21] "Another suspicious death in prison: Former HSYK member Teoman Gökçe dies", 02.04.2018, https://www.tr724.com/cezaevinde-supheli-bir-olum-daha-eski-hsyk-uyesi-teoman-gokce-hayatini-kaybetti/, İET:11/08/2023

of this happened in Edirne. Abdülkadir and Nurcan Arslan, a couple with six children, including seven-year-old quintuplets and a 13-year-old daughter, were arrested in Edirne. Although there are 6 children in need of maternal care and affection and most importantly, one of the quintuplets is disabled, the court arrested both the mother and the father. Since it is not possible to take these children left behind to prisons according to the legal regulations, they were left with relatives[22] .

4. CONCLUSION

Discrimination in execution practices and violations of the right to treatment in prisons constitute clear violations of both national and international law. The European Convention on Human Rights (ECHR) and judgments of the European Court of Human Rights (ECtHR) protect the right of detainees and prisoners to be treated in accordance with human dignity and to have access to adequate health care, while the Turkish Constitution and relevant legislation affirm these rights. However, the examples and findings discussed in the report show that there are serious shortcomings in the implementation of existing legal regulations. It is therefore necessary to establish more effective monitoring mechanisms to prevent discrimination and violations of the right to treatment in prisons, to train staff in human rights and to take concrete steps to protect the rights of prisoners. These steps will contribute to the management of prisons in a manner that respects human dignity and complies with the rule of law.

5. RECOMMENDATIONS

Discrimination in execution practices and violations of the right to treatment in prisons need to be urgently addressed. First of all, existing inspection mechanisms in prisons should be strengthened and independent inspection bodies should work effectively. To ensure prisoners' right to access to health care, human rights training for prison staff should be increased and the quality of health care services should be regularly monitored. Furthermore, comprehensive legislation and rigorous implementation of anti-discrimination policies should be put in place to ensure their effective implementation. Finally, a continuous monitoring and evaluation

[22] ¨Mother and father of quintuplets, one of whom was born disabled, also arrested¨, 30.09.2023, https://kronos36.news/tr/hukuksuzluk-devam-ediyor-besizlerin-anne-ve-babasi-tutuklandi/, 03/10/2023

process should be established to protect prisoners' rights and prevent violations, based on the principles of transparency and accountability. These steps will contribute to preventing human rights violations in prisons and ensuring execution practices in line with human dignity.

UNDERSTANDING OF THE RULE OF LAW

POLICE AND ROGUE STATE

EXECUTIVE SUMMARY

After the corruption investigation of December 17/25, 2013, efforts to harmonize laws and the Constitution with Universal Legal Principles, which had been achieved through great struggles, came to a halt. Legislative amendments related to the investigation and changes such as the Criminal Judgeship of Peace have been made rapidly. Appeals against the decision of the Criminal Judge of Peace do not produce any results as the other Criminal Judge of Peace decides the case. Thus, Criminal Justices of the Peace are appointed by people who are close to the ruling AKP.[1] The influence of the Ministry of Justice has been increased in the appointment and transfer system of judges and prosecutors. Judges and prosecutors who rule in favor of cases that are of interest to the ruling party can be transferred (exiled) to a remote location without waiting for the transfer date and without taking into account the family situation.[2] Thus, new judges and prosecutors are assigned to the cases and decisions are made in favor of the government. In violation of the basic principle of Criminal Law, which states that "there is no crime without law", trials have been held and convictions have been given for actions and acts that are not crimes. Restrictions on detained lawyers' meetings with their clients seriously weakened the right to defense, and some lawyers were pressured and even arrested for fulfilling their defense duties. This is a clear indication that the Police State mentality is at work in Turkey.

Kidnappings by MIT in other countries in agreement with the illegal organizations of that country[3] , kidnappings by MIT in Turkey[4] and threats to release or send migrants in Turkey to Europe[5] are behaviors that fit the understanding of a rogue state. These practices have no legal and legitimate basis.

[1] https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/
[2] https://www.hrw.org/tr/news/2016/08/08/292770
[3] https://humanrights-ev.com/tr/isvicrede-turk-diplomatlar-mit-ile-birlikte-adam-kacirmak-istedi/
[4] https://bianet.org/haber/turkiye-de-gozaltinda-kayiplar-52998
[5] https://www.dw.com/tr/erdo%C4%9Fan-abyi-tehdit-etti-s%C4%B1n%C4%B1rlar%C4%B1-a%C3%A7ar%C4%B1z/a-36519386

Law (Arabic: حقوق) or **statute**[1] is a normative science that regulates the actions of the individual, society and the state and their relations with each other through norms duly enacted by competent bodies, supported by public power, indicating how the addressee should or should not behave in general, and regulating all relevant possibilities for this with norms in force. It is also a set of rules that organize society and regulate interpersonal relations, ensure the flow of common life in peace and security, fulfill justice when necessary, supported by public power and secured by the state with sanctions.[6] Law pursues the common good and common interest in individual-society-state relations. [7]

In the field of law, sanctions are imposed by public power. It is used to compel compliance with the law, to punish those who do not comply with it and to compensate the damages that arise in cases of non-compliance. Sanctions aimed at ensuring and protecting the rule of law are fulfilled in the manner prescribed by the rule of law.

Law fulfills two main functions: 1. it ensures order, 2. it establishes justice.

1. Order is the harmonious and purposeful functioning of any system. Order prevents chaos. It ensures peace and trust. It creates an atmosphere of peace between people.
2. Justice is the protection of rights between people. It realizes the implementation of concepts such as Equal Opportunity and Equality of Rights. The justice system (courts) is needed - even in an individual sense - when order is disrupted.

The rule of law is defined as follows; The rule of law is a form of state in which the public power within its borders is bound by the order of value and law based on the basis of immutability and continuity. Unlike states governed by absolutism, state power is defined by law in order to protect citizens from arbitrary practices (the concept of formal rule of law). A rule of law based on modern understanding also aims to create and protect a just order in the material sense (the concept of substantive rule of law). Objective value judgments, unlike the subjective rights of individuals, function as a limitation of the legislator through established principles.

The rule of law is considered to be the contemporary and most advanced level of social organization after passing through the stages discussed above.

There does not seem to be a problem in terms of legislation on the issue of law and the rule of law in Turkey. Although the constitution and laws are not perfect, the building blocks of the rule of law and the rule of law are in place.

[6] Introduction to Law, Prof.Dr. Turgut Akıntürk, Anadolu University Publications, 2002 (Page-3)
[7] https://tr.wikipedia.org/wiki/Hukuk#cite_note-2

The rule of law requires the impartial and equal application of the law, the supervision of the law by an independent judiciary and the protection of the fundamental rights and freedoms of individuals. Some important criteria to be taken into account when assessing whether or how the government applies the law are as follows:

1. Judicial Independence:
    - An important indicator is whether the judiciary takes decisions independently of the legislative and executive branches. An independent judiciary checks whether the government is acting in accordance with the law. In practice, the opposite is the case. According to Article 138 of the Constitution, "Judges are independent in their duties; they judge according to their conscientious convictions in accordance with the Constitution, the law and the law. In practice, the Council of Judges and Prosecutors (HSK) is not independent. Through the CJP, all members of the judiciary are kept under the control of the government. The President of the Republic of Turkey Recep Tayyip Erdoğan[8] and MHP President Devlet Bahçeli, who supports the government in the People's Alliance, personally or indirectly intervene in the judiciary. [9]
2. Right to a Fair Trial:
    - It assesses whether individuals have the right to a fair trial in impartial and independent courts. This is an important indicator of whether the law is being applied correctly. After the December 17/25 Corruption Operation, the AKP and Erdoğan continued step by step to completely change all the legislation on fair trials and the appointment system of judges and prosecutors. Criminal Courts of Peace have been replaced by Criminal Judgeships of Peace. Thus, arrests, confiscation of assets and appointment of trustees were made through the single judge Criminal Judgeship of Peace. Objections to the decisions are also made to another Judge of Peace within the Criminal Judgeship of Peace and the objections have been neutralized. Thus, the judges appointed to the Criminal Judgeships of Peace have become important. Criminal Justices of the Peace are appointed by those who are personally nominated or pointed out by the government. Criminal Judgeships of Peace have often been criticized for being contrary to the "principle of the natural judge", also known as the "legal judge" or the "ordinary judge".10 The defense influence of lawyers in Turkey has been severely weakened. Restrictions imposed by emergency decrees, concerns about judicial independence and pressure on lawyers have made it difficult to effectively exercise the right to defense. This has undermined the right to a fair trial and undermined the rule of law.
3. Fundamental Rights and Freedoms:
    - It takes into account whether the government respects the fundamental rights and freedoms of individuals. Whether these rights are violated provides information on how the law is applied. [11] Thousands of people were dismissed from their jobs in a single day with a wholesale approach with the Decree Laws

[8] https://tr.euronews.com/2022/02/03/erdogan-bizi-baglamaz-dedigi-aihm-e-kac-kez-basvurdu
[9] https://tr.euronews.com/2023/11/14/bahceli-anayasa-mahkemesi-ya-kapatilmali-ya-da-yeniden-yapilandirilmali
[10] https://tr.wikipedia.org/wiki/T%C3%BCrkiye%27deki_sulh_ceza_hakimlikleri
[11] chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ihd.org.tr/wp-content/uploads/2022/06/OHAL-KHKlar%C4%B1-Raporu.pdf(Human Rights Association State of Emergency Decree Laws and Their Effects on Human Rights Struggle-Hüsnü Öndül)

issued after July 15, 2016, and thousands of people who worked for the state for years and provided for their families were suddenly left unemployed. This situation has not only affected the person concerned, but has also created a great trauma on the other members of the family, children and spouses. Thousands of judges and prosecutors have been dismissed overnight, ignoring their legal rights, and some of them have been imprisoned without any justification and without any justification for any act or action. Sometimes parents were imprisoned and children were left unattended. Unfortunately, some of those who were suspended from duty could not bear the current situation and committed suicide. Unfortunately, not only those who were suspended but also other family members, children and spouses committed suicide. [12]

4. Equal Application of the Law:
    - It examines whether the law applies equally to all individuals and institutions. Everyone must be treated equally before the law without discrimination. People accused of FETÖ were especially tortured by not applying their legal rights. Applications due to torture were ignored and even sick detainees or prisoners were not given medicine and medical examinations and were tortured and left to die. Many detainees and inmates have died in prisons because they were denied medication and medical examinations. In prisons, the legal rights of those arrested or convicted on FETÖ charges have been restricted, prison conditions have been intentionally aggravated, and the number of people per m2 has been deliberately increased, making conditions unbearable. Appeals against poor conditions have been ignored or rejected. The right to postponement of execution has been denied to prisoners, especially without justification, and those who have served their time have not been released in due time and their prison terms have been extended without justification.
5. Transparency and Accountability:
    - Transparency and accountability of government decision-making processes are important. The proper application of the law is also linked to the accountability of the government's actions. There is no oversight of the office of the President. The Grand National Assembly of Turkey has been rendered dysfunctional. The mechanisms to oversee the government are not particularly activated. As parliament, only the proposals coming from the Presidency are voted and enacted into law without discussion with the votes of the deputies of the AKP and its partner MHP, which constitute the majority of the parliament. Any support from the opposition and civil society organizations in the legislative process is almost impossible.
6. Compliance with the Constitution and Laws:
    - It assesses whether the government is acting in accordance with the Constitution and other laws. Violations of the Constitution and illegal practices undermine the rule of law. The principle of "no crime without law", which is one of the basic elements of criminal law, has been violated and the ECtHR has ruled against Turkey.[13] Crimes such as using the ByLock app, depositing money in Bankasya, working in colleges, subscribing to Zaman newspaper, being a

[12] https://www.bbc.com/turkce/haberler-dunya-39745716

[13] Yüksel Yalçınkaya v. Turkey ([BD], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023)

member of associations and trade unions, which have no equivalent in the Turkish Penal Code, have been fabricated.

Independent legal experts, international human rights organizations and other observers have from time to time criticized the application of the law in Turkey.[14] These criticisms may include issues such as judicial independence, the right to a fair trial, freedom of expression and violations of other fundamental rights.[15]

Today, violations of law have become commonplace in Turkey and hardly a day goes by when violations of law are not discussed. While these violations of law and rights are being discussed, the ruling party and its partner in power or the MHP, which supports the ruling party, do not seem to be bothered by this. They even try to cover up violations of law and rights and threaten those who bring up violations of law and rights.

The need to investigate the chronological process of this situation has arisen. Namely, when AKP came to power in 2002, there were positive efforts in the direction of democratic discourses, European Union initiatives and legal work on this issue. After AKP came to power, the party tried to ensure representation from all walks of life (Alevi, Left, Liberal, Democrat). There were consultation committees within the party and through these, the needs of society were discussed and politics was carried out accordingly. But day by day, the AKP has remained in power without losing votes in every election, despite criticism from all walks of life, let alone representation from various sectors. Is the victory in the elections due to the successful practices of the government? The situation has arisen to investigate the issue of whether the victory in the elections is due to the successful practices of the government. We have tried to deal with political developments chronologically. In this way, it has become possible to see the reasons that have led from the understanding of the rule of law to the understanding of the police and rogue state.

Police State This concept emerged for the first time in Germany and is the transition period from feudal order to absolutist rule. The police state is the understanding of a state that can take all kinds of actions for the welfare and future of the society, and for this purpose can interfere with the rights and freedoms of individuals as it wishes and is not bound by any rule of law while doing so.[3] The word "police" in the concept of police state refers to all the activities of the state, not to the police, which today serve as law enforcement officers. The uncontrolled and unlimited power of the state to carry out these actions is called "police power". Because of the definition of police power, absolute governments in Germany were called "police states". Today, the term "police state" is also used for states whose actions and transactions are not subject to judicial review and do not provide legal security to their citizens.

Rogue State A rogue state or outlaw state is a term used in international relations for states that threaten global peace, are unpredictable, aid the proliferation of weapons of mass destruction, treat their own populations ruthlessly, threaten their neighbors, strictly violate international treaties to which they are a party, support terrorism, and even allegedly use it as a tool in their politics.[16]

[14] https://tr.euronews.com/2023/11/09/turkiye-demokratik-degerler-raporunda-sinifta-kaldi-hukukun-ustunlugunde-dunyada-148-sirad

[15] https://oad.org.tr/blog/hukukun-ustunlugu-endeksi-2023/

[16] https://tr.wikipedia.org/wiki/Haydut_devlet(Topur, Tuncer (2005). National security and Turkey. Google Books. pp. 163-164. ISBN 9752550495.)

Turkey is obliged to act in line with the judgments of the ECtHR. [17][18]Judgments such as Pişkin v. Turkey[19] remind Turkey of its commitments to the ECtHR on human rights violations. If Turkey fails to implement these judgments, its credibility and respect for the law in the eyes of the international community may be questioned, and states that consistently fail to comply with the ECtHR's judgments may be characterized as "rogue states" for violating international norms. Therefore, it is of utmost importance that states abide by the judgments of the ECtHR and respect international law and norms. Within the concept of rogue state, it would be incomplete not to mention Recep Tayyip Erdoğan's statement "WITCH HUNT, WITCH HUNT" (2014). Because while victimization is being perpetrated, it is known by the government that it is not actually a crime. Nevertheless, non-criminal acts and actions are easily carried out as if they were crimes. Both the local courts and the higher courts, the Court of Appeal, the Supreme Court of Cassation and the Constitutional Court, were pressured to give favorable decisions. This time, the ECHR ruled against Turkey for violating the principle of "No Crime Without Law".[20] This time, pressure is being exerted by the government to prevent the implementation of the ECHR judgments in domestic law. Thus, an atmosphere of fear is created in Turkey. Despite their innocence, arrest warrants are immediately issued on baseless accusations, the trials of detainees are prolonged, and a policy of harassment is pursued. Can you imagine, you know you are innocent, people cannot even rejoice with acquittals that come years later. Even if they are acquitted, they are not reinstated. It has become impossible to live under the lawless conditions in Turkey.[21] You are seen in society as someone who has been tried for a terrorist offense.[22] Your acquittal is no longer meaningful. Children are marginalized at school by teachers and peers, sometimes even resorting to brute force. The family life of the person on trial is also seriously disrupted. [23]

After 2011, the pool media (partisan media) became the talk of the town.[24] Erdoğan united the press in the companies that were given the most tenders with a single pool logic.[25] Even the newspapers and televisions that were seen as oppositional are now gathered in a pool dominated by Erdoğan. Although it looks like it belongs to a few businessmen, in fact the pool media has been united under the businessmen pointed out by Erdoğan. [26]Thus, the newspapers and televisions that most influenced public opinion were personally directed by Erdoğan and those who were not in favor of the government were dismissed from their jobs. [27]

In the meantime, some political developments took place through the leaders of some political parties. The leader of the BBP was assassinated on March 25, 2009 in an assassination made to

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[17] https://www.anayasa.gov.tr/tr/yayinlar/insan-haklari-bilgi-bankasi/avrupa-insan-haklari-mahkemesi/aihm-yapisi/#:~:text=Court%20decisions%20of%20final%20quality%20b%C3%BCt%C3%BCn%20decisions%C4%B1,decisions%C4%B1n%C4%B1n%20execution%C4%B1%20of%20decisions%20are%20in%20this%20scope%C4%B1r.

[18] https://inhak.adalet.gov.tr/Home/SayfaDetay/aihm-kararlarinin-icrasi10122019111749

[19] PİŞKİN v. TURKEY (Application no. 33399/18) 15 December 2020

[20] Yüksel Yalçınkaya v. Turkey ([BD], no. 15669/20, §§ 10-22 and 108-40, 26 September 2023)

[21] https://www.sozcu.com.tr/fetocuyu-ihbar-et-hatti-wp1349446

[22] https://www.avrupaturkgazetesi.com/onemli-cagri-fethullahcilari-bu-numaraya-ihbar-edin/

[23] https://www.aa.com.tr/tr/turkiye/izmirde-9-bin-feto-ihbari-degerlendirildi/670540

[24] https://www.cnnturk.com/turkiye/yandas-medya-degil-besleme-basin

[25] https://t24.com.tr/haber/makyol-cengiz-kalyon-ve-kolin-dunyada-devletten-en-cok-ihale-alan-sirketler-listesinde-ilk-siralarda,636193

[26] https://www.diken.com.tr/havuz-medyasi-gibi-gorev-40-yilda-bir-verilirmis/

27 https://halktv.com.tr/gundem/havuz-medyasinin-yeni-patronu-hasan-yesildag-oldu-iste-erdogan-yesilda-215843h?fbclid=IwZXh0bgNhZW0CMTEAAR1BgXc5xMWFSSHBwYrsijulrtXrFVCIBlQQgUj2gX8BUDxF6x1IO1ZPTrI_aem_JpBdplRxX6W_fpeSKgIQ4g

look like a helicopter crash.[28] Numan Kurtulmuş, the head of the People's Voice Party (2012) and Süleyman Soylu, the head of the DP (September 22, 2012) switched to the AKP. Not only that, but people like Abdullah Gül, Ahmet Davutoğlu (May 22, 2016), Ali Babacan and others who could have been alternatives to the AKP were somehow removed from the party and isolated, despite the fact that they had been involved in the founding of the AKP and had worked within it for a long time.[29] Meetings with them were banned. We now better understand that these political changes were not spontaneous events. Step by step, Recep Tayyip Erdoğan ran unopposed and without an alternative and won all the elections. Allegations of irregularities[30] and unfair electoral conditions in some elections[31] never left the agenda. Thus, Recep Tayyip Erdoğan started to act with great confidence as the sole leader, closed to criticism. Thus, the environment for the July 15th incident was created and with the constitutional amendment, he gathered unchecked powers that even the Ottoman Sultans did not have.

The debate on the forgery of Recep Tayyip Erdoğan's university diploma is still ongoing[32] . The main reason for the debate is the claim that Recep Tayyip Erdoğan does not have a university diploma, despite the fact that Article 101 of the Turkish Constitution stipulates that the person who will be president must have a higher education degree. The People's Liberation Party has taken President Tayyip Erdoğan's fake diploma to the Constitutional Court[33] .

After July 15th, without observing any rule of law, ignoring the freedoms and rights mentioned in the Constitution, people were declared terrorists in one day with decree laws and were either unemployed or imprisoned. Even judges and prosecutors have been deprived of the security of judgeship. Even members of the Supreme Court of Appeals and the Constitutional Court, the highest judicial authorities, have been detained and arrested in violation of the law without any guarantees. They were even put in solitary confinement for months in prison. Hundreds of lawyers, one of the three pillars of the judiciary, were also imprisoned. Lawyers who followed the cases under FETÖ charges were arrested again. People on trial were left without defense. Those on trial have been isolated from the whole world. Since those who became unemployed were marked with a Decree Law in their records by the Social Security Institution, special follow-ups were made to ensure that they were not employed, even in the private sector, and penalties were imposed on the workplaces that employed them.[34] Those who were not imprisoned were sentenced to starvation outside. Thus, thousands of people risked death and traveled abroad illegally, and unfortunately some of them failed to make it and died on the way.[35]

The last constitutional amendment that led to these violations was called the Turkish Type Presidential System (One Man State System), and the Turkish Grand National Assembly was neutralized and made a notarized approval only.[36] The opposition has no influence in the

[28] https://www.sivasirade.com/haber/15-yildir-aydinlatilamadi-katiller-cezasiz-kalmasin-60159.html
[29] https://tr.euronews.com/2019/08/23/erdogan-ak-parti-den-ayrilanlarin-esamesi-okunmamis-okunmayacaktir
[30] https://www.bbc.com/turkce/articles/c801754ly9jo
[31] https://www.dw.com/tr/14-may%C4%B1s-se%C3%A7im-s%C3%BCreci-adil-mi/a-65381472
[32] https://tr.wikipedia.org/wiki/Recep_Tayyip_Erdo%C4%9Fan%27%C4%B1n_%C3%BCniversite_diplomas%C4%B1_tart%C4%B1%C5%9Fmas%C4%B1
[33] https://www.hkp.org.tr/hkp-cumhurbaskani-tayyip-erdoganin-sahte-diplomasini-anayasa-mahkemesine-tasidi/
[34] https://www.dw.com/tr/t%C3%BCrkiyede-khkl%C4%B1lar-bize-vebal%C4%B1-muamelesi-yap%C4%B1yorlar/a-50521070
[35] https://tr.euronews.com/2018/07/21/meric-nehrinde-turk-gocmenleri-tasiyan-bot-alabora-oldu
[36] https://www.bbc.com/turkce/haberler-turkiye-44737074

enactment of laws. The control of the government has been made impossible. As such, an Erdoğan regime has emerged with the Legislative, Executive and Judiciary concentrated in one hand. Whoever the Erdoğan regime declares terrorism, terrorism charges are immediately filed against the person concerned,[37] and they are thrown into prison through the courts. The Prosecutor's Office and the Courts are now sentencing people pointed out by Erdoğan with terrorism charges under the guise of law. Erdoğan accused the entire opposition of terrorism with a fake video during election rallies.[38] Although it was revealed that it was a fake video, no investigation could be initiated against anyone. Those whom Erdoğan points out are immediately charged with terrorism or released immediately when he asks for their release. Thus, the judiciary has been completely turned into a toy in the hands of the government. As such, the number of detainees and convicts in prisons makes Turkey the world's and Europe's leader in this regard.[39] As much as 35 percent of the files before the ECHR are related to rights violations in Turkey.[40] The number of files is increasing day by day. The decisions of the Constitutional Court and the ECHR cannot be implemented due to the pressure of the government and the ruling party MHP.[41] The ECHR now renders collective judgments against the State of Turkey on rights violations.

WHAT NEEDS TO BE DONE URGENTLY:

1- Decree Laws should be abolished as soon as possible, as if they had never been issued. All laws amended by emergency decrees should also be abolished,
2- Urgent implementation of the ECtHR judgments,
3- Abolition of the Criminal Judgeship of Peace and restoration of the principle of natural justice,
4- Ensuring the independence and impartiality of the judiciary in law and practice
5- Amend the definitions of "terrorism" in Article 1 and "terrorist" offender in Article 2 of the Anti-Terror Law in line with international human rights law and standards.

Istanbul Bar Association

Attorney Celal Paşaoğulları

[37] https://www.dw.com/tr/erdo%C4%9Fan-bug%C3%BCne-kadar-kimlere-ter%C3%B6rist-dedi/a-56175417
[38] https://tr.euronews.com/2023/05/23/kilicdaroglu-videosunun-montaj-oldugunu-kabul-eden-erdogana-tepkiler-kim-ne-dedi
[39] https://www.bbc.com/turkce/articles/c729771k3z4o
[40] https://tr.euronews.com/2024/03/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaslarinin-basvurulari-turkiye-acik-ara-zirvede
[41] https://medyascope.tv/2024/05/07/bahceliden-ozel-gorusmesi-oncesi-kavala-aciklamasi-avrupa-istedi-diye-adalet-ve-hukuk-serefini-iki-paralik-mi-edelim/

REPORT ON JUDICIAL DECISIONS ON COMPLAINTS OF TORTURE AND ILL-TREATMENT IN TURKEY AND THE TREATMENT OF SERVICE MEMBERS

INTRODUCTION

The justice system is present and indispensable in all societies that have the characteristics of a state and live together. The most important function that sustains society is the sense of justice. A John Rawls, in his work *A Theory of Justice,* emphasizes that justice is the fundamental principle of social order and that it is critical to ensure justice in all areas of society.[1] When the sense of justice is not properly satisfied, social collapse is inevitable. This collapse is seen not only in the legal field but also in the social, cultural, economic and educational fields simultaneously. This is because it is normal and necessary for law to penetrate all the capillaries of society. According to Tyler's work, the perception of procedural justice is vital for the sustainability of legal and social order, because when people believe that they live in a just system, their trust in the law increases.[2] Therefore, it should be the exception rather than the rule that the delicate scales of the justice system are inaccurate, and the mechanisms for correcting and compensating for errors that do occur should work perfectly and without discrimination. Feldman, on the other hand, states that the legal system ensures order and trust in all sectors of the social structure and that the effective functioning of justice is indispensable for the general welfare of society.[3]

BACKGROUND AND FRAME

The fundamental condition for the healthy functioning of the justice mechanism is the independence of the courts. It is not possible to speak of the independence of a court that has to report to someone for its decision, or that makes decisions out of fear that it or its family will be harmed.[4] The biggest coup against the judicial system in Turkey began with the period of 17-25 December 2013, when the government was involved in the biggest corruption organization in Turkish history. During this period, the government launched a coup against the judiciary and security forces that had led the legal operations against it, and arrested, detained or silenced them. [5] In 2016, all kinds of legal investigations proposed to be carried out on this coup attempt, whose real organizers were revealed with clear evidence, were blocked by the judicial system created by the government itself, and it was used as a cover to legitimize the unlawful practices initiated earlier. With the Presidential Government System, which was adopted by the April 16, 2017 constitutional referendum[6] held under the state of emergency, institutional changes were made that eliminated parliamentary oversight and made the judiciary dependent on the executive.

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[1] Rawls, J. (1971). *A Theory of Justice*. Harvard University Press.
[2] Tyler, T. R. (2003). "Procedural Justice, Legitimacy, and the Effective Rule of Law"
[3] Feldman, D. (1999). "The Role of Law in Society"
[4] Article 138 of the Constitution - Independence of Judges
[5] European Convention on Human Rights (ECHR) Article 6 - Right to a Fair Trial
[6] https://www.dw.com/tr/referandumun-y%C4%B1ld%C3%B6n%C3%BCm%C3%BCnde-t%C3%BCrkiye/a-43400214

These changes have led to a process in which public confidence in the judiciary has gradually declined due to concerns that the judiciary has lost its impartiality and become instrumentalized.[7]

After this period, hundreds of thousands of members of the congregation were dismissed from their jobs with emergency decrees, without even a court order, labeled as 'associated' according to lists based on unknown criteria, detentions and arrests were made against them through baseless investigations, and lawsuits were filed on charges of terrorism.[8]

DETAILING THE VIOLATIONS EXPERIENCED

It is normal and necessary for the law to penetrate all the capillaries of society. For this reason, the delicate scales of the justice system should be the exception rather than the rule, and the mechanism for correcting and compensating for errors should work perfectly and in a non-discriminatory manner.

2. If we consider the issue at this point, it will be easier to find the source of the justice mechanism in Turkey and the non-standard double standard practices that occur in the courts. In this context, when we look at Turkey's recent history, it is not a coincidence that when Turkey was at its best in social, economic and educational fields, it was also at its peak in the fields of law and justice.[9] So what happened to this balance in the Turkish justice system, especially in the last 10 years?

3. The first and fundamental condition for the healthy functioning of the justice mechanism is the independence of the courts. It is not possible to talk about the independence of a court that has to report to someone for its decisions or that makes decisions out of fear that it or its family will be harmed. The biggest coup against the judicial system in Turkey began with the period of 17-25 December (2013), when the government was involved in the biggest corruption organization in Turkish history. During this period, the government launched a coup d'état against the judiciary and security forces that had led the legal operations against it, and arrested, detained or silenced them.[10] In 2016, all kinds of legal investigations proposed to be carried out about this coup attempt, whose organizers were revealed with clear evidence, were blocked by the judicial system created by the government itself, and it was used as a cover to legitimize the unlawful practices initiated earlier.[11] After this period, hundreds of thousands of members of the congregation were dismissed from their jobs with emergency decrees, without the need for a court decision, labeled as 'associated' according to lists based on unknown criteria, detentions and arrests were made against them through baseless investigations, and lawsuits were filed on charges of terrorist organization.

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7 https://www.dw.com/tr/15-temmuzdan-sonra-yargı-nasıl-değişti/a-58269963

8 https://www.gazeteduvar.com.tr/forum/2020/02/25/muphem-bir-ihrac-gerekcesi-iltisak

9 http://adudspace.adu.edu.tr:8080/jspui/bitstream/11607/4485/1/3152.pdf

10 https://www.ntv.com.tr/turkiye/feto-iddianamesini-iade-eden-hakimlere-inceleme,vvGCbLy6YE6qg14QwaGCXQ

11 https://www.cumhuriyet.com.tr/turkiye/15-temmuz-raporu-neden-meclise-sunulmadi-tek-sorumlu-akpdir-ve-report-ifsa-
we've-1960642

4. Thousands of members of the judiciary were arrested or exiled after this period, and thus the necessary intimidation was given to the judiciary throughout the country. [12] The vast majority of judges and prosecutors who did not take the desired decisions in these investigations and cases were arrested or transferred to exile regions. So much so that it was forced to appoint people who had just graduated from law school and had no more than a few years of professional experience as members of the heavy penal courts hearing these cases. This can be clearly seen by examining the court panel registration numbers in the case files they call 'FETÖ'. To give an idea, while the registration number of the presiding judge in such court panels is in the tens of thousands, the registration numbers of the members who were appointed to the courts later on and who constitute the majority in the decision-making phase are in the 100s of thousands. The majority of these so-called 'FETÖ' cases are decided by the court committees formed in this way. Again, while the opinions of the members of the courts are generally in line with the opinion of the presiding judge, except for details, in these cases in particular, the members of the court other than the presiding judge and appointed especially for these cases, contrary to the opinions of the presiding judge and public prosecutors, constituted a 2/3 majority and rendered decisions of detention and conviction.

5. The principle of 'Suspicion is Beneficial for the Accused', which was meticulously applied by the courts until the 'FETÖ' cases, has been transformed into 'Reasonable Suspicion', leading to arbitrary and abusive arrest decisions. In this way, the actions of the defendants, which can be considered daily, have been turned into a basis for the 'Crime of Being a Member of a Terrorist Organization' on the basis of suspicion. Actions such as giving religious talks, sending one's children to pro-group schools, subscribing to a certain newspaper or TV platform, graduating from a certain school, depositing money in a certain bank, or being a member of an association have become conclusive evidence in 'FETÖ' cases. However, despite the findings of forensic medical reports, this principle is applied to the point of abuse only against those who are close to the government.[13]

6. Again, the universal principle of 'Presumption of Innocence' has been suspended for these cases. While the guilt of the defendants can be proved with conclusive evidence through public cases to be opened by Public Prosecutors, the defendants have been put under the obligation to prove their own innocence and these people have been told 'If you are innocent, prove it'.

7. In the preparatory stages of these cases, whereas a public defender is assigned to citizens even in the most ordinary crimes in the normal investigation procedure, in the preparatory stages of these cases prepared with the allegation of being a member of a terrorist organization, statements were taken under the name of "Preliminary Statement / Interview" without the presence of a lawyer, the defendants' requests to call their own lawyers were rejected and even the statements were signed without the supervision of a lawyer.

8. During the trial, while "Trial without Detention" was the basis, in the community cases this basis was changed to "Trial with Detention", and the defendants were tried in detention from the beginning of the trial until the verdict stage based on the acts that we have already listed above that did not constitute a crime, and it was decided to continue the detention with the verdict until the verdict was finalized.

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[12] https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/istanbulda-218-hakim-ve-savci-tutuklandi/614249

[13] https://www.yenicaggazetesi.com.tr/11-yasindaki-cocugu-istismar-edenlerin-avukati-akpli-il-baskani-cikti-8-ay-then-705468h.htm

was given. There are numerous decisions of the Constitutional Court that this practice is unlawful.[14]

9. In crimes that fall under the jurisdiction of the heavy criminal courts, except for community trials, in cases where the execution should be postponed or deferred, such as the defendant's illness, old age, pregnancy, etc., decisions were made in favor of the defendant at the trial or execution stage, while in community trials, defendants were not allowed to exercise their rights under the law. So much so that during this period, people in the last stage of cancer were carried to prisons on stretchers, and defendants who had difficulty even walking were carried to hospitals in handcuffs on stretchers under the supervision of 5-6 law enforcement officers. This was also the period in Turkey's history when the number of women giving birth in prison peaked.[15] Interestingly, this was also the period when the number of defendants with higher education levels was the highest.[16]

10. Another unlawful practice in the preparatory phase of the Cemaat trials is the house searches. In fact, the searches were carried out in the presence of more police officers than necessary, usually at 4-5 in the morning and turned into a media show. People who were not suspected of fleeing and who lived at home with their 3-4 children were raided with terror squads and heavy weapons, and the children living at home were subjected to psychological trauma. The interrogation judges issued arrest warrants for both of the defendants, who were on trial as husband and wife and who came to court with their babies under the age of 1 who needed maternal care, and the babies had to be delivered to their relatives through lawyers. This example is a clear indication that hate crimes are systematically committed against members of the community, regardless of whether they are old, young or infants.

11- Again, in these cases, the defendants were subjected to the 'Fetömeter', which has never been applied to any defendant or group before, and those who committed acts similar to those mentioned in paragraph 5 were automatically deemed guilty and labeled as members of a terrorist organization without any judicial review.[17]

12- One of the universal principles of law is the principle of 'non-retroactivity of laws'. This principle has also been severely violated in these cases. First of all, while criminal laws can only be regulated by law, they were tried and imprisoned for acts criminalized by the decree laws issued during this period. Institutions that were legally established at the time of their establishment and afterwards were retroactively linked to terrorism with the decree laws issued, and anyone associated with these institutions was accused of being a member of a terrorist organization. For example, everyone who had an account or made payments through Bank Asya, a bank associated with the Brotherhood, was prosecuted.[18]

13- Another practice, which is unique in the history of the world and seen only in the cases of the Brotherhood, is that on July 17, the date of the coup attempt, military students who were 14-15 years old, who were not yet of legal age, and who were under the supervision and command of their commanders on that day.

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[14] Balıkesir 2nd High Criminal Court. 2017/138 Es. - File No. 2018/384 K.

[15] https://boldmedya.com/2020/07/09/820-gram-dogan-tutsak-bebek-zeynep-ve-annesinin-savasi/

[16] https://www.boldmedya.com/2021/09/30/egitime-kelepce-cezaevlerinde-466-doktorali-mahkum-gun-sayiyor/

[17] https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/feto-metre-ile-kriptolar-desifre-ediliyor/1251818

[18] https://www.khkhukukiyardim.com/static/media/Ek6.ca7eb65073dd25334a52.pdf

When they turned 18, lawsuits were filed against them on charges of 'Attempted Coup' and 'Being a Member of a Terrorist Organization'.[19]

14. The final point in the Turkish judicial hierarchy is the Constitutional Court's judgments, which must be applied without exception by the lower courts. These decisions of the Constitutional Court are final and cannot be appealed in the domestic legal system. During this period, the judiciary has decayed to such an extent that not only the court of first instance did not comply with the finalized decisions of the Court of Cassation, but the Court of Cassation also did not comply with the decision of the Constitutional Court and, more than that, filed a criminal complaint against the members of the Constitutional Court who issued the decision.[20]

15. In the Courts of the Republic of Turkey, the obligations arising from international agreements are superior to the provisions of domestic legislation and are applied with priority. The decisions of the ECtHR are of this nature and are binding on all judicial authorities of the Republic of Turkey. There is no appeal against these decisions and they must be implemented without delay. On September 26, 2023, in the so-called Yalçınkaya judgment, the ECtHR explicitly ruled that all of the actions that the courts had relied on in these judicial operations against the members of the Brotherhood, especially ByLock, were unlawful and warned Turkey to take measures to implement this decision in all precedent case files.[21] However, despite the clear provision of the Constitution, the courts in Turkey have not ruled in line with this decision in the cases of the Brotherhood, and continue to increase their legal operations against the members of the Brotherhood based on the same reasons. This weakness in the hierarchical control of the judicial authorities in the Republic of Turkey, which we mentioned in the previous paragraph, also manifests itself in the fulfillment of obligations arising from international agreements. This situation is a clear indication of the level of victimization and helplessness of citizens in seeking their rights.

CONCLUSION

The Republic of Turkey is a legal state, as defined in its Constitution. The characteristics of a legal state have been created as a result of great sacrifices and struggles in the long process of the evolution of the law and are now universally applied in a similar manner all over the world. The rule of law keeps society in order and security only through the sincerity and goodwill of those who apply it. Therefore, the government of the Republic of Turkey must take concrete and sincere steps in this regard, establish an independent judicial system throughout the country and fulfill its responsibilities arising from international agreements in this regard.

[19] Constitutional Court Application No: 2012/1012 Date of Decision 02/10/2013

[20] https://yetkinreport.com/2024/01/04/yargida-atalay-krizi-derinlesiyor-yargitaydan-aymye-agir-ithamlar/

[21] https://www.drgokhangunes.com/makale/yuksel-yalcinkaya-karari-ve-sonuclarina-dair-uzman-gorusu-doc-dr-tolga-sirin/

THE PROBLEM OF THE SYSTEM OF CRIMINAL PROCEDURE IMPLEMENTED BY THE GOVERNMENT IN TURKEY

1-EXECUTIVE SUMMARY:

International institutions, including the European Court of Human Rights (ECHR), have identified significant human rights issues in the functioning of Turkish criminal law. Decisions by Turkish courts, especially against groups actively opposing the government, are reported to be filled with human rights violations, contravening both the European Convention on Human Rights (ECHR) and Turkish written law1. Courts even violate the fundamental legal principle of "Legality Principle"[1].

In modern law, criminal procedure is formed through the collective work of prosecution, defense, and adjudication, each with distinct roles and responsibilities[2]. The entirety of legal rules established for this activity is known as Criminal Procedure Law. In Turkey, there is no collective approach in practice. The government operates judicially with hatred and a *punitive approach against opponents, particularly members* of the Gülen Movement and Kurdish leaders. It *arbitrarily*[3] determines crime and criminals before trials, declares innocent people as traitors through hate speech and black propaganda, and throws them in front of the public. The prosecution, acting as an arm of the executive and courts acting as its watchdog, formalize the government's will into verdicts. The government uses the judiciary as a guillotine for active opposition.

In its Grand Chamber ruling on September 26, 2023, the ECHR in the Yalçınkaya case (Application no: 15669/20), *highlighted systemic issues*[4]*, in the Turkish judiciary, emphasizing problems with legality*[5] *and arbitrariness*[6] incompatible with its own domestic law. The ECHR noted that Articles 314 of the Turkish Penal Code and Anti-Terrorism Law are vague and judicially unpredictable, leading to broad interpretations contrary to the principles of criminal justice. **(par 239)**

Despite the ECHR issuing dozens of judgments and compensation orders against Turkey and thousands of pending cases, the government does not revert to lawful practices[7]. Autocratic regimes thriving on unlawfulness have no concern for law/justice. Instead, archaic systems *(like the Accusatory Criminal*

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[1] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

[2] CENTEL, Nur, Zafer, Hamide, Criminal Procedure Law, Beta Publications, Istanbul 2013, p.3

[3] - The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**
- The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, indicated that '*Turkey needs to address the systematic problem concerning convictions for terrorism offenses'*. The plaintiff's lawyer, Johan Heyman, stated that '*the systematic problem in the decision pertains to the entire Turkish Justice System*'.
- https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[4] - The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, indicated that '*Turkey needs to address the systematic problem concerning convictions for terrorism offenses'*. The plaintiff's lawyer, Johan Heyman, stated that '*the systematic problem in the decision pertains to the entire Turkish Justice System*'.
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[5] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

[6] -The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**
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- https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[7] STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface, p.1

Procedure or the Conseil d'Etat operating under political influence) are seen as advantageous, keeping autocrats free from judicial oversight. They identify and accuse the crime and criminals themselves, using courts designed as government organs to turn their will into judgments.

In Turkey, the applied procedure is not the *'judicial activity'* defined by modern law. For judicial activity, there must be independent and impartial courts that synthesize prosecution and defense arguments to reach the material truth and render judgments based on the free evaluation of evidence (Article 217/1) (ECHR Article 6, Constitution Article 138). The procedure should adhere to principles emphasizing the 'Right to a Fair Trial'.[8] However, in Turkey, the judiciary has become an arm of the administration, protecting its interests. There are judicial bodies, but they are neither independent nor impartial; they work under instructions. The government uses law not as a goal but as a tool to *'suppress opponents'*.

This paper examines the unnamed but universally recognized 'Systemic Problem in Turkish Law' from the perspective of Criminal Procedure Law within its historical development.

2-THE HISTORICAL DEVELOPMENT OF CRIMINAL PROCEDURE SYSTEMS:

The System Where the Crime and the Criminal are Accused Before the Trial Begins: The Accusatory Criminal Procedure System:

In the historical process, Criminal Procedure Law in Europe generally developed in stages as the Accusatory System, the Inquisitorial System, and the Cooperative System. In ancient Greece, Rome, and the first half of the Middle Ages, the Accusatory System dominated criminal justice. In this system, for a criminal investigation to start and for the judge to take action, it was necessary for one or several people to make an accusation.[9] The system where the accuser had the advantage was the accusatory system.[10] Since the trial started with an accusation and was conducted publicly, it was possible for the accuser to destroy evidence against themselves.[11] The judge acted as an arbitrator and could not conduct investigations ex officio, was passive, the parties conducted the case, and the judge was bound by the evidence presented by the parties. The judge made decisions based on the requests.[12]

Criminal trials were not conducted to determine whether a person was guilty. Because the person was presumed guilty in advance, the trial was a tool for punishing the accused. There was no distinction between the accused and the criminal. In this understanding, the norms of criminal justice focused on inflicting pain on the perpetrator of the crime. The accused constituted the "subject" of the trial and did not have rights or powers in the trial. The opportunity for defense was limited.[13] The accused was presumed guilty in advance, and the possibility of acquittal was contrary to the purpose.

The government declares a person or group it sees as active opposition as guilty and directly places them in the position of the accused, accusing them of the most severe crime. The prosecution, which has become an organ of the government, follows up on the government's accusation to turn it into a court ruling, and the other organ, the courts, convert the accusation into a verdict supposedly on behalf of the Turkish Nation.

For instance, in the government's accusation, the Gülen Movement members are presumed guilty, and the crime is forming, leading, or being a member of an armed terrorist organization. The government has definitively determined the crime and the criminal. Individuals or groups have been thrown before the society with hate speech and black propaganda. The judiciary has received instructions. The

[8] Ergun ŞAHİN. TAAD, vol. 5, issue 18, July 2014 -BIÇAK, p. 81
[9] Kunter-Yenisay-Kurtoğlus. p. 142: Centel-Zafer p. 97
[10] Ayhan KÖKSAL. The Function of Accusation in Anglo-Saxon Criminal Procedure Law, p. 185
[11] Ayhan KÖKSAL. The Function of Accusation in Anglo-Saxon Criminal Procedure Law, p. 188
[12] Özbek-Kanbur-Doğan-Bacaksız-Tepe Criminal Procedure Law p. 44 / Kunter-Yenisay-Kurtoğlu. p. 142 / Centel-Zafer p. 97
[13] YURTCAN, Erdener, Criminal Procedure Law Beta Publications Istanbul 1986 p. 6

judiciary's task is to announce the government's accusation as a court ruling. The medieval accusatory system and the current criminal procedure system applied by the government coincide exactly.

When members of the Gülen Movement and leaders of the Kurdish movement are tried, no distinction is made between the accused and the criminal; they are presumed guilty. The purpose is *to intimidate, punish, and subjugate the members of these movements.* The government continually expresses this aim with hate speech such as '*these are your better days'*.
Accusatory criminal proceedings are designed as a process where offenders lose their social status and are discredited in the eyes of society.[14] Today, this has been done to members of the Gülen Movement and Kurdish political leaders through black propaganda, causing them to lose their social status and be discredited in the eyes of society.

The System Where Law Becomes an Organ of Politics: The Captured Justice System:[15]

The Conseil d'Etat (Council of State) in France was established by Napoleon Bonaparte on December 13, 1799, with the Constitution. It was not created to provide special judges for resolving administrative disputes, but rather to ensure that no judicial oversight existed over administrative activities.[16] The desire was for the state power to be used freely without any oversight. Judicial independence and effectiveness were seen as obstacles, and it was not desired for the judiciary to hinder politics. The court members were not "judges" but part of the administration.[17]

There was a desire to prevent strong judicial oversight over administrative activities, preferring compliant judges. Therefore, between 1799 and 1872, the Conseil d'Etat did not have the authority to make decisions on administrative disputes. Instead, it prepared decision drafts on disputes and presented them as proposals to the head of state, who made the decision. Judges adjudicated on behalf of the sovereign.[18] This system was called the *'Captured Justice System' (systeme de la justice retenue)*.

Laws were enacted in France between 1790 and 1795 to ensure that judicial courts would not judge the administration-political power.[19] With the Constitution of 1799, the *Conseil d'Etat was established* as an organ dependent on the administration to ensure that there was no oversight over the government by administrative judiciary as well. Thus, the government removed itself from Judicial and Administrative Judicial Oversight, becoming unaccountable[20].
This unit, established as an organ of the government to prevent oversight, was made independent of the administration by the law dated May 24, 1872, and was given the authority to make final decisions on disputes, transitioning to the *'Transferred Justice System'*[21]. Over time, it became a valuable institution and the highest administrative court, advising the government, especially on draft laws. It became the best example of the Continental European Administrative Regime.[22] Turkish Administrative Law, including its administrative structure and judiciary, was entirely modeled after France.[23]

The Criminal Procedure System Applied by the Government to Active Opponents in Turkey:

The government has turned the criminal procedure system into the *'Accusatory Criminal Procedure System'*, which humanity abandoned in the darkness of the Middle Ages due to bitter experiences, and

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[14] Ergun ŞAHİN. TAAD, vol. 5, issue 18, July 2014 - CENTEL p. 6
[15] CAPTURED JUSTICE SYSTEM: Judges adjudicate on behalf of the sovereign, who can interfere with the judge's decision.
[16] French Council of State, Prof. Dr. Bernart PACTEAU – Translated by Prof. Dr. Durmuş TEZCAN
[17] -Prof. Dr. Kemal GÖZLER http://www.idare.gen.tr/sinavlar
[18] -Prof. Dr. Kemal GÖZLER http://www.idare.gen.tr/sinavlar
[19] '…During the great revolution of 1789, laws were enacted first for judicial courts not to interfere with administrative activities (law dated August 17/24, 1790) and to ensure that administrative matters, regardless of their nature, would not be handled by judicial courts (law issued in the third year of the revolution, on December 16, confirmed by a decree dated June 1795)…' State, Prof. Dr. Bernart PACTEAU – Translated by Prof. Dr. Durmuş TEZCAN
[20] -Prof. Dr. Kemal GÖZLER http://www.idare.gen.tr/sinavlar
[21] TRANSFERRED JUSTICE SYSTEM: Judicial authority is transferred to judges, and the sovereign cannot interfere with the judge's decisions.
[22] Ahmet AKBABA. A Review of the French Administrative Judiciary System, Ministry of Justice, Ankara Bar Journal, 2014
[23] http://dergipark.org.tr>article-file

the criminal judiciary into the *'Captured Justice System'* applied in the French Conseil d'Etat before 1872, making it an organ of the executive. Today, these systems, each seen as separate legal disasters and belonging to different centuries, are applied simultaneously by the current government. The systemic problem in Turkish law is the de facto application of the *Accusatory Criminal Procedure System and the Captured Justice System*. When the judiciary is brought to this state, it becomes an organ of the government, serves its interests, loses its impartiality and independence, and loses all its functions.

In the government's accusation, the predetermined guilty are members of the Gülen Movement, and the crime is forming, leading, or being a member of an armed terrorist organization. The government declares members of the Gülen Movement, whom it wants to intimidate, scare, and destroy, as guilty with a *wholesale approach,* initiating the Accusatory System by attributing the most severe crime in the Turkish Penal Code (TCK) and manipulating the public with hate speech and black propaganda (contrary to TCK Article 122). The task of conducting the prosecution and turning the sentence determined by the government into a court ruling falls to judges and prosecutors who act *as the government's organ and protect its interests*.

Autocratic governments that have gone beyond the law and now feed on lawlessness fear being judged, that is, justice. While unjudicializing themselves, they use the law as a tool to intimidate, scare, silence, and destroy active opposition. Modern law, operating with the *Transferred Justice System,* is not suitable for achieving the lawlessness they intend, so they must revert to the *Captured Justice System*.

The reason for the uncompromising application of these outdated systems, centuries old, to today's opponents, especially members of the Gülen Movement and Kurdish movement leaders, is this. The arbitrariness[24], and illegality[25] mentioned in the ECHR Grand Chamber's judgment are "necessities" for autocratic governments. The practitioners of these outdated systems are obliged to use the *Accusatory Criminal Procedure and Captured Justice Systems* to avoid being judged, to keep themselves outside judicial oversight, and to subjugate and eliminate active opposition.

3-THE PROBLEM IN CRIMINAL PROCEDURE AND STRUCTURES THAT SUPPORT THE PROBLEM:

ECHR Emphasizes Systemic Problem (System Issue) in Yalçınkaya Decision:

The ECHR Grand Chamber's Yalçınkaya decision of September 26, 2023, identifies issues within the Turkish judiciary, including the systemic problem[26] the violation of the principle of legality (ECHR 6/1, Constitution Article 30),[par 265] unpredictability in the broad applications of laws, violation of the principle that laws cannot be interpreted broadly, violation of the principle of individual criminal responsibility, and arbitrariness.[27]

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[24] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. (par 300)

[25] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. (par 300)

[26] - The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, indicated that '*Turkey needs to address the systematic problem concerning convictions for terrorism offenses'*. The plaintiff's lawyer, Johan Heyman, stated that '*the systematic problem in the decision pertains to the entire Turkish Justice System*'. -https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[27] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. (par 300)

ECHR official Siofra O'Leary, in response to a question about ByLock while presenting the 2023 statistics, stated that the *Yalçınkaya decision concerns 8,000 cases, revealing a systemic problem*.[28] The ECHR also views the acceptance of ByLock as definitive and indisputable evidence as a violation of the right to a fair trial.

Legal experts may wonder how the principle of legality (ECHR 6/1, Constitution Article 30) can be violated and how such severe punishments can be given in this era.[29] Of the over 25,000 violation decisions issued by the ECHR between 1959-2022, only 59 were related to the violation of the principle of "No punishment without law" (ECHR 6/1), with the Yalçınkaya decision being the 60th.[30]

The UN Human Rights Council's Working Group on Arbitrary Detention, in its decision dated June 7, 2022, declared that '*communication programs like ByLock or the act of depositing money in a legal bank should not be the subject of prosecution*'[31], describing this legal absurdity with astonishment. This astonishment arises from the inability to view law from the government's perspective.

The ECHR Grand Chamber answers this question with its decision: Systemic Problem[3] (systemic issue).[32] The systemic problem is the government removing the Turkish Criminal Law System from the Transferred Justice System and reverting it to the Captured Justice System, and returning the Criminal Procedure to the medieval Accusatory Criminal Procedure System. The arbitrariness[33] mentioned in the ECHR Grand Chamber ruling is a 'necessity' for autocratic governments. They must rely on the *Accusatory Criminal Procedure and Captured Justice Systems* to avoid being judged, to keep themselves outside judicial control, and to intimidate and eliminate active opposition.

In the December 10, 2021 report by the Initiative of Imprisoned Lawyers, it is stated that "as highlighted in many ECHR decisions, '*the laws defining terrorism and organized crime too broadly and the judiciary's tendency to further stretch these laws have reached unprecedented levels recently. Prosecutors and increasingly courts view and use legal and peaceful actions and expressions protected under the ECHR as evidence of criminal activity, sometimes being so inconsistent and arbitrary that it becomes almost impossible to predict the legal consequences of well-intentioned actions. This uncertainty discourages legitimate opposition and criticism*'.[34]

Every 35 out of 100 cases pending before the ECHR concern Turkish citizens. As of February 29, 2024, 23,550 of the 67,300 cases pending before the ECHR were filed against Turkey, more than double the cases filed against Russia, which is in second place[35]**.** After notifying Turkey of 1,000 ByLock-related cases in December 2023, the ECHR notified another 1,000 cases in April 2024, with 8,500 ByLock cases still pending before the ECHR and a potential total of approximately 100,000 cases[36].

According to the 2023 report of the International Institute for Democracy and Electoral Assistance (IDEA), Turkey ranks 148th out of 173 countries in the Rule of Law index. In Europe, Turkey, behind even Russia, is only better than Belarus, ranking 45th out of 45 countries.[37]

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[28] https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[29] -https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden
-STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface, p.1

[30] Lawyer Hatice Kübra KARADAĞ, May 28, 2024, Yalçınkaya Decision and its Impact on FETO/PYD Cases

[31] https://x.com/drgokhangunes/status/1566734363563364353 September 5, 2022

[32] https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[33] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

[34] https://www.evrensel.net/haber/449901/tutuklu-avujatlar-inisiyatifi-turkiyede-avukatlik-melegine-yonelik-saldirirlari-raporlastirdi-

[35] https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede

[36] https://www.dw.com/tr/ai%CC%87hm-bin-bylock-ba%C5%9Fvurusunu-daha-ankaraya-iletti/a-68946469

[37] https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede

There has been a sharp increase in the number of applications and violation decisions against Turkey, especially since 2019. The court received 9,257 applications in 2019, 11,750 in 2020, 15,251 in 2021, 20,100 in 2022, and 23,550 in 2023[38]. Violations are concentrated on certain rights.

By May 2024, the ECHR had issued a total of 50 violation decisions concerning 1,661 applicants against Turkey, ordering a total of 7,491,138 Euros (262,189,830 TL) in compensation.[39]

The HSK (Council of Judges and Prosecutors) is Tasked with Protecting the Accusatory System and Is Not Independent:

The HSK is designed in a way that it cannot protect judicial independence or act independently.[40] It is a highly politicized institution due to its administrative structure. The guarantee of judgeship is gone (ECHR 6/Constitution 138). Of the 13 members, one is the Minister of Justice, who is politically responsible to the President, and the other is the Undersecretary of the Ministry of Justice, a natural member. The remaining 11 members are elected by the President and the executive with a certain majority. The 22-year government has achieved numerical superiority in the HSK. Additionally, politicians appoint loyalists, not qualified legal experts, to the HSK.[41] According to Prof. K. Gözler, the April 16, 2017, constitutional amendment removed the independence of the judiciary against the President, as well as the legislative body.[42]

An autocratic power, devoid of a sense of justice, wants to use state power freely without any oversight. It sees the judiciary as an obstacle to this. Therefore, it obstructs the judiciary's freedom and effectiveness. Ultimately, politicians do not want to be judged themselves and want to make the judiciary dependent on them. The practical application of this is the Captured Justice System. Today, these systems, seen as legal disasters and belonging to different centuries, are applied simultaneously by the government. The systemic problem in Turkish law is exactly these applications. When the judiciary is reduced to this state, it becomes an organ of the government, loses its impartiality and independence, and all its functions are lost.

The autocratic government in Turkey uses the HSK, which it has designed through appointments, to tighten its grip on the judiciary. Established to ensure the independence of the judiciary and the security of the judgeship and prosecution profession, the HSK is now one of the biggest obstacles to judicial independence: the management of the judiciary has been handed over to the government through the HSK.

A recent example: Hamit KOCABEY, who had been a member of the HSK for 4.5 years and stated, *'...I have been with Mr. Bahçeli since 2000, and I have never disagreed with him,'*[43] announced his resignation from the HSK on October 14, 2021, statin g that *'...I have resigned from the HSK membership as a result of my consultation with our chairman, Mr. Bahçeli'*[44]**.** This statement reveals the position of HSK members against politics. When a politician says "resign," a 4.5-year HSK member resigns, saying "yes sir." This publicly witnessed situation sheds light on how decisions are made within

[38] Ministry of Justice Strategy Development Department 2023 Annual Ministry Activity Report
[39] STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface
[40] Transparency International Turkey, September 2018, Presidential Government System
[41] hptts://www.evrensel.net/haber/466973/hsk-uyeliginden-istifa-eden-kocabey-mhpdeki-gorevinden-de-istifa-etti (2006-2009 MHP Ankara Provincial Board Member, 2009-2012 MHP Ankara Provincial Deputy Chairman, 2015 MHP Central Executive Board Member, 2017 HSK Member)
[42] Gözler, K. (2016) "Farewell to the Separation of Powers, Farewell to the Constitution," Retrieved from http://www.anayasa.gen.tr/elveda-anayasa-abd.pdf
[43] hptts://www.evrensel.net/haber/466973/hsk-uyeliginden-istifa-eden-kocabey-mhpdeki-gorevinden-de-istifa-etti (2006-2009 MHP Ankara Provincial Board Member, 2009-2012 MHP Ankara Provincial Deputy Chairman, 2015 MHP Central Executive Board Member, 2017 HSK Member)
[44] https://www.odatv.com/yazarlar/odabudsman/turkıyenin-konustugu-istifa-haberi-engellendi-219267

the HSK. When considering the Minister of Justice as the council chairman and the undersecretary as a natural member, it is clear that the HSK is not independent of the legislative and executive branches.

The government uses the HSK, which it controls, as a sword of Damocles over judges and prosecutors. Judges and prosecutors who make decisions in line with political will, regardless of their legality, are rapidly promoted and assigned to desired geographical locations, while those who make decisions in line with the law but contrary to the government's will are not promoted, dismissed, subjected to administrative investigations, and exiled through geographical transfers.[45]

The European Union's 2018 Turkey Report states, 'The changes made to the HSK's structure with the 2017 Constitutional Referendum cast further shadows on the necessity of the Council being independent of the executive'.[46]

The Ideal for the Accusatory System: Peace Criminal Judgeship:

The ECHR's Yalçınkaya decision of September 26, 2023, identified one reason for the systemic problem in the Turkish judiciary as the Peace Criminal Judgeship.

The government, using the Accusatory System, declares criminals and their punishments before the trial. Accordingly, the accused must be arrested immediately, homes and workplaces searched, travel bans imposed, assets seized, and trustees appointed to companies or municipalities as frequently done recently. These actions should be quick and centralized, and objections to judicial decisions should not be functional.

To fulfill the requirements of the *Captured Justice System,* the government established the Peace Criminal Judgeship on June 18, 2014[47], aiming to increase its judicial influence, ensuring no decisions contrary to its will. By abolishing criminal courts and creating a system with fewer and more controllable single judges, it created its own Conseil d'Etat. The biggest factor making Peace Criminal Judgeships a significant part of the Accusatory System is that their decisions cannot be appealed to a higher court or any other judicial authority. Appeals against the decisions of a Peace Criminal Judge are decided by another Peace Criminal Judge, rendering objections non-functional.

This system violates fundamental legal principles, primarily the Principle of the *Legal or Natural Judge*. Besides violating the Natural Judge Principle, the lack of a functional appeal mechanism contradicts the Rule of Law Principle, personal freedom and security, and the Right to a Fair Trial. Prof. K. Gözler states that these judgeships are no different from the Independence Courts,[48] which had political functions in the early years of the Republic, and the High Court of Justice operating on Yassıada after the May 27, 1960 coup.[49]

The European Union's 2016 Turkey Report states, *'Peace Criminal Judges have created an environment increasingly allowing executive influence over the judiciary. These judicial authorities act as single judges holding powers to issue search warrants, detain individuals, and seize properties... The decisions and judgments indicate a departure from ECHR jurisprudence*.[50]

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[45] -For example, Judge Sercan KARAGÖZ, who demanded the release of businessman Osman KAVALA, was transferred from Istanbul to Ağrı.
-The HSK gave Erzurum Judge Aydın BAŞAR a location change penalty while serving in Balıkesir for acquitting a defendant charged with insulting the President, https://yurtsever.org.tr/2019/hskdan-surgun-yiyen-hakim-hakkında-aciklama-verdiği-karar-adalete-güveni-azaltici-nitelikteydi-246055/

[46] The European Union's 2018 Turkey Report

[47] According to the 2023 Ministry of Justice activity report, there are 750 Magistrate Judgeships in Turkey.

[48] https://dergipark.org.tr/tr/pub/mukaddime/issue/19677/2101328 The Independence Courts, re-established after the Republic, *had a political role* primarily in suppressing criticism from the press, the opposition party, or other dissenting groups against the policies implemented by the political power.

[49] Gözler K. Magistrate Judgeships and the Principle of Natural Judge Turkish Constitutional Law Website www.anayasa.gen.tr 29,08,2014

[50] European Union 2016 Turkey Report

The European Union's 2019 Turkey Report also notes, *'No changes have been made to the institution of Peace Criminal Judgeship, which carries the risk of creating a parallel system.*[51]

Despite being noted in all EU progress reports and identified as illegal, the government has not abandoned the *Peace Criminal Judgeships* için because they serve the interests of the Accusatory Criminal Procedure System.

Lawyers Who Effectively Defend Outside the Accusatory System Are Arrested and Tried for Membership in a Terrorist Organization:

In the government's view, none of the elements of the accusatory system—prosecution, defense, and adjudication—should remain outside the system. Even collective work is unnecessary. The function of these elements is not to conduct proceedings but to fulfill the government's will, contributing to its desire to intimidate and take revenge. Law is a tool for this.

Lawyers who provide effective defense are a significant threat to the Accusatory System. Their effective defenses during investigation and prosecution phases damage the application of the accusatory system and demand the application of modern law, not the law of the strong. They voice opposition to medieval judicial systems. However, an autocratic government that has removed itself from judicial oversight does not want opposing voices.

To prevent lawyers from providing effective defense or to integrate them into the system, legislation has been amended against lawyers and the defense, and decrees have been issued. The decrees have been effective in obstructing effective defense. With the decrees, multiple Bar Associations were established on July 11, 2020, attempting to politicize lawyers. Regulations such as trials without lawyers, rejecting lawyers' requests to hear witnesses, trials in the absence of lawyers, limiting the number of lawyers and meetings with detained clients, banning lawyers from investigations and prosecutions against their clients[52], confiscating lawyer-client files and notes, and restricting lawyer-client meetings were enacted.

Despite the decrees, lawyers who did not enter the Accusatory System and provided effective defense were subjected to arbitrary and illegal actions using the Anti-Terrorism Law, disregarding ECHR, relevant international conventions, and national legal guarantees (such as Articles 58-59 of the Attorneys' Law). They faced charges, irregular investigations, detentions, arrests, expulsions, license denials, license revocations, and suspensions[53], with many being imprisoned.

According to 2023 data from Weltanwalte e.V[54], between 2016-2023, lawyers faced 1,638 investigations, 903 detentions, 665 arrests, 40 arrest warrants, and 586 conviction decisions. During this period, 181 lawyers were in prison.[55]

In the Current System, Prosecutors Serve as the Government's Watchdogs:

In the Accusatory Criminal Procedure System, there was no office of the prosecutor. One or several people directly made their accusations to the judge. Accusations were not made on behalf of the public, and there was no one to follow the proceedings on behalf of the public. The accusation had no public value. The parties collected and presented the evidence. The judge, acting as an arbitrator, could not collect evidence.

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[51] European Union 2019 Turkey Report

[52] According to the February 2018 report of the Initiative of Imprisoned Lawyers, the Istanbul 8th Peace Criminal Judgeship issued a decision in October 2017 banning 100 lawyers from representing their clients.
-https://weltanwaelte.com/blog/tırkiyede-avukatkara-ve-savunmaya-saldirilar

[53] Weltanwelta e.V, Cologne, Germany

[54] Weltanwelta e.V, Cologne, Germany

[55] According to the December 10, 2021 report of the Initiative of Imprisoned Lawyers titled "The Crackdown," more than 1,600 lawyers were detained and investigated, 615 were arrested, and cases were opened against 15 Bar Association Presidents.
https://www.evrensel.net/haber/449901/tutuklu-avujatlar-inisiyatifi-turkiyede-avukatlik-melegine-yonelik-saldirirlari-raporlastirdi-

In modern law, the prosecutor is the director of the investigation phase. According to Article 160/1 of the Criminal Procedure Code (CMK), the prosecutor should immediately begin to investigate the truth to determine whether to file a public case and, if deemed necessary, file a public case according to Article 170/1 of the Criminal Procedure Code (CMK). Today, in accordance with the Accusatory Criminal Procedure System, the government declares the crime and the criminal. The decision to file a public case is not left to the prosecutor's discretion. The prosecutor acts as the guardian of the government's interests. Under the de facto Captured Justice System, the prosecutor cannot choose not to file a public case on behalf of the government. The prosecutor's role is to ensure the government's will is turned into a *court ruling*.

If a prosecutor does not comply, they themselves face public prosecution for membership in a terrorist organization, are dismissed from their profession, or at the very least, are removed from their position, subjected to administrative investigation, or exiled. This creates an atmosphere of fear by the autocratic government. The ECHR Grand Chamber, in its Yalçınkaya ruling of September 26, 2023, explains these practices as 'arbitrariness[56], 'systemic problem[57] ,' and notes that the judiciary does not even comply with its own national law[58].

The ECHR constantly identifies human rights violations and issues rulings against Turkey,[59]calling for a *return to the rule of law*. Many international legal institutions report and publish these illegalities. However, the government, which seems to survive on illegality, does not return to the rule of law and produces illegal solutions to temporarily resolve the situation. For example, silencing lawyers who provide effective defense, creating a system of Peace Criminal Judgeships, manipulating the structures of the Constitutional Court, HSK, and Court of Cassation, and removing the legal (compensation) liability of judges are some examples…

The Government Declares Crimes and Criminals, Evidence is Fabricated Afterwards:

In criminal proceedings, evidence must be related to and represent the event. According to Article 107/4 of the Criminal Procedure Code (CMK), the events constituting the charged offense must be explained in connection with the existing evidence in the indictment. The investigator should reach the accused based on evidence. The evidence representing the event should be logical, material, and legally appropriate. Evidence should possess common characteristics such as legality, commonality, representation of the event, accessibility, rationality, and reality.

In recent years, with the Accusatory System implemented in the country, suspects are first identified, and then evidence is sought against them. Even if suitable evidence cannot be found for the charged crime or if the evidence obtained illegally has no legal value, it is accepted as suitable evidence for the crime because it is the government's command.

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[56] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

[57] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, indicated that '*Turkey needs to address the systematic problem concerning convictions for terrorism offenses'*. The plaintiff's lawyer, Johan Heyman, stated that '*the systematic problem in the decision pertains to the entire Turkish Justice System*'. -https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden

[58] The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

[59] - STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface, p.1
- https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede
- hptts://www.dw.com/tr/ai%CC%87hm-bin-bylock-ba%C5%9Fvurusu-i%C3%A7in-daha- g%C3%B6r%C3%BC%C5%9F-istedi/a-68946469
- STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface

The ECHR noted that the judicially broad and unpredictable interpretation of Article 314/2 of the Turkish Penal Code and the *Anti-Terrorism Law* automatically creates a presumption of guilt based solely on ByLock usage, making it almost impossible for the applicant to defend against the accusations.**par 268** The ECHR also considers the acceptance of ByLock as definitive and indisputable evidence a violation of the right to a fair trial.**par 264** ByLock, as evidence of a terrorist organization, is considered invalid according to MIT's statements[60], decisions by the Court of Cassation[61], and the ECHR decisions (par 264), but it continues to be accepted as sufficient evidence by the government judiciary, contrary to Article 46 of the ECHR and Article 90/5 of the Constitution. The government's will takes precedence over modern legal principles.

Evidence, even the law, becomes a tool for this purpose. Thus, law reverts to the Middle Ages, leading to a systemic collapse.

Ways to Ignore ECHR Decisions, Local Courts Not Implementing Constitutional Court Decisions (Contrary to Article 153 of the Constitution), the Court of Cassation Filing Criminal Complaints Against Constitutional Court Members[62], and ruining the lives of innocent people through terrorism charges are part of the path to fulfill the government's will. Neither the above-mentioned illegalities, modern law, human rights, nor the following matter on the path to fulfilling the government's will:

The UN Human Rights Council's Working Group on Arbitrary Detention, in its decision dated June 7, 2022, stated that '*communication programs like ByLock or the act of depositing money in a legal bank should not be the subject of prosecution*'[63].

The ECHR has issued numerous rulings that ByLock cannot be used as evidence of membership in a terrorist organization[64]. The most comprehensive ruling was made by the ECHR Grand Chamber on September 26, 2023, in the Yalçınkaya case, stating that '*ByLock cannot be considered evidence of membership in a terrorist organization*.**par 264** After notifying Turkey of 1,000 ByLock-related cases in December 2023, the ECHR notified another 1,000 cases in April 2024 and stated that no further defense would be requested.

Additionally, the 16th Criminal Chamber of the Court of Cassation, in its decision 2019/73152E 2019/7221K, stated that *"...intelligence information cannot be considered as evidence of the crime being proven..."* and issued an acquittal.[65]

ByLock is prohibited evidence obtained through intelligence methods, contrary to Article 134 of the Criminal Procedure Code (CMK). The first to announce that ByLock evidence was obtained through intelligence methods was MIT. In the "Basis and Method" section of the third technical report on ByLock and in the press release dated April 6, 2017, MIT stated that ByLock was obtained through methods specific to the organization and not according to the CMK[66].

Despite national and international court decisions, MIT's statements, and clear legal provisions, the judiciary, which has become an organ of the government in accordance with the *Captured Justice System*, still considers ByLock as sufficient evidence for conviction, contrary to Article 46 of the ECHR

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[60] https://aktifhaber.com/gündem/gunes-bugun-sizlerle-bylock-ile-ilgili-bomba-bir-skandali-daha-paylasacagim-h176586.html
[61] https://aktifhaber.com/gündem/gunes-bugun-sizlerle-bylock-ile-ilgili-bomba-bir-skandali-daha-paylasacagim-h176586.html
[62] The 3rd Criminal Chamber of the Court of Cassation's decision not to comply with the Constitutional Court's ruling regarding the imprisoned MP Can ATALAY and to file a criminal complaint against Constitutional Court members once again brings the issue of judicial independence and the rule of law in Turkey to the forefront.
[63] https://x.com/drgokhangunes/status/1566734363563364353 September 5, 2022
[64] -The ECHR, in the case of Judge Aydın Sefa AKAY, sentenced for using ByLock, ruled that Articles 5 (right to liberty and security) and 8 (right to respect for private and family life) of the ECHR were violated.
-The ECHR ruled that the arrest of police officer AKGÜN for using the ByLock encryption application violated Article 5 (right to liberty and security) of the ECHR, stating that using ByLock does not constitute "reasonable suspicion.".
[65] https://aktifhaber.com/gündem/gunes-bugun-sizlerle-bylock-ile-ilgili-bomba-bir-skandali-daha-paylasacagim-h176586.html
[66] https://aktifhaber.com/gündem/gunes-bugun-sizlerle-bylock-ile-ilgili-bomba-bir-skandali-daha-paylasacagim-h176586.html

and Article 90/5 of the Constitution.[67] Convictions are issued with evidence unrelated to the alleged crime, not representing the material event, and obtained illegally.

Legal Immunity Granted by Decree No. 696 Due to Obedience to Unlawful Practices:

With Article 121/2 of Decree No. 696, published in the Official Gazette No. 30280 dated December 24, 2017, and Article 37 of Decree No. 6755 dated November 8, 2016, it was added that "Persons who act to suppress terrorist acts and actions that continue in nature, regardless of whether they hold an official title or perform an official duty, shall not be held legally, administratively, financially, or criminally liable for these acts"[68].

The government granted protection to those involved in illegal acts within the *Captured Justice System* and gave assurance with Decree No. 696, essentially saying, '*Do not fear, continue; I have removed all your legal, administrative, criminal, and financial responsibilities,'* making them immune from judicial oversight.

Similar to the *Captured Justice System* but not limited to just the political power, the judiciary granted legal immunity to anyone, regardless of whether they hold an official title or perform an official duty, to ensure the government's will is turned into a court ruling. This provision even includes future crimes. This regulation is unprecedented, even compared to medieval legal systems, and is a legal disaster in terms of the rule of law.

Furthermore, with Article 46/1 of the Code of Civil Procedure (HMK), it was stipulated that compensation lawsuits against judges due to their judicial activities would be filed directly against the State. Thus, if compensation arises from decisions made in line with the government's will, whether legally or not, the compensation will be paid by the public, not by the government or judges.[69]

This situation reminds us of a fundamental legal norm: A state power not limited by law becomes an instrument of organized crime[70], which is evident in Turkey, as inferred from international high court decisions, even if not explicitly written.

Criminal Courts Decide Not in the Name of the Turkish Nation, but in the Name of the Government:

For this reason, for example, despite knowing that Constitutional Court decisions are binding on all legislative, executive, and judicial organs and administrative authorities (Constitution Article 153), President Erdoğan can say, *"I do not comply with the decision, nor do I respect it"* regarding the Constitutional Court's decision to release journalists Can DÜNDAR and Erdem GÜL.[71]

Because, as a natural result of the system being a medieval legal system, decisions are given in the name of the government. Although court decisions are stated to be "in the name of the Turkish Nation" (Constitution Article 9), the applied procedures and outcomes show that decisions are given in the name of the government and in line with its will. The existing prosecutors act as the government's

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[67] - The ECHR, in the case of Judge Aydın Sefa AKAY, sentenced for using ByLock, ruled that Articles 5 (right to liberty and security) and 8 (right to respect for private and family life) of the ECHR were violated.
-The ECHR ruled that the arrest of police officer AKGÜN for using the ByLock encryption application violated Article 5 (right to liberty and security) of the ECHR, stating that using ByLock does not constitute "reasonable suspicion.".

[68] https://ww.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm

[69]- STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface, p.1
- https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede
- https://www.dw.com/tr/ai%CC%87hm-bin-bylock-ba%C5%9Fvurusu-i%C3%A7in-daha- g%C3%B6r%C3%BC%C5%9F-istedi/a-68946469
- Ministry of Justice Strategy Development Department 2023 Annual Ministry Activity Report

[70] Prof. Dr. İzzet ÖZGENÇ Crimes of Terrorist Organizations p.14

[71] hptts://www.bbc.com/turkce/haberler/2016/02/160228-erdogan-dundar-aym

watchdogs, following its directives. The outcome of this judicial procedure, which openly violates procedural rules, is not justice but oppression. This system violates fundamental human rights and individual freedoms, protecting not the interests of the state or society, but those of the government. The systemic problem in Turkish law is precisely this application. Thus, the rule of law is eroded, the legal culture is destroyed, legal certainty, predictability, and foreseeability are diminished, and lawlessness, chaos, fear, and arbitrariness increase. In other words, the country is being driven towards a medieval state of lawlessness.[72]

4-CONCLUSION:

From afar, the world sees that Turkey has judicial institutions and procedural bodies belonging to modern legal systems. However, they exist only in form and appear to function, but are not operational. All institutions are designed so that they cannot make decisions independently of the government's will. No institution or body is left independent or impartial. Judicial bodies are given political functions.

The systemic problem or systemic issue is the government's conversion of the Turkish Criminal Law System back to the Captured Justice System and the Criminal Procedure to the medieval Accusatory Criminal Procedure System. Today, these systems, seen as separate legal disasters belonging to different centuries, are applied simultaneously by the current government.

1700s Captured Justice System and 2000s Presidential System:

According to Prof. K. Gözler, the constitutional amendment referendum held during the state of emergency on April 16, 2017, eliminated the independence of the judiciary alongside the legislative body against the President[73]. In other words, the separation of powers has effectively ended, and all power has been concentrated in the President.

The European Union's 2021 Turkey Report states that *the presidential system is the biggest obstacle to judicial independence. The Venice Commission's 2017 opinion emphasized that the presidential system lacks a system of checks and balances ensuring judicial independence, preventing excessive concentration of power in a single office*.[74] This absence of checks and balances is because autocracy does not recognize any power other than itself and never accepts oversight and balancing institutions. It sees itself above the state, the nation, and the law, leading to lawlessness.

The government labels any differing opinion within the administration or judiciary as *double-headedness,* as seen during Abdullah Gül's presidency and Erdoğan's prime ministry (2007-2014) and Erdoğan's presidency and Ahmet Davutoğlu's prime ministry (2014-2015)50. Only one voice should be heard, and that voice should be the government's. The Captured Justice System does not tolerate other voices.

The government, disregarding the presumption of innocence (ECHR 6/2, Constitution 38/4), not adopting the principle of judicial independence (ECHR 6), and continuing to direct judges and prosecutors on pending cases (TCK 288), engages in hate speech contrary to Article 122 of the Turkish Penal Code, committing hate crimes.

Government interventions have rendered judicial proceedings ineffective. By seizing the judiciary's functions, the government turns its accusations against innocent but opposing individuals into court rulings. In accordance with the *Captured Justice System,* manipulated intelligence and investigation information, illegal evidence, and fabricated accusations are processed as truth by the government's watchdog prosecutors, resulting in the harshest penalties. For a government thriving on unlawfulness,

[72] In its World Report published in January 2022, Human Rights Watch stated that the Erdoğan government has set Turkey's human rights record back by decades and disregarded International Human Rights Law. Human Rights Watch http://hrw.org/tr/news/2022/01/13/380670
[73] Gözler, K. (2016) "Farewell to the Separation of Powers, Farewell to the Constitution," Retrieved from http://www.anayasa.gen.tr/elveda-anayasa-abd.pdf
[74] European Union 2021 Turkey Report

collective work or legal evidence does not matter. What matters is transforming the government's accusation into a court ruling.

The April 16, 2017, constitutional amendments do not establish a presidential system. The relationship between the President and the judiciary or the administration lacks a system of checks and balances that previously existed. This mechanism is entirely within the President's appointment power, granting unlimited and unconditional authority for these appointments.[75]

For example, in the presidential system of the United States, the Senate's approval is always required for the President's appointments of high-level public officials and judiciary personnel. In Turkey's presidential system, there is no functional oversight or approval mechanism, leading to arbitrariness and violations of the principles of legality and non-retroactivity of criminal law.[76] No modern legal state in the world lacks such a system of checks and balances. This system was called the *Captured Justice System* in the 1799s. In the 2000s, it is called the *Presidential System.*

Where court decisions are disregarded, the rule of law does not function. Where judicial independence and the guarantee of judgeship are not implemented, it cannot be claimed that judicial authority is exercised independently by courts. Ignoring these principles nullifies the meaning of the principle of *'separation of powers.* ' In this situation, the government cannot be limited by the Constitution against society.[77] A state that is not limited by the Constitution is not a state governed by the rule of law, and its system is not a presidential system. A system that does not accept the separation of powers, positions itself above and outside the judiciary and the executive, and cannot tolerate the balance and oversight of its will, is the *Captured Justice System* of the 1799s.

Human Rights Watch's January 2022 World Report stated that Erdoğan's government has regressed Turkey's human rights record by *decades and disregarded international human rights law*[78]**.**

The Government Established Captured Justice and Accusatory Criminal Procedure Systems as the New Systems During the July 15 Process:

With the declaration of a state of emergency on July 20, 2016, under Article 121 of the Constitution, Turkey experienced the darkest periods of its history in all respects. The state of emergency, initially for three months, was extended seven times, and the country was governed under the state of emergency regime for nearly two years[79]. The Constitutional Court could not review the decrees issued under the state of emergency[80]**.** The government, free from judicial oversight, made good use of this gift.

The attraction of state of emergency decrees for the government is their exemption from parliamentary and Constitutional Court oversight.[81] Those serving the Accusatory Criminal Procedure System were exempted from judicial oversight and became unaccountable through state of emergency decrees. The government's motivation was to remain outside judicial oversight.

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[75] Gözler, K. (2016) "Farewell to the Separation of Powers, Farewell to the Constitution," Retrieved from http://www.anayasa.gen.tr/elveda-anayasa-abd.pdf

[76] Gözler K, (2017) "Presidential System or Neverland System? What Are We Voting for on April 16?" Retrieved from http://www.anayasa.gen.tr./neverland.htm

[77] Gözler K, (2017) "Presidential System or Neverland System? What Are We Voting for on April 16?" Retrieved from http://www.anayasa.gen.tr./neverland.htm

[78] Human Rights Watch, Retrieved from http://hrw.org/tr/news/2022/01/13/380670

[79] HaberTürk Newspaper 2018, "State of Emergency Ended After 2 Years," Retrieved from https://www.haberturk.com/son-dakika-olaganustuhal-sona-erdi-206418

[80] Constitutional Court of the Republic of Turkey, 2018, "Press Release on Decisions Regarding State of Emergency Decrees," Retrieved from

[81] The Constitutional Court unanimously decided that it is not authorized to review the annulment cases against Decrees No. 668, 669, 670, and 671.

Before the referendum, many articles of the Constitution and significant laws lost their effectiveness and validity. This state is defined as the *'Constitutional State of Abandonment'*.[82] The Constitution exists but does not bind state organs in practice, rendering it powerless. The easiest way to deconstitutionalize is to consistently violate constitutional provisions until they are effectively changed.[83]

During this period, many state of emergency decrees unrelated to ensuring public order and devoid of legal content were issued without parliamentary and Constitutional Court oversight. Restructuring civil-military relations by concentrating power in the presidency, without sharing oversight and control powers among parliament, government, and NGOs, was seen as *'monopolistic civilianization'* by Prof. M. Gürcan and contrary to democratic *civilianization* principles[84].

The 2014 presidential election, the July 15, 2016 coup attempt, the state of emergency period, and the presidential system referendum were carried out in an unconstitutionalized Turkey, thus paving the way for the new system amidst a general state of confusion.[85]
Let us conclude with the descriptions by Prof. K. Gözler and Prof. M. Gürcan: There is no proper criminal procedure in Turkish Criminal Law. There is unconstitutionalized, unjudicialized, and unlawful law. There is a sui generis system unique to the government, contrary to the ECHR, modern world law, its own Constitution, and laws, that has bankrupted the country and all its institutions, characterized by oppression, repression, and elimination.

5-RECOMMENDATIONS:

A- Recommendations for the Government in Turkey:

Every 35 out of 100 cases pending before the ECHR concern Turkish citizens. As of February 29, 2024, 23,550 of the 67,300 cases pending before the ECHR were filed against Turkey[86]. The ECHR notified Turkey of 2,000 ByLock-related cases[87]. There are 8,500 more pending ByLock cases, yet the government continues its unlawful practices. Turkey ranks 148th out of 173 countries in the Rule of Law index and second to last in Europe, only ahead of Belarus, among 45 countries[88]. In 2023, there were 23,550 applications to the ECHR from Turkey[89].

These data and the ongoing practices of the government indicate that, in addition to legal recommendations for the government in Turkey, effective sanctions are necessary. Legal recommendations alone hold no significance. Since 2016, the highest national and international legal institutions have been making these recommendations. The government either completely ignores these recommendations or pretends to heed them while circumventing them to continue its own practices.

The good faith recommendations of the Constitutional Court, the ECHR, the UN, the EU, and other international or national legal institutions are not taken into account by the government in the intended sense. For instance, despite the ECHR's numerous rulings highlighting that Articles 314 of the Turkish Penal Code and the Anti-Terrorism Law are vague and lack legal quality, no amendments have been made to these laws. Instead, the government continues its arbitrary and broad interpretation of these

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[82] Cumhuriyet Newspaper 2016, "Davutoğlu-Erdoğan Dispute Turned into Media Clash," Retrieved from http://www.cumhuriyet.com.tr/haber/sitesi/514124/davutoğlu-erdoğan-restlesmesi-medyada-kavgaya-donustu.html
[83] Gözler K, (2017) "Presidential System or Neverland System? What Are We Voting for on April 16?" Retrieved from http://www.anayasa.gen.tr./neverland.htm
[84] Gürcan, M. (2016) "Never Again! But How? State and the Military in Turkey After July 15," Istanbul Policy Center, (3).
[85] httsp://www.anayasa.gov.tr/icsayfalar/basin/kararlarailiskinbasınduyurulari/genelkurul/detay/21.html
[86] https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede
[87] hptts://www.dw.com/tr/ai%CC%87hm-bin-bylock-ba%C5%9Fvurusu-i%C3%A7in-daha- g%C3%B6r%C3%BC%C5%9F-istedi/a-68946469
[88] https://tr.euronews.com/2024/3/17/aihmde-bekleyen-100-davadan-35i-turk-vatandaşlarinin-basvurulari-turkiye-acik-ara-zirvede
[89] Ministry of Justice Strategy Development Department 2023 Annual Ministry Activity Report

laws. The government has changed legal regulations that it felt restricted its ability to suppress active opposition, even if these changes violated the ECHR, modern legal principles, the Constitution, or its own domestic law. It has made numerous unlawful regulations through emergency decrees, bypassing the Constitutional Court's oversight, erasing 800 years of legal gains and pushing the country back to the Middle Ages.

For autocratic powers, law or justice is a tool, not a goal. The understanding of law by the autocratic government in Turkey is to turn the judiciary into its organ, bring it under its command, make itself unaccountable, and use the judiciary to suppress active opposition. The "*return to law"* recommendations made for years[90], have resulted in the government's illegal practices increasing exponentially.

B- Recommendations for the UN Human Rights Commissioner:

Sanctions should directly impact the government and its future. For instance, imposing financial penalties has no significant effect on the government. The ECHR has ordered substantial compensations for applicants, but the government continues its unlawful practices, as the people bear the financial burden. Sanctions that do not directly affect the government have no deterrent effect. Diplomatic and political sanctions, legal sanctions, economic sanctions, and military sanctions should be applied. For example, withholding funds, cutting economic and technical aid, and reducing cooperation in various areas are necessary. Effective sanctions should target the government directly.

[90] - The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, found violations of Articles 6/1, 7, and 11 of the ECHR. '*It emphasized that the uniform and general approach of Turkish judiciary towards the ByLock evidence is incompatible with the national law requirements for this crime and contrary to the purpose of Article 7 of the ECHR, which provides effective safeguards against arbitrary prosecution and convictions'*. **(par 300)**

- The ECHR Grand Chamber, in its Yüksel YALÇINKAYA/Turkey judgment dated September 26, 2023, indicated that '*Turkey needs to address the systematic problem concerning convictions for terrorism offenses'*. The plaintiff's lawyer, Johan Heyman, stated that '*the systematic problem in the decision pertains to the entire Turkish Justice System*'.

- https://tr.euronews.com/2024/01/25/aihm-2023-yili-istatistiklerini-acikladi-bekleyen-davaların-yuzde-34u-turkiyeden;

- STICHTING JUSTICE SQUARE, Amsterdam/May 2024, "Post-July 15 Violation Decisions against Turkey by the ECHR," Preface, p.1

"Restructuring": A Weapon of Genocide

Human Rights Violations caused by the investigations launched under the name of "restructuring" in the process that turned into a modern genocide for the volunteers of the Hizmet Movement in the aftermath of the July 15, 2016 coup attempt in Turkey

1. EXECUTIVE SUMMARY

This report examines the **systematic lynching** and genocide that the Erdoğan regime, which rapidly became authoritarian in 2011 and especially after the July 15, 2016 coup attempt, **opened 285 new prisons** with a total capacity of 196,682 in addition to the existing prisons in Turkey after 2016, increasing **the total number of prisons to 403** and the **capacity of prisons to 295,328 people**[1] and imprisoning its political opponents in these prisons, imposed on every layer of the volunteer community of the Hizmet movement through the investigations opened under the name of "**Restructuring**" by the Judicial Organs under the control of the Erdoğan regime.

- As it is known, with the great massacre movement initiated based on the story of the infamous coup attempt in Turkey on the night of July 15, 2016, which was**systematically prevented from being illuminated** at every stage by the current government and its supporters**, and which has been shrouded in so many smokescreens since the first day** , the community known as the volunteers of the service movement, led by Fethullah Gülen, was rolled over like a steamroller, regardless of whether they were men and women, young and old, children and patients, students, civilians or officials. As of **April 2018, 160,000 people have been detained, 50,000 people have been arrested on charges of FETÖ/PDY membership and 152,000 public employees have been dismissed from their jobs** during the purge that began on July 15, 2016, **unprecedented in the world**.[2]

- As it is known, **Erdoğan and his government**, which has become increasingly corrupt, increasingly distanced itself from the law, **transformed and authoritarianized the judiciary by making it dependent on itself** since 2002 when it came to power, had a historic opportunity with the July 15, 2016 coup attempt and used this opportunity to transform and produce enmity against the Hizmet movement and gained uncontrolled political power and authority. In short, Erdoğan has established his regime. For the establishment of this regime, the July 15 incident and the hostility against the Hizmet movement were constantly made an agenda, the existing Constitutional regulations were ignored and a de facto one-man regime was introduced without even a new Constitutional regulation, the parliamentary system was abolished *(later on, this one-man regime was formalized by calling it the Presidential System with the April 16, 2017 Referendum)* and all institutions and organizations of the state were redesigned according to the one-man system, that is, the Erdoğan Regime. In order to ensure the legitimacy and continuity of this new regime, to turn the society into a single front on its

[1] https://cte.adalet.gov.tr/Home/SayfaDetay/cik-genel-bilgi

[2] https://www.google.com/search?q=darbe+giri%C5%9Fiminden+hemen+sonra+ihra%C3%A7+edilenlerin+say %C4%B1s%C4%B1&oq=darbe+giri%C5%9Fiminden+hemen+sonra+ihra%C3%A7+edilenlerin+say%C4%B1s%C4%B1&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAIQIRigATIHCAMQIRigATIHCAQQIRigAdIBCTE5NjQ3ajBqOagCALACAQ&sourceid=chrome&ie=UTF-8

side and to intimidate all opposition groups, it has marched on the Hizmet movement by using all the power of the state and especially the Judiciary.

- In this process, tens of thousands of violations of rights, some of which have been brought to the ECHR, have been created by the judiciary, which has been turned into a cudgel of the government and an instrument of liquidation. In these cases pending before the European Court of Human Rights, judgments of violation of rights have started to be issued and it is understood that similar judgments will increase like an avalanche.

- However, despite the ECHR's rulings on rights violations, the new regime established in Turkey has, by its very nature, begun to show a reflex to refuse to recognize, implement and resist, at all costs, the status and decisions that the country has accepted through international agreements, and has begun to traditionalize this attitude.

- Even though the majority of the media was turned into supporters of the established regime, the intellectuals and opposition parties were silenced, and the July 15 coup d'état was, according to their own rhetoric, "***a great blessing fromGod*** "[3], the contradictions were gradually revealed, and according to some of the news sources accessible to the public, "***the truth of the matter was not at all as described***", At the very moment when the official mouthpieces and rhetoric began to lose credibility, the former regime, in a manner reminiscent of **Goebbels** tactics, with unparalleled media support, again turned on the service movement and its volunteers and launched a second wave of unlawfulness.

This wave is called "**restructuring**". Through this accusation, the Hizmet Movement and its volunteers have again been made a daily agenda with mind-boggling accusations, and thousands of news reports served to local and national media have tried to shape public perception and maintain the existing illusion.

2. THE EXTENT OF THE 2ND WAVE OF UNLAWFUL "RESTRUCTURING" INVESTIGATIONS AGAINST VOLUNTEERS OF THE HIZMET MOVEMENT

In the "**restructuring**" investigations initiated on the direct instructions of the Erdoğan regime to the judiciary, a "**witch hunt**" has been launched in almost all provinces of Turkey and thousands of people have been detained, arrested and sentenced in hundreds of investigations, some of them in hasty trials, and many people continue to be held in prison as detainees or convicts. In this way, thousands of people have been subjected to endless criminal accusations, their social, family and professional honor and reputation have been damaged, they have been subjected to prejudicial behavior of the society and have been forced to isolate themselves from the society and have been turned into living corpses.

- If one wants to clearly understand what the dimensions of the situation are in concrete terms, the gravity of the situation can be revealed with all its nakedness even by analyzing thousands of news reports and their contents that appear on the screen when a search is made on the internet with the title "***fetö restructuring***".

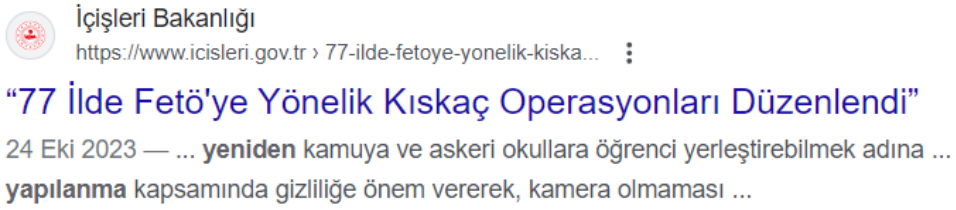
In order to understand the situation, some examples of web search results are quoted below. In the examples, it is understood that people from all segments and regions of society, such as students, women, couriers, businessmen-craftsmen, civil servants, civilians, old-young people, people who have been sentenced before and released, people who listen to religious

[3] https://www.dw.com/tr/erdo%C4%9Fan-i%CC%87stanbulda-a%C3%A7%C4%B1klama-yapt%C4%B1/a-19403922

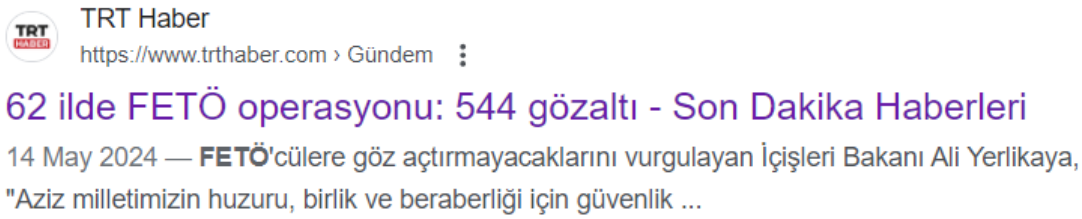
conversations by joining chat rooms in x, people from different provinces, have been detained, arrested and sentenced as suspects in "**restructuring**" investigations.

Below, the originals of the news headlines that appear on the search screen when a web search is made are given in .pdf format, the headlines of the news are presented in word text translation just below the .pdfs, and the links to the news are footnoted.

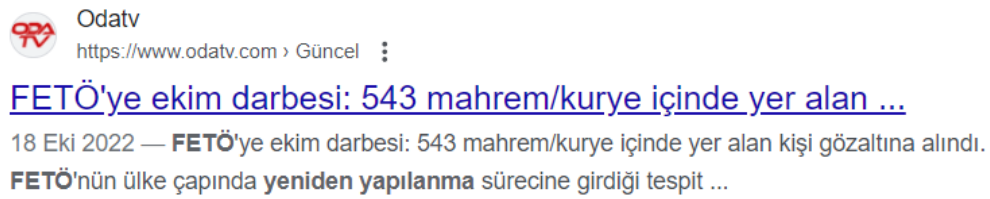
For example ;



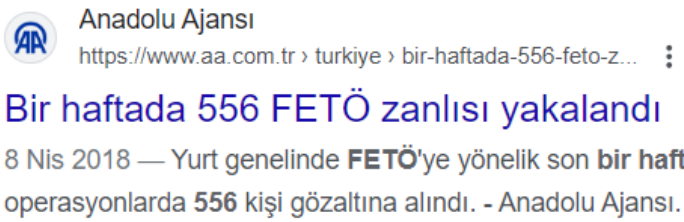
- "**77 İlde Fetö'ye Yönelik Kıskaç Operasyonları Düzenlendi**"[4]
  ("**Pincer Operations Against Fetö Organized in 77 Provinces**")



- "**62 İlde Fetö Operasyonu : 544 Gözaltı-Son Dakika Haberleri**"[5]
  ("**Fetö Operation in 62 Provinces : 544 Detentions-Breaking News**")



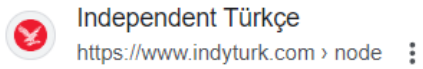
- "**Fetö'ye Ekim Darbesi :543 Mahrem / Kurye İçinde Yer Alan Kişi Gözaltına Alındı**"[6]
  ("**October Crackdown on Fetö: 543 People Involved in Mahrem / Courier Detained**")



- "**Bir Haftada 556 Fetö Zanlısı Yakalandı**"[7]

[4] https://www.icisleri.gov.tr/77-ilde-fetoye-yonelik-kiskac-operasyonlari-duzenlendi
[5] https://www.trthaber.com/haber/gundem/62-ilde-feto-operasyonu-544-gozalti-857345.html
[6] https://www.odatv.com/guncel/fetoye-atm-operasyonu-254579
[7] https://www.aa.com.tr/tr/turkiye/bir-haftada-556-feto-zanlisi-yakalandi/1111747

("**556 Fetö Suspects Caught in One Week**")


Independent Türkçe
https://www.indyturk.com › node

"FETÖ'nün mali yapılanması"na operasyon: 500'den fazla ...

18 Eki 2022 — İçişleri Bakanı Soylu, **FETÖ**'nün mali yapılanmasına yönelik başlatılan Gazi Turgut Aslan Operasyonu'nda şu ana kadar 543 şüphelinin **gözaltına** ...

- "**Fetö'nün Mali Yapılanması'na Operasyon : 500'den Fazla Gözaltı**"[8]
  ("**Operation on Fetö's Financial Structure: More than 500 Detained**")


Yeni Şafak
https://www.yenisafak.com › gundem

FETÖ'den 612 bin kişiye işlem | Ankara Haberleri

27 Kas 2020 — Bunların 292 bin 703'ü **gözaltına alındı**, 96 bin 945'i tutuklandı. Cezaevlerinde tutuklu 25 bin 655 **kişi** bulunuyor. Firari sayısı ise 25 bin 48.

- "**Fetö'den 612 Bin Kişiye İşlem /Ankara Haberleri** "[9]
  ("**612 Thousand People Prosecuted for Fetö /Ankara News**")


NTV Haber
https://www.ntv.com.tr › Türkiye Haberleri

29 ilde FETÖ operasyonu: 108 gözaltı

4 gün önce — ... DEVAM EDİYOR ! 29 **ilde FETÖ**'ye yönelik düzenlenen "KISKAÇ-20" operasyonlarında 108 şüpheli yakalandı ! **FETÖ**'cülere göz açtırmayacağız.

- "**29 İlde Fetö Operasyonu : 108 Gözaltı**"[10]
  ("**Fetö Operation in 29 Provinces : 108 Detentions**")


Cumhuriyet
https://www.cumhuriyet.com.tr › Siyaset Haberleri

Adana merkezli 8 ilde FETÖ operasyonu: 75 kişi için ...

21 Kas 2022 — Adana merkezli 8 ilde, **FETÖ** soruşturması **kapsamında** haklarında yakalama kararı çıkarılan 75 kişiye yönelik operasyon düzenlendi.

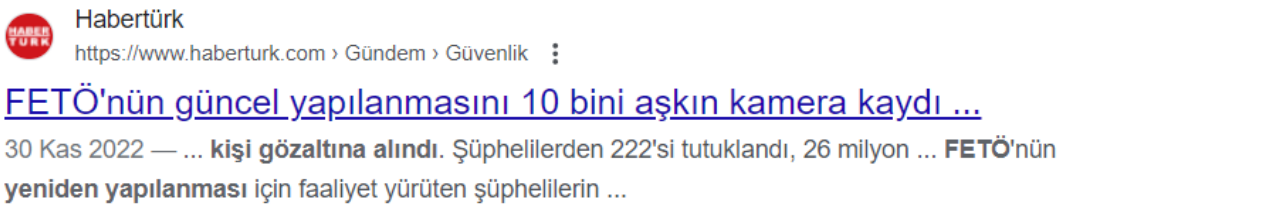
- "**Adana Merkezli 8 İlde Fetö Operasyonu : 75 Kişi İçin Gözaltı**"[11]
  ("**Fetö Operation in 8 Provinces Centered in Adana : Detention for 75 People**")

[8] https://www.indyturk.com/node/565451/haber/fet%C3%B6n%C3%BCn-mali-yap%C4%B1lanmas%C4%B1na-operasyon-500den-fazla-ki%C5%9Fi-g%C3%B6zalt%C4%B1na-al%C4%B1nd%C4%B1

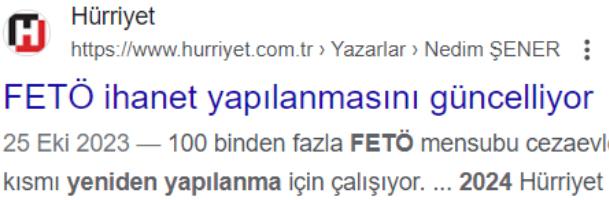
[9] https://www.yenisafak.com/gundem/fetoden-612-bin-kisiye-islem-3587006

[10] https://www.sozcu.com.tr/29-ilde-feto-ye-operasyon-108-gozalti-p63343

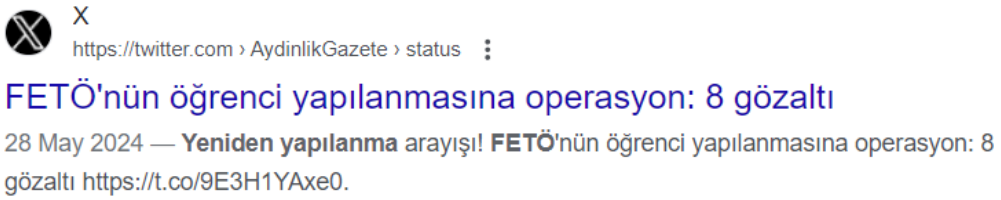
[11] https://www.cumhuriyet.com.tr/siyaset/adana-merkezli-8-ilde-feto-operasyonu-75-kisi-icin-gozalti-karari-verildi-2004677



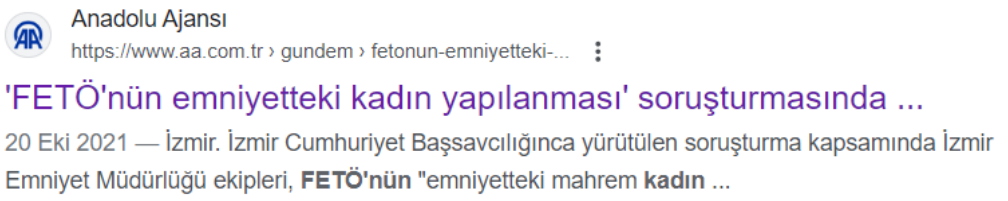
- **"Fetö'nün güncel yapılanmasınaı 10 bini aşkın kamera kaydı çözdü. Şüphelilerden 222'i tutuklandı"**[12]
  ("More than 10 thousand camera recordings solved the current structure of Fetö. 222 of the suspects were arrested")



- **"Fetö İhanet Yapılanması Güncelleniyor. 100 Binden Fazla Fetö Mensubu Cezaevle-rinden Tahliye Edildi Ve Önemlik Bir Kısmı Yeniden Yapılanma İçin Çalışıyor."**[13]
  ("The Fetö Betrayal Organization is being updated. More than 100,000 Fetö members have been released from prisons and a significant number of them are working for re-structuring.")

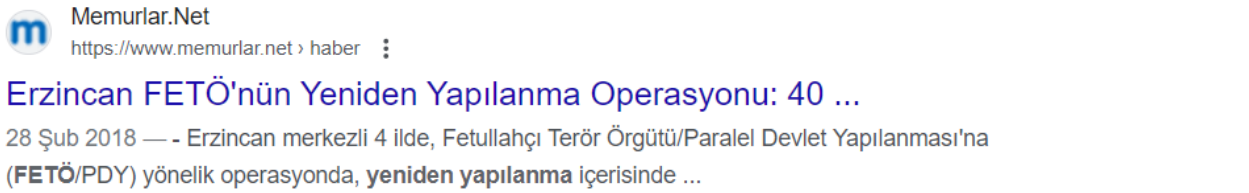


- **"Fetö'nün Öğrenci Yapılanmasına Operasyon : 8 Gözaltı"**[14]
  ("Operation on Fetö's Student Organization: 8 Detentions")



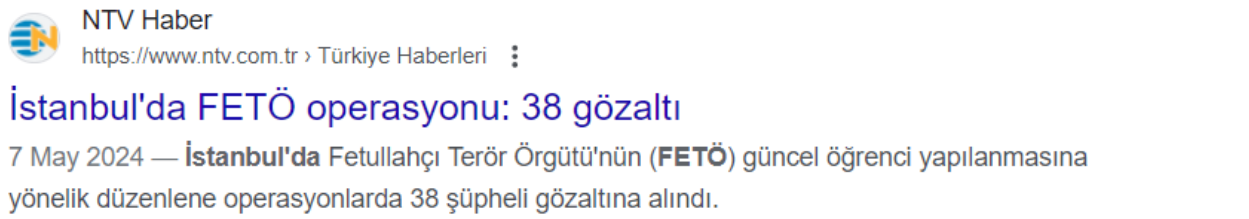
- **"Fetö'nün Emniyetteki Kadın Yapılanması Soruşturnasında 33 Şüpheli Yakalandı"** [15]
  ("33 Suspects Arrested in Investigation on Fetö's Female Structure in Police")

[12] https://www.haberturk.com/feto-nun-guncel-yapilanmasini-10-bini-askin-kamera-kaydi-cozdu-3543502
[13] https://www.hurriyet.com.tr/yazarlar/nedim-sener/feto-ihanet-yapilanmasini-guncelliyor-42350972
[14] https://x.com/HukukiHaber/status/1787744081113731481
[15] https://www.aa.com.tr/tr/gundem/fetonun-emniyetteki-kadin-yapilanmasi-sorusturmasinda-33-supheli-yakalandi/2397145



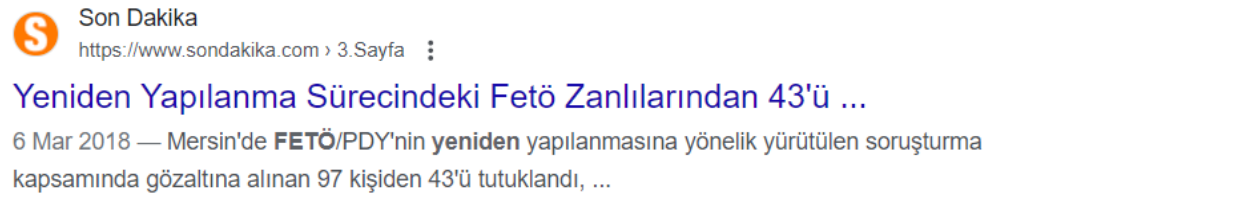
- **"Erzincan Fetö'nün Yeniden Yapılanma Operasyonu : 40 Gözaltı"**[16]
  ("Erzincan Fetö's Restructuring Operation : 40 Detentions")

- **"İstanbul'da Fetö Operasyonu : 21 Şüpheli Tutuklandı"**[17]
  ("Fetö Operation in Istanbul: 21 Suspects Arrested")



- **"İstanbul'da Fetö Operasyonu : 38 Gözaltı"**[18]
  ("Fetö Operation in Istanbul : 38 Detentions")

- **"Antalya Merkezli 8 İlde Fetö'nün Yeniden Yapılanmasına Yönelik Operasyon…"**[19]
  ("Operation on Fetö's Restructuring in 8 Provinces Centered in Antalya...")



- **"Yeniden Yapılanma Sürecindeki Fetö Zanlılarından 43'ü tutuklandı."**[20]

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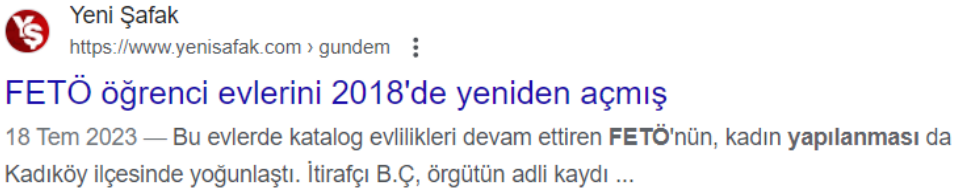
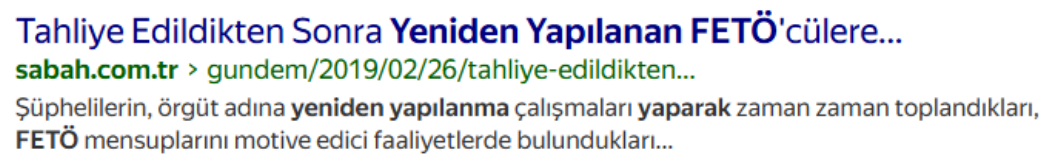
[16] https://www.memurlar.net/haber/731376/
[17] https://www.hukukihaber.net/istanbulda-feto-operasyonu-21-supheli-tutuklandi
[18] https://www.ntv.com.tr/turkiye/istanbulda-feto-operasyonu-38-gozalti,sr46DNay8keIECq0y0wn1A
[19] https://www.ahaber.com.tr/gundem/2021/09/30/antalya-merkezli-8-ilde-fetonun-yeniden-yapilanmasi-operasyonunda-35-zanli-yakalandi
[20] https://www.sondakika.com/3-sayfa/haber-yeniden-yapilanma-surecindeki-feto-zanlilarindan-10628319/

("43 of Fetö Suspects in Restructuring Process Arrested.")



- **"Fetö Öğrenci Evlerini 2018'de Yeniden Açmış"**[21]



- **"Tahliye Edildikten Sonra Yeniden Yapılanan Fetö'cülere …"**[22]
  ("Fetö Reopened Student Housesin 2018")

- **"Yeniden Yapılanmaya Çalışan Fetö'ye Darbe : 33 Gözaltı"**[23]
  ("Crackdown on Fetö Trying to Restructure : 33 Detentions")

- **"X'te Risale-i Nur Sohbet Odalarına Katılan 7 Kişi Tutuklandı"**[24]
  ("7 People Arrested in X for Participating in Risale-i Nur Chat Rooms")

The climate of fear and oppression prevailing in the country is reinforced through this and similar news on television, print media and social media every day. The media, which is under the control of the authoritarian and oppressive government, intensively serves news about the "**restructuring**" investigations to the media, showing the people subjected to the operation being dragged to the courthouses or security directorates in handcuffs, lined up in single file, showing what the political power does to those whom it considers enemies, and thus, the fear that has settled in the country is further exacerbated.

3. RIGHTS VIOLATIONS IN "RESTRUCTURING" INVESTIGATIONS

[21] https://www.yenisafak.com/gundem/feto-ogrenci-evlerini-2018de-yeniden-acmis-4546009
[22] https://www.sabah.com.tr/gundem/2019/02/26/tahliye-edildikten-sonra-yeniden-yapilanan-fetoculere-operasyon
[23] https://www.iha.com.tr/haber-yeniden-yapilanmaya-calisan-fetoye-darbe-33-gozalti-791164
[24] https://t.co/9A8NVDTCTx.

The "**restructuring**" investigations initiated at the behest of the political power in Turkey, which has become overly authoritarian and whose checks and balances have been abolished, are unlawful according to the established case law of the Court of Cassation and the decisions of the Constitutional Court. Because in the investigations and operations carried out under the name of "**restructuring**", market warehouses are raided, oils, rice, pasta and money are confiscated as "**evidence of crime**", in-kind and in-cash aid is provided to victims whose spouses are in detention, and the gathering of a few people, even from the same profession, is illegal, Unimaginable actions such as organizing meals and days out, attending each other's weddings and funerals, giving pocket money or supplementary education to children whose parents have been imprisoned, and meeting their needs can be considered "**acts of terrorism**".

- **The July 15, 2016 coup attempt has been a complete mystery from the very first moment**. For those who are looking for the answer to the question: *"If you want to find the criminal, first investigate who the crime serves!*'" (Alexandre Dumas) or *"Whoever the crime serves is the criminal."* (Cicero).

As human rights lawyers have stated;

*"Those who ordered these operations and those who accuse people of **'terrorism'** without any concrete evidence are committing **'crimes against humanity'**." Although it is stated that these operations were carried out to decipher the structure of a new armed organization, it is not possible to speak of such an organization and structure. Because **all of the activities shown as evidence of restructuring are lawful acts and** cannot be considered within the scope of any crime, even if they were carried out with the instructions of the organization.*

*In accordance with the practice of the Court of Cassation, **visiting members of the organization in prison and meeting their needs is not an organizational activity, nor is** it a crime to provide aid to those who have been dismissed with a Decree Law or who have just been released from prison **for purely humanitarian purposes, for charity** , or **as part of a kinship/neighborly relationship**. Theso-called restructuring investigations, far from being legal, are a continuation of the**'witch hunt'** and **'demonization'** ofa certain group of peoplethat started with the July 15 process. **The new mission of the judiciary** is to turn people who have not been involved in acts of violence into**'civilian dead'** with a systematic effort by reopening organization investigations against them.*

***Yes, there is no doubt that there is a crime. But this crime is committed not by people who have not been involved in any crime and for whom there is no evidence other than template allegations based on assumptions and prejudice, but by the members of the judiciary who authorized these operations**. Even if a person has already been sentenced, can the constitutional and legal rights of this person and his/her family be denied and these rights be used as justification for new accusations ? (Dr. Gökhan GÜNEŞ)*[25]

*These operations are based on **'humanitarian aid'** provided to individuals or their families who have been sentenced for alleged links to the Gülen Movement and their 'work to earn a living', and these investigations are based on the 'prejudice/malicious **intent**' that some individuals who have already been sentenced or are under investigation are engaged in **organizational** activities.*

[25] https://www.tr724.com/hukukcular-uyardi-cemaate-yonelik-yeniden-yapilanma-operasyonlari-insanliga-karsi-suctur/

A HUMANITARIAN ACTIVITY, NOT AN ORGANIZATIONAL ONE !

*First of all, working for a living and providing humanitarian aid to those in needis notan **"organizational**!" but a **"humanitarian"** activity! It is a necessity to sustain life. There are many Court of Cassation decisions on this issue.*

*On the other hand, in its decision dated 21/10/2021 and numbered 2017/36905, the Constitutional Courtstates thatthe judicial authoritiescannot act withthe "prejudice/bad**intentions**"I mentioned above.*

*In the decision, the Constitutional Courtruled that it violates the presumption of innocence fora person with a 'final conviction' for being a member of a terrorist organization to beconsidered to have'**re-established contact**' with the terrorist organization by evaluating '**any new act**' together with'**previous acts**' and to bepunished for being a member of a terrorist organization for this reason.*

*The determination made in this judgment is very important in terms of restructuring operations, and it has been stated that people who have been previously sentenced, investigated or prosecuted may be punished**with** the"**prejudice that they have re-established contact**". Itis a violation of many fundamental rights protected by the Constitution, notably**the presumption of innocence**,to be subjected to investigation for routine activities such as"**work**" or "**humanitarian aid**" for the sustenance oftheir lives.*

*Furthermore, in the application dated 17/11/2021 and numbered 2018/28616 b., the Constitutional Courtconsidered the"**lifetime ban**" ofthe applicant, who received a"**finalized conviction**", from exercising the rights and powers of his professionas a violation of the right to respect for private life.*

*The Constitutional Courtfound the sanction**, which resulted in**the applicant **being unable to practice his profession again** notonly "in the public sector but also in the private sector" "without a specific place and time limit" , to be "**disproportionate**".*

*According to this decision,preventing peoplewho have been"**convicted**" or "**under investigation**" from practicing their professions in order to sustain their livesis a violation of many fundamental rights protected under the Constitution, especially the"**right to respect for private life**".*

*In line with the aforementioned Constitutional Court decisions,it isclearly "**unlawful**"to subject people to investigation for routine activities such as"**work**" or "**humanitarian aid**"for the sake of survival.*

*Despite this,those conducting these"**unlawful**" investigations are clearly committing crimes against humanity beyond misconduct.*(Nevra KADIGİL)[26]

On the other hand ;

***These investigations are justified by** activities such as helping the relatives of detainees and convicts, finding jobs for those dismissed from their jobs by emergency decrees, opening student houses, and organizing motivational meetings to prevent defections from the organization. However, even though these operations are carried out within the scope of an armed organization, no action plan, study or strategy document or evidence or any weapons, which are essential elements for an armed*

[26] https://www.tr724.com/hukukcular-uyardi-cemaate-yonelik-yeniden-yapilanma-operasyonlari-insanliga-karsi-suctur/

organization, have been seized so far. ***Although it is stated that these operations were carried out in order to decipher the structure of a new armed organization****,* it is***not possible to speak of such an organization and structure****. Because all of the activities shown as evidence of restructuring are lawful acts, and even if they are carried out with the instructions of an organization, they cannot be considered within the scope of any crime. Moreover, if the action is a crime, the organizational instruction has a value, but if the action does not correspond to any crime, it does not constitute a basis for any punishment. According to the practice of the Court of Cassation, signing a petition organized upon the call of an armed organization, closing shutters upon the call of an organization, visiting members of an organization in prison and meeting their needs are not organizational activities. Again, as stated by the ECtHR in the Ragıp Zarakolu judgment, arrest and conviction decisions based on* ***legal and routine activities*** *and the exercise of rights regulated in* ***the Constitution and ECHR*** *are unlawful*.(Dr. Gökhan GÜNEŞ)[27]

In this context;

- According to the decision of the 2nd Chamber of the Military Court of Appeals No. 07.05.1980 T., 1980/157 E., 1980/169 K., the "intended act" must be an act aimed at achieving the goal of the armed terrorist organization and must be capable of producing the result and must be of the nature/severity of grave acts such as killing, wounding, bombing. However, none of the acts subject to these investigations can be considered to have this quality. It is a fact that none of the acts charged within the scope of the "**restructuring**" investigations can be considered as **acts of grave quality and intensity towards the organizational order and purpose**, as they do not involve force / violence, threat and grave danger.

- "According to the decision of the Criminal General Assembly of the Court of Cassation numbered 01.02.1988 T., 1988/9-422 E., 1998/1 K., it is not possible to accept that the crime has occurred with the**acceptance that** the persons suspected in the "**restructuring**" investigations**know** that they are members of the organization or that it**is legally determined without hesitation that they are in the organization**.

- According to the decision of the Criminal General Assembly of the Court of Cassation No. 30.04.2002 T., 2002/9-102 E., 2002/236 K., it is not possible to use and accept the actions subject to "**restructuring**" investigations as evidence of a crime, considering **that they are legitimate actions that are not crimes to be committed**, or that they are **actions** performed for individuals who are not involved in crime **with humanitarian feelings**, or that they are **not related to a situation that can be attributed to crime**.

For all these reasons, the restructuring investigations and prosecutions initiated under the compulsion of the current government violate the "Right not to be defamed and the Presumption of Innocence" and thus the "Right to a Fair Trial" enshrined in Article 38, Paragraph 4 of the 1982 Constitution of the Republic of Turkey and Article 6, Paragraph 2 of the ECHR. They violate the "**Right to Immunity from Defamation and the Presumption of Innocence**" and therefore the "**Right to a Fair Trial**" and the " **Principleof Legal Certainty** / **Certainty**" in both the Constitution and the ECHR, and with the unlawfulness inherent in the**"restructuring**" investigations, they also constitute a violation of international conventions and statutes that Turkey has ratified.

4. CONCLUSION

In the second phase of the process that started on July 15, 2016, criminal investigations are being

[27] https://www.drgokhangunes.com/makale/100/

systematically opened against volunteers and sympathizers of the service movement under the name of "**Restructuring**", a concept and crime that was invented again, this time with the accusations of "**Being a Member of an Armed Terrorist Organization**" or "**Aiding an Armed Terrorist Organization**", "**Violation of the Law on the Prevention of Terrorism Financing**".

These investigations **threaten** thousands of citizens, who were previously subjected to criminal investigations under Article 314 of the Turkish Penal Code on similar charges, but were ruled "**No Case to Prosecute**" or were given "**Acquittal**" verdicts by the High Criminal Courts as a result of the prosecutions against them, or who were unjustly convicted in previous prosecutions against them and whose convictions were "**Executed**" by keeping them in closed prisons for years, with a clear attitude of lawlessness and rulelessness.

"**Reconstruction**" investigations and prosecutions have now turned into a **systematic and callous apparatus of genocide**, to the **extent of destroying the material and moral existence of the person**, disregarding human dignity. It has become impossible for people who have been subjected to all these intense and severe traumas to lead a **self-contained**, **non-interventionist** and **secure** life in terms of social life.

It is seen that by serving the news of this investigation, which was initiated with the instructions of the political power in a way that constitutes an open intervention in the judiciary, to the media day by day, social tension and the control of the members of the judiciary are tried to be ensured and it is almost as if the priority agenda is not to let the people belonging to the service movement breathe, that the sharp eyes of the government are on the judicial organization, that it is dangerous for anyone to develop an impartial or other opinion than the political power on this issue, and that an adverse consensus is tried to be created and maintained in all civil and official circles of the society against the members of the service movement, who have been targeted in this regard. It is understood that they have sacrificed and will sacrifice the law once again and again and again in order to make society stop distinguishing between good and evil in the mind and conscience of society and to make the dominance of only the means that will achieve the political goal superior and to ensure the continuation of the marginalization moves that the political power feeds on and to perpetuate their power with this method.

Under all these circumstances, any possible reflex and initiative of the members of the judiciary (which essentially has no independence and assurance of the judiciary) and the police, which are directly affiliated with the political power, to act objectively and in accordance with justice, has been conceptualized under the name of "**Restructuring**" and shaped into criminal accusations, and the social structure and members of the service movement are tried to be shaken, and the "**presumption of innocence**" is tried to be paralyzed and reset with these artificial strokes.

In this way, a modern and new generation massacre, **organized and institutional evil**, almost a modern **Holocaust**, is being tried to be revived and legitimized, this situation is being shoved into the eyes like similar ones in the past, the investigations are being redesigned in order to destroy the public conscience and sense of justice, to numb the masses and to make people thankful that nothing has happened to them yet...

Therefore, it has become undeniable that a community of tens of thousands of adherents, which is an extremely **peaceful** and **authentic movement** of volunteerism and **kindness**, has been forced to migrate from their countries or isolated from the society from which it emerged through endless pressures.

5. RECOMMENDATIONS

In the face of these systematic and unprecedented attacks on personal liberty and freedom, the **main recommendations to the Turkish authorities include**

- Immediately put an end to the "**restructuring**" investigations and similar ones against members of the Hizmet movement,

- To take all legislative, administrative and practical measures and establish control systems, to ensure the full independence of the judiciary and the security of judges as part of the attack on individual rights and freedoms in the country through "**restructuring**" investigations,

The main recommendations to the international community are:

1. Strongly call on the Turkish Authorities to immediately put an end to the rights violations caused by the "**restructuring**" investigations,

2. In accordance with the Charter of the United Nations, the Human Rights Council established an independent commission to investigate the issue and to prepare a report with findings on human rights violations,

3. Imposing sanctions based on the Human Rights Commission report, similar to the political and diplomatic pressure and sanctions imposed on Turkey by the Committee of Ministers based on unimplemented ECtHR judgments.