



JOINT SUBMISSION FOR THE SECOND PERIODIC REVIEW OF TURKIYE BEFORE THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

BY VOLUNTEER JURISTS¹ AND JUSTICE FOR RULE OF LAW² ASSOCIATIONS

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¹ The Volunteer Jurists is a professional, non-political, non-profit and international association, aiming to disseminate, promote and defend democracy, human rights, the rule of law and the independence of the judiciary; and to fight against human rights violations against lawyers.

² Justice for Rule of Law ASBL is a professional, non-political and non-profit association, aiming to; defend judicial independence in the service of the rule of law and a lasting democracy, be in solidarity with the victims of illiberal and populist oppression, inside and outside the EU, contribute to cultural and social integration, as well as to the reintegration of jurists and their families who had to flee persecution in their country of origin.

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I- INTRODUCTION

This joint submission is prepared for the second periodic review of Türkiye before the UN Human Rights Committee. The Committee's session will take place in Geneva between 14 October and 07 November 2024. The Volunteer Jurists and The Justice For Rule of Law Associations are respectively Geneva and Brussels based non-profit organizations. To realize our objectives, we are committed to provide international mechanisms, including the Human Rights Committee (hereinafter the Committee), with vital information on human rights issues. By doing so, we believe that human rights violations can be addressed more efficiently and swiftly by international mechanisms when they are supported with comprehensive and accurate information from organizations like the Volunteer Jurists and Justice For Rule of Law Associations.

Türkiye is a focal point of our attention due to the lack of respect for the independence of the judiciary by the authorities, both internally and externally. In Türkiye, thousands of judges have been dismissed and detained under the pretext of combating terrorism. Those in power have eradicated judicial independence and transformed the judiciary into a tool for silencing dissenting voices. Mass detentions of judges and prosecutors, along with allegations of torture and inhumane treatment, are alarmingly prevalent in the country.

This submission also highlights the Government-driven Association of Judicial Unity's (YBD) organizational structure's inherent lack of legitimacy, influenced by non-democratic forces and motives to eliminate dissent within society. We question the legitimacy of representing all segments and underscores the damaging impact of the YBD's majority in the HSK elections, leading to purges under the pretext of the July 15, 2016 coup attempt. The report contends that the only path out of this judicial predicament is a return to the rule of law, a notion eradicated by the Government and the YBD.

As associations that are dedicated to safeguard the independence of the judiciary and the rights of judges and prosecutors, we have prioritized the instances that primarily affect judges, prosecutors, and lawyers. We rely on the Committee to adopt concluding observations in a way that ensure the full implementation of the Convention and pave the way of reinstating justice in the republic of Türkiye. We also sincerely request that the Committee take the findings of this report into consideration, include them in its concluding observations after posing relevant questions to the representatives of Türkiye during the hearing.

II- LACK OF JUDICIAL INDEPENDENCE

Türkiye ranked 117th among 142 countries in the Rule of Law Index of 2023³. This is a clear indication of the state of the judiciary's respect for democracy, the rule of law, and human rights. Freedom House has placed Türkiye in the league of *'Not Free'* countries for seven consecutive years since 2016, due to the lack of an independent judiciary and growing threats to all fundamental freedoms. Following the July 2016 coup attempt, the country has experienced a substantial number of detentions, including over 300 journalists, party co-chairs, and elected mayors associated with the pro-Kurdish People's Democratic Party (HDP). Thousands of judges, prosecutors, and lawyers, including key figures like the head of the dissolved association of judges (YARSAV) and the president of the Progressive Lawyers Association (ÇHD) face terrorism-related charges. To comprehend the root cause of this decline, one needs to look into the developments that unfolded in the judiciary especially in the last decade.

Seeing the attempted coup d'état of July 2016 as a "gift from God"⁴, President Erdoğan used it as a pretext to implement a widespread purge against the independent judiciary, political opponents, and critical voices. On 16 July 2016, in the immediate aftermath of the botched coup attempt of 15 July, 2,745 judges and prosecutors were suspended and as of August 2016, dismissed from their posts in a 60-page decision that was completely contrary to law and procedure. In the following months, this number exceeded 4,500, and in these 60 pages, nothing was attributed to any of these judges, except for about 50 judges and prosecutors who were dealing with some high-profile cases. Ironically, these were the cases in which Erdogan openly said he was acting as "chief prosecutor" to express his political support. Names of 4,500 judges were included in the purge lists attached to the same copy-paste decisions. Thus, there was no example of individualization or reference to a single specific act attributed to any of these judges. On July 16, 2016, five members of the High Council of Judges were also dismissed before the expiry of their four-year duty term without respect for any judicial security.

³ <https://worldjusticeproject.org/rule-of-law-index/global/2023/Turkiye/>

⁴ [Erdoğan says coup was 'gift from God' to reshape country, punish enemies – EURACTIV.com](#)

Similarly, the Constitutional Court itself purged two of its judges for alleged baseless links with a terrorist organization only on the grounds of “information from the social environment” and “common opinion emerging over time”. Regarding this decision, the Venice Commission stated that “*The judgment does not refer to any evidence against the two judges concerned*”.⁵ The arrest and detention of judges and prosecutors⁶ indeed started even before the coup attempt and this course has been pursued after the repeal of the state of emergency in July 2018.

More than 2,700 judges were arrested by using a similar copy-paste decision, without any evidence. They were arrested and subsequently dismissed on the grounds of arbitrary decisions that only contained vague, stereotypical, and non-individualized reasoning. In addition, about 10 judges who refused to arrest their colleagues based on such an order were arrested within a few days. The vast majority of the detained judges, including two members of the Constitutional Court, were held in overcrowded prisons, and some are still being held in solitary confinement, contrary to Turkish law and international standards.

The suspension decisions were presented as evidence of the detention of judges/prosecutors, and then their detention on remand was presented as evidence of their dismissal from office. Next, their dismissal from office was taken as evidence of their prosecution and conviction. Finally, these convictions were used as evidence for the rejection of their appeals by the Council of State. First, they were suspended, dismissed, or imprisoned, and then the search for evidence began. Many of them were arrested in their offices in the courthouse. How these arrests and dismissals were carried out sent a strong message to those judges and prosecutors who remained in office.

The European Network of Councils for Judiciary suspended the observer status of the High Council for Judges and Prosecutors of Turkey in December 2016, as it no longer complied with ENCJ Statutes, functioning as an institution independent of the executive and legislature, thus jeopardizing the judiciary's independent delivery of justice.⁷

⁵ Venice Commission, Opinion on Emergency Decree Laws Nos. 667-676 Adopted Following the Failed Coup of 15 July 2016, 12 December 2016, §§ 135, 136

⁶ In 2015, Süleyman Bağrıyanık, the former Adana Chief Public Prosecutor, along with Ahmet Karaca, the former Adana Deputy Chief Public Prosecutor, and prosecutors Aziz Takçı and Özcan Şişman were arrested due to their use of judicial powers ordering a search of trucks destined for Syria, subsequently revealed to be affiliated with the National Intelligence Organization. In Istanbul, Judge Metin Özçelik and Judge Mustafa Başer were arrested, accused of being a member of a terrorist organisation.

⁷ <http://www.platfompij.org/wp-content/uploads/CPJreport.pdf>.

Independence of the Turkish judiciary was further imperilled following the constitutional amendments approved by the referendum on 16 April 2017.⁸ The constitutional amendment changed the structure, composition, and methods of the appointment of the previous judicial council (HSK). Four out of the 13 members are now appointed by the President of the Republic. The Minister of Justice, who presides over the HSK, and his deputy are *ex officio* members. The remaining seven members are appointed by the Turkish Parliament. All members appointed by the parliament are to be elected by a qualified majority, which the ruling AKP and the Nationalist Movement Party have at present. Consequently, the appointment of all members of the HSK is, in one way or another, factually controlled by the executive government. None of the members of the HSK are elected by judges or public prosecutors.⁹ The amendments were assessed by the Venice Commission as lacking sufficient checks and balances as well as endangering the separation of powers between the executive and the judiciary.¹⁰ As a result of the constitutional amendments in 2017, the Constitutional Court (CC) now comprises 15 judges. Among them, three judges are elected by Parliament, and the President of the Republic appoints the remaining 12 judges.

In her 2019 report, the Council of Europe Commissioner for Human Rights highlighted significant issues, emphasizing the lack of independence and partiality of the Turkish judiciary to political interests. The Commissioner noted the abrupt dismissal of more than 4,000 colleagues without procedural safeguards, with half of the judiciary recruited through opaque procedures essentially controlled by the executive. The report pointed out that removals and transfers aim to influence decisions and legal proceedings, with public officials openly expressing preferences in an intimidating manner. In light of these circumstances, the Commissioner concluded that expecting the Turkish judiciary to act independently from political power and uphold the rule of law and human rights would not be reasonable.”¹¹.

⁸ ICJ, The Turkish Criminal Peace Judgeships and International Law, Briefing Paper, Geneva, 2018, p. 5.

⁹ ICJ, Turkey’s Judicial Reform Strategy and Judicial Independence, Briefing Paper, Geneva, November 2019, p. 3.

¹⁰ European Commission, [Key findings of the 2018 Report on Turkey \(europa.eu\)](https://ec.europa.eu/euro-justice/venice/key-findings-of-the-2018-report-on-turkey)

¹¹ <https://rm.coe.int/report-on-the-visit-to-turkey-by-dunja-mijatovic-council-of-europe-com/168099823e>, paras.122-123.

The Platform for an Independent Turkish Judiciary¹² has maintained that the mass dismissals and mass arrests without proper individualized accusations have had a clear “chilling effect” within the judiciary. So, judges and prosecutors who are still in power also fear being subject to such arbitrary measures. As for the mass dismissals, no minimum procedural requirements (not even a hearing as a basic benchmark for adversarial procedures) were followed.¹³

Based on this backdrop, Parliamentary Assembly of the Council of Europe adopted Resolution 2156 (2017) which made Türkiye the first and only member state to the CoE that has been demoted to monitoring status. Committee of Ministers of the CoE has formally launched an infringement procedure against Turkey in 2022 for failing to comply with the ECHR judgements¹⁴.

A- Continuous forced transfer of judges

Judges and prosecutors in Türkiye are subject to reassignments or removals, without clear and transparent criteria. These measures have been used to influence judicial decisions or to target judges who may be perceived as not aligning with the government's political agenda. In May 2019, the Judicial Reform Strategy announced a guarantee of geographical tenure that should be introduced for judges with a certain professional seniority and based on merits. A day after the announcement of the Strategy, 4,027 judges and prosecutors were transferred. No reason was given for the transfers apart from “the requirements of the service.”¹⁵

In its report of June 2016, International Commission of Jurists (ICJ) expressed that the practice of rotating judges was being applied as a form of hidden disciplinary sanction.¹⁶ The European Commission echoed this view in April 2018 stating that “*there is a need for legal and constitutional guarantees to prevent judges and prosecutors from being transferred against their will.*”¹⁷ ECtHR has declared the system of transferring judges as incompatible with the principles of the rule of law, as established in its Bilgen v. Turkey case.

¹²[Situation-of-Turkish-Judiciary-Platform-Report.pdf \(medelnet.eu\).](#)

¹³<http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-for-ordering-release-of-gulen-suspects.aspx?pag.ID=238&nID=111576&NewsCatID=509>

¹⁴ <https://www.hrw.org/news/2022/02/02/turkey-council-europe-votes-infringement-process>

¹⁵ European Commission 2020 report, page. 25

¹⁶ ICJ, Turkey: the Judicial System in Peril - A Briefing Paper, Geneva, June 2016, p.18.

¹⁷ European Commission, Turkey 2018 Report, Doc. No. SWD(2018) 153 final, 17 April 2018, p. 24.

B- Emergency decrees threatening judges

In the aftermath of the 2016 failed coup attempt, one-third of Türkiye's judges and prosecutors were summarily dismissed without individual investigation or a chance for judicial review. Commissioner for Human Rights of the Council of Europe noted that mass dismissals created an "atmosphere of fear" among remaining judges and prosecutors, emphasizing that the end of the state of emergency did not eliminate political control over the judiciary.¹⁸ While the state of emergency lapsed in July 2018, the power of the HSK to dismiss judges and prosecutors under the same criteria as under emergency legislation was maintained for a further three years under Law No. 7145 which came into force in July 2018. Since then, there have been at least 24 more dismissals of judges and prosecutors arbitrarily.

C- Abusive use of anti-terror legislation

In August 2020, Special Rapporteurs of the UN OHCHR mechanism jointly penned a letter addressed to the Turkish Government. The letter stated¹⁹(dated 26 August 2020, with Reference Number OL TUR 13/2020) "Turkey's anti-terrorism legal framework grants the Government excessive authority over the judiciary, thus undermines its independence. Law No. 7145 gives the Government the authority to dismiss any public official, judge, or prosecutor solely based on an "assessment" "connection" or "affiliation" with a "structure, formation or group" that Turkey's National Security Council has "determined to operate against the national security of the state." National Security Council (MGK) as a security entity being in a position to make such determinations without judicial oversight and review is extremely troubling."

United Nations Working Group on Arbitrary Detentions (WGAD) repeatedly stated that widespread and systematic imprisonment practices based on vague terrorism charges in Türkiye since 2016 may constitute *crimes against humanity*²⁰.

¹⁸ <https://rm.coe.int/third-party-intervention-12-cases-v-turkey-on-freedom-of-expression-an/1680764ef6> para. 35.

¹⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=25482>

²⁰ Inter alia: <https://www.ohchr.org/sites/default/files/documents/issues/detention-wg/opinions/session96/A-HRC-WGAD-2023-3-AEV.pdf>, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_47_Advance_Edited_Version.pdf, https://www.ohchr.org/sites/default/files/Documents/Issues/Detention/Opinions/Session88/A_HRC_WGAD_2020_51_Advance_Edited_Version.pdf

ECtHR in its *Yalçinkaya v. Türkiye* case found Türkiye in systemic and widespread breach of Article 6, Article 11, and Article 7 of the Convention²¹. In the decision, ECtHR expressly referred to Article 46 of the Convention and stated that there are currently more than 8.000 pending applications before the ECHR and more than 100.000 cases before the Turkish courts that will eventually reach Strasbourg. Hence, this landmark decision nullifying investigations and convictions along the principle '*nullum crimen sine lege*' reveals the gravity of the issues affecting not only Yalçinkaya but also hundreds of thousands of applicants in the context of a systemic failure in guaranteeing fair trial, legal certainty, and freedom of expression. However, Turkish authorities persistently ignore the Yalcinkaya decision just like Kavala and Demirtas decisions *inter alia*.

Before its dismantling, the Turkish Association of Judges and Prosecutors (YARSAV) had more than 1800 members. After July 2016, It has been dissolved through an state of emergency decree, which further damaged judicial independence and of the rule of law. Despite its dissolution, YARSAV is still recognized as a member of European Association of Judges (EAJ) and Magistrats Européen pour la Démocratie et les Libertés (MEDEL). The President of YARSAV, Murat ARSLAN, was arrested and sentenced to 10 years of imprisonment after a trial that failed to meet the minimum requirements of due process, as observed by MEDEL. Despite the legal challenges, Mr ARSLAN was honoured with the Vaclav Havel Human Rights Prize in 2017 by the Parliamentary Assembly of the Council of Europe.²²

²¹ <https://hudoc.echr.coe.int/fre#%7B%22tabview%22:%5B%22document%22%5D%2C%22itemid%22:%5B%22002-14187%22%5D%7D>

²² <https://www.medelnet.eu/index.php/news/europe/426-report-of-medel-s-observertothe-ongoing-trial-of-murat-arслан-president-of-yarsav-in-german-and-english>

III- SPECIAL ROLE OF THE ASSOCIATION OF JUDICIAL UNITY (YBD)

Within the scope of this submission, we would like to elucidate the special role of the Association of Judicial Unity (Original name in Turkish: Yargıda Birlik Derneği) in the erosion of the independence of the judiciary. In Türkiye, the initiative to erode judicial independence by the executive branch through a civil society organization, the Association of Judicial Unity (YBD) has been effectively utilised.²³ The judiciary is tethered to the government through an organization originating within its own ranks, along with those who bowed to the government's plans to take over the judiciary and having their shares in this takeover. While there are judges who aren't affiliated with this organization but still serve the government, the YBD's endeavours to sustain a judiciary aligning with government policies systematically and continuously are more perilous than judges individually pledging loyalty to the government. By spotlighting this unusual scenario, we aim to illuminate how a "civil society organization" was instrumentalised in extermination of the rule of law in Türkiye.

In Türkiye, the Council of Judges and Prosecutors (HSK) plays a pivotal role in overseeing the judiciary's administration. The Council handles fundamental functions, including admitting judges and prosecutors to the profession, assigning them to various roles and courts, addressing disciplinary matters, and appointing them to higher courts.²⁴ Following a Constitutional amendment in 2010, it was envisaged that some HSK members would be elected from among judges and prosecutors themselves.²⁵ The first election took place in 2010, with a subsequent election in 2014 being central to our discussion. The Judicial Unity Platform, openly supported by the government prior to the second election, commenced operations in 2014.²⁶ As noted above, the Association of Judicial Unity was first established as the Platform for Judicial Unity in 2014, in the run up to the October 2014 elections for members of the HSK. Following the success of its candidates in these elections, it became the Association of Judicial Unity (YBD). Within eight months of their establishment they had

²³ <https://yargidabirlik.org.tr/> (26.12.2023)

²⁴ <https://www.cjp.gov.tr/about-us> (26.12.2023)

²⁵ <https://www.iemed.org/publication/turkeys-constitutional-reform-and-the-2010-constitutional-referendum/> (28.12.2023)

²⁶ https://www.bbc.com/turkce/haberler/2014/10/141018_yeni_turkiye_yeni_yargi (29.12.2023)

registered 5,000 judges and prosecutors as members, making them, in record time, the judicial association with the highest number of members nationally.²⁷

Throughout the election, the government utilized public resources to endorse HSK candidates affiliated with this platform.²⁸ Consequently, the platform's member candidates secured a majority in the HSK, thereby assuming control of the judiciary. Subsequently, this platform evolved into an Association, currently boasting around 10 thousand members, constituting half of the judiciary.²⁹ The ensuing sections of this submission elaborate on how the systematic activities of this association placed the judiciary at the disposal of the government.

A. Government's role and support in the establishment phase

It is an indisputable fact that the Erdoğan government established the Judicial Unity Platform (YBP), openly accepted by government officials and members.³⁰ Various politicians and bureaucrats expressed their supports openly.³¹ The then-Prime Minister and AKP Chairman Ahmet Davutoglu, in a meeting with YBP members, expressed support for their cause, confirming the platform's goals.³² The then-Justice Minister Bekir Bozdog stated that they established the YBP with many judges and prosecutors well-known to the public, aiming to cleanse the judiciary from the Gulenists.³³ Birol Erdem, a former member of the Council of Judges and Prosecutors (HSK), provided detailed insights into the formation of the YBP, describing the process and its objectives, which indicate interference of government in every

²⁷ <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf> (26.12.2023)

²⁸ <https://www.hurriyetdailynews.com/pm-davutoglu-meets-judicial-officers-discusses-parallel-structure-71259>

²⁹ https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-10/turkey_report_2020.pdf

³⁰ <http://www.hurriyetdailynews.com/pm-davutoglu-meets-judicial-officers-discusses-parallel-structure.aspx?pageID=238&nID=71259&NewsCatID=338> September/03/2014 (27.12.2023)

<http://www.al-monitor.com/pulse/originals/2014/09/turkey-judiciary-battle-gulen-akp.html##ixzz3CWf8cTyz>
Semih İDİZ, <http://www.hurriyetdailynews.com/erdogans-new-turkey-strives-to-curb-judiciary-.aspx?pageID=449&nID=71250&NewsCatID=416> September/04/2014 (26.12.2023)

³¹ Regarding allegations of undue influence over the election process, see European Commission, Turkey report 2015, p. 56. Ergun Özbudun, Turkey's Judiciary and the Drift Toward Competitive Authoritarianism, The International Spectator, Issue 50/2, DOI: 10.1080/03932729.2015.1020651, pp. 42–55.

³² https://www.todayszaman.com/national_claim-government-lobbying-to-influence-judiciary-elections_357282.html & <https://www.haberturk.com/gundem/haber/986597-paralel-yapi-da-degerlendirildi>
& Suat Toktaş ile Liderler Özel Söyleşisi (Ahmet Davutoğlu) | 6 Eylül 2022, Halk TV
(<https://www.youtube.com/watch?v=hPDZjPtUJdo>) (27.12.2023)

³³ <https://www.odatv4.com/guncel/bekir-bozdog-odatvye-konustu-benimle-calisan-insanlardan-bir-tanesi-bile-boyle-soylerse-170170> (27.12.2023)

step towards the establishment.³⁴ Harun Kodalak, a founding member of the YBP, testified in a trial, confirming the initiation of the YBP during meetings with the Ministry of Justice.³⁵ Abdullah Yaman, a current judge at the Court of Cassation, wrote about the early stages of the YBP, revealing that meetings were initiated by the Ministry of Justice, aiming to shape judiciary.³⁶ The YBP actively utilized government resources during its election campaign, receiving support such as free meeting rooms and arranged transportation for judges.³⁷

In summary, the formation process involved discussions, consultations, and outreach to judges from various backgrounds, with active support from the Ministry of Justice. The YBP actively benefited from government resources during its election campaign. The platform's activities and objectives have been publicly disclosed by government officials and founding members.³⁸

B. Government Support for the Judicial Council (HSK) Elections

Turkish President Recep Tayyip Erdoğan and the AKP made extensive efforts to secure the success of the Justice Unity Platform in the High Council of Judges and Prosecutors (HSK) elections.³⁹ Key figures, including Fahri Kasirga, former Secretary-General of the Presidency and former Minister of Justice, actively campaigned for the Platform by visiting judicial institutions. The then-Justice Minister Bekir Bozdağ promised significant salary improvements for judges and prosecutors and an amnesty of judges' disciplinary penalties to reinforce YBP's election promises.⁴⁰

³⁴ Statement given on 28.11.2016 in the investigation file numbered 2016/104109 by Ankara Republic Chief Public Prosecutor's Office.

³⁵ <https://www.sozcu.com.tr/adalet-bakanligi-eski-mustesari-birol-erdeme-fetoden-dava-acildi-wp5344176> Decision numbered 2019/11 E, 2021/5 K. given by the 9th Criminal Chamber of the Court of Cassation regarding the then Undersecretary of the Ministry of Justice Birol Erdem in its capacity as the First Instance Court.

³⁶ <https://www.karar.com/yazarlar/elif-cakir/yargi-camiasinin-vidanini-rahatsiz-eden-gozalti-4235> (20.12.2023)

³⁷ Istanbul Public Prosecutor's Office made its choice in HSYK elections: Buses for the government supporters! <https://www.diken.com.tr/istanbul-bassavciligi-hsyk-secimlerinde-arafini-secti-hukumetin-destekledigi-ybp-icin-arac-tuttu/> (20.12.2023)

³⁸ "The Ministry of Justice has established the Judicial Unity Platform for the upcoming HSYK membership elections, which will take place next fall. Members of the platform, traveling province by province, are trying to create their own lists." <https://www.cumhuriyet.com.tr/haber/yargida-cemaate-karsi-yeni-ittifak-64117>

³⁹ <https://www.expressioninterrupted.com/judicial-crisis-what-changed-what-remains-the-same-and-the-path-ahead/> (26.12.2023)

⁴⁰ Thomas Stadelmann (Editor), Democracy falling apart: Role and Function of Judicial Independence, Separation of Powers and the Rule of Law in a Constitutional Democracy – The Turkish Judiciary in 2018. p.40-41 & <https://www.cagdaskocaeli.com.tr/haber/4604763/kasirga-adliyeyi-ziyaret-etti> & <https://www.hurriyet.com.tr/gundem/adalet-bakani-bekir-bozdogdan-hakim-ve-savcilara-cifte-mujde-26859629>

Under the guidance of the Undersecretary of the Justice Ministry, the government collaborated with YBP, organizing confidential sessions and administering surveys among the “accredited” members of the judiciary.⁴¹ YBP revealed its candidates, stressing objectives related to social and economic benefits, remission of punishments, and specific reforms.⁴² The then-Justice Minister Bekir Bozdağ proposed legislative changes aligning with YBP's demands, indicating potential election-related motivations.⁴³ AKP's Mahir Ünal warned that if YBP lost the election, the government would not recognize the results, reflecting a strategy of fear and intimidation.⁴⁴ Ultimately, YBP clinched the majority of seats in the HSK elections, underscoring the efficacy of the government's backing.⁴⁵

C. Post-HSK election dynamics: Unfolding impact of the Platform's triumph

Following its triumph in the HSK elections, the Platform underwent a significant transformation, rebranding itself as the “Yargıda Birlik Derneği”-YBD (Association of Judicial Unity) and obtaining distinct legal identity. Membership in the association is exclusive, requiring the endorsement of three existing members, with judges and prosecutors barred from dual membership.⁴⁶ With the subsequent transfer of HSK administration to YBD, those aligning with the government agenda within the association experienced swift career advancement. Simultaneously, members of the judiciary maintaining their independent stance faced consequences, including purge and disciplinary investigations.⁴⁷

⁴¹ <http://www.medyagundem.com/yargida-paralel-orgute-karsi-birlik/> &

<https://www.aa.com.tr/tr/turkiye/yargida-birlik-platformu-adaylarini-acikladi/126515> (25.12.2023)

⁴² <https://www.memurlar.net/haber/482227/hakim-ve-savcilara-zam-disiplin-cezalarina-af.html> (19.12.2023)

⁴³ <https://www.hurriyet.com.tr/gundem/hakim-ve-savcilara-1155-tl-zam-27169289> &

<https://www.hurriyet.com.tr/gundem/adalet-bakani-bekir-bozdogdan-hakim-ve-savcilara-cifte-mujde-26859629> (26.12.2023)

⁴⁴ <https://www.cumhuriyet.com.tr/haber/akp-demokrasisi-kazanirsak-mesru-kaybedersek-gayrimesru-123637>

⁴⁵ <https://www.cumhuriyet.com.tr/haber/yargi-da-akpye-baglandi-129695> &

https://www.bbc.com/turkce/haberler/2014/10/141018_yeni_turkiye_yeni_yargi (23.12.2023)

⁴⁶ <https://yargidabirlik.org.tr/ybd-hakkinda/uyelik-kosullari> (26.12.2023)

⁴⁷ The transfers of 74 judges and prosecutors assigned to the Supreme Council of Judges and Prosecutors (HSK) and the Ministry of Justice were carried out through the Judicial Judiciary Decree Law No. 2710 dated 27.11.2014. Additionally, 7 administrative judges had their assignments changed, except for those who requested transfers through the Administrative Judiciary Decree Law No. 2711 on the same date. This decree affected candidates who participated in the HSK elections on October 12, 2014, did not succeed, but received high votes. They were reassigned to other cities without making requests and before the completion of their terms of duty. Details of the decree can be found at:

https://www.hsk.gov.tr/Kararnameler/DuyuruOku/594_hakimler-ve-savcilar-yuksekkurulu-birinci-dairesinin-27112014-tarihli-kararnamesi.aspx (24.12.2023)

Furthermore, on 28.11.2014, the assignments of 2 judges serving in the Ministry and the Constitutional Court were changed by the Judicial Judiciary Decree Law No. 2714.

YBD, as underscored in international reports, evolved into a mechanism ensuring complete alignment between the Turkish judiciary and the executive branch.⁴⁸ Under YBD's influence, the HSK issued consecutive decrees swiftly relocating thousands of judges and prosecutors, illustrating a deliberate and uncompromising strategy. The Constitutional Court, in its decision, acknowledged that since 2014, the HSYK had been reassigning judges and prosecutors based on unofficial lists, affirming the arbitrary nature of these actions.⁴⁹

D. Profiling in the Judiciary: Unveiling the Harsh Ramifications

After the attempted coup on July 15, 2016, the Ankara Chief Public Prosecutor's Office issued arrest warrants for numerous judges and prosecutors.⁵⁰ Subsequently, it came to light that the YBD, in collaboration with the Ministry of Justice and intelligence units, played crucial roles in profiling judges and prosecutors. The individuals implicated in the events of the alleged coup on July 15, 2016, were systematically classified into two categories: those displaying allegiance to the government and those perceived as disloyal. This profiling procedure, extending over two years, meticulously identified the active roles of YBD members within the judiciary, alongside designating judges and prosecutors as either supportive or deemed "traitors." At approximately 3 a.m. on the night between July 15 and July 16, a sweeping action

Details can be found at: https://www.hsk.gov.tr/Kararnameler/DuyuruOku/595_hakimler-ve-savcilar-yuksekkurulu-birinci-dairesinin-28122014-tarihli-kararnamesi.aspx (24.12.2023)

Similarly, on 18.12.2014, the assignments of 66 judges in the Court of Cassation were changed, except for the requests of these judges, through the Judicial Judiciary Decree Law No. 2805.

Details can be found at: https://www.hsk.gov.tr/Kararnameler/DuyuruOku/603_hakimler-ve-savcilar-yuksekkurulu-birinci-dairesinin-18122014-tarih-ve-2805-sayili-kararnamesine-iliskin-duyuru.aspx (24.12.2023)

Furthermore, the assignments of 784 judges and prosecutors were changed by the Judicial Judiciary Decree Law No. 2015/24 dated 15.01.2015, and the assignments of 104 administrative judges were changed by the Administrative Judiciary Decree Law No. 2015/25 on the same date.

Details can be found at: https://www.hsk.gov.tr/Kararnameler/DuyuruOku/614_hakimler-ve-savcilar-yuksekkurulu-birinci-dairesinin-15012015-tarih-ve-20152425-sayili-adli-ve-idari-yargi-kararnamelerine-iliskin-duyuru.aspx (24.12.2023)

Finally, on 05.03.2015, the assignments of 2 administrative judges serving in the Ministry of Justice and the Constitutional Court were changed by the Administrative Judiciary Decree Law No. 382, except for their requests.

Details can be found at: https://www.hsk.gov.tr/Kararnameler/DuyuruOku/632_hakimler-ve-savcilar-yuksekkurulu-birinci-dairesinin-05032015-tarihli-ve-382-sayili-idari-ve-yargi-kararnamesi.aspx (24.12.2023)

For a comprehensive overview of the 2015 judicial and administrative judiciary main decree, please refer to: https://www.hsk.gov.tr/Kararnameler/DuyuruOku/668_2015-yili-adli-ve-idari-yargi-ana-kararnamesi.aspx

⁴⁸ <https://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/> (11.01.2024)&

<https://medelnet.eu/category/news/situation-in-turkey/> (11.01.2024)

⁴⁹ <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2016/49158> (10.01.2024)

⁵⁰ <https://www.aa.com.tr/tr/15-temmuz-darbe-girisimi/-2-bin-745-hakim-ve-savci-hakkinda-gozalti-karari/609308> (12.12.2013) & *Case Of Turan And Others V. Turkey*

<https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-213369%22> (10.12.2023)

unfolded, resulting in the suspension of around 2,850 judges and prosecutors, with simultaneous arrest warrants issued against them. Remarkably, within a remarkably brief span of six hours, a comprehensive list detailing the purported involvement of 2,850 judges and prosecutors in the coup attempt was compiled, complete with their respective courts and registry numbers. The inclusion of a deceased prosecutor and retired judiciary members on this list strongly suggests its preparation well in advance of the actual coup attempt.⁵¹ Later on listed judges and prosecutors faced severe consequences, including dismissals, arrests, and alleged torture in detention.⁵² The overall pattern suggests a systematic effort to eliminate judges and prosecutors perceived as opponents through a process of profiling, blacklisting, and subsequent dismissals and arrests.⁵³

E. Shaping the Turkish Judiciary: Unravelling the impact of YBD

The AKP government, under the leadership of Erdoğan, introduced substantial amendments to the laws governing Court of Cassation and Council of State through Law No. 6572. Enacted on December 2, 2014, this law restructured both institutions, establishing eight new chambers in Court of Cassation and allocating specific roles to Council of State.⁵⁴

Law No. 6572 resulted in the creation of eight new chambers in Court of Cassation, bringing the total membership to 129, including 8 Chamber Presidents and 121 members. HSK selected 144 members for Court of Cassation, with 121 being members of the newly formed YBD. Notably, even those not officially part of YBD but actively involved in its founding or subsequent activities were chosen as members.⁵⁵

Council of State, under the same law, was allocated 2 Chamber Presidents, 37 members, 23 Prosecutors, and 50 Inquiry Judges. The HSK selected 30 members for Council of State on December 15, 2014, with 11 of them being YBD members. Similar to Court of Cassation, non-

⁵¹ <https://www.sozcu.com.tr/olen-savci-nasil-ihrac-edildi-wp1465947> (09.11.2023)& <https://www.timeshighereducation.com/news/turkey-purge-crackdown-may-cause-exodus-top-scholars> (19.12.2023)

⁵² <https://www.hrw.org/report/2016/10/26/blank-check/turkeys-post-coup-suspension-safeguards-against-torture> (04.01.2024) & <https://stockholmcf.org/persecuted-members-of-high-courts-held-in-solitary-confinement-in-turkish-prisons/> (04.01.2024)

⁵³ <https://www.reuters.com/investigates/special-report/turkey-judges/> (02.01.2024)

⁵⁴ Choi, G. (2016). Judges and their Allies: The Synergy between the Constitutional Court and Judicial Support Networks in Turkey. *Berkeley Undergraduate Journal*, 29(2). <http://dx.doi.org/10.5070/B3292033068> Retrieved from <https://escholarship.org/uc/item/13j5b83h>

⁵⁵ Ergun Özbudun (2015) Turkey's Judiciary and the Drift Toward Competitive Authoritarianism, *The International Spectator*, 50:2, 42-55, DOI:10.1080/03932729.2015.102065

official YBD members actively participating in the Association's activities were selected as members, leading to a redefinition of responsibilities within Council of State.

Through the HSK, political power gained the majority by electing members themselves, solidifying control over the management of Court of Cassation and Council of State.

The most significant changes occurred after the July 15, 2016, coup attempt and the subsequent Law No. 6723 enacted on July 23, 2016. This law led to the termination of all members' terms in Court of Cassation and Council of State, with HSK re-electing “suitable individuals”. Subsequently, Court of Cassation and Council of State became entirely aligned with political power.⁵⁶

Of the 267 Court of Cassation members elected on July 25, 2016, 150 were YBD members; similarly, out of 96 Council of State members elected, 14 were YBD members. Those who actively supported the Judicial Unity Platform, irrespective of YBD membership, were also elected.⁵⁷ Many judges and prosecutors who were not officially members of YBD but actively participated in the activities of YBD, engaged in profiling activities against independent judges and prosecutors in their regions, and were known as volunteers of YBD among judiciary members, were found not to have officially joined YBD for various reasons.⁵⁸

Erdogan and AKP strategically aimed to manipulate the composition of high courts to increase their influence over critical cases and to appoint members to influential positions in institutions such as the Constitutional Court, Council of Judges and Prosecutors (HSK) , and Supreme Election Board (YSK).

F. Quantifying the Judicial Influence: Statistical Insights into the YBD

The effectiveness of YBD in the judiciary is clearly understood from the following statistics. The roster of judges and prosecutors affiliated with the YBD, serving as the foundational dataset for this report, was initially disclosed on YBD's website on April 30, 2021, coinciding with the announcement of attendees at the General Assembly meeting. Subsequently, due to

⁵⁶ Human Rights Foundation report, https://hrf.org/wp-content/uploads/2019/06/Turkey-ECtHR-Report_April-2019.pdf (29.12.2023)

⁵⁷ Mehmet Bakır ÖZKAN & Dr. Hasan DURSUN, Türkiye Yargisinin Üzerindeki Gölge: Yargıda Birlik Derneği, CROSSBORDER JURISTS ASSOCIATION, <https://www.crossborderjurists.org/tr/turiye-yargisinin-uzerindeki-golge-yargida-birlik-dernegi-raporu/> (04.01.2014)

⁵⁸ Mehmet Bakır ÖZKAN & Dr. Hasan DURSUN, *ibid.*

public discussions surrounding the mentioned judicial figures, the list was withdrawn from the website. Consequently, although our report was compiled in September 2024, the names of YBD members in the dataset were derived from those invited to the General Assembly in April 2021. Information regarding individuals who joined YBD after April 30, 2021, is not available in public sources.⁵⁹

The names of all members of the Court of Cassation and the Council of State could not be obtained, as this data was not disclosed on the websites of the respective high courts or elsewhere. For our analysis, names listed in the member election decisions published in the Official Gazette by the HSK since October 2014 were consolidated. These names were then cross-referenced with the list provided by YBD to form our conclusions. Presently, the Court of Cassation comprises 380 members. However, our study identified and utilized 454 elected members for comparison. The additional 74 names stem from the fact that some members elected until July 15, 2016, did not secure re-election thereafter. A parallel approach was adopted for the analysis of Council of State members.⁶⁰

When analysing these findings collectively, a conspicuous pattern emerges, revealing that the bureaucratic echelons of the Ministry of Justice, the high courts, and the High Election Board responsible for elections are predominantly comprised of judicial members associated with the YBD. The pronouncements and decisions emanating from these institutions unmistakably align with the objectives of the YBD.

Among the 85 founding members of YBD, a substantial 46 currently hold active positions within the Constitutional Court, Court of Cassation, Council of State, High Election Board, or occupy high-ranking administrative roles within the Ministry of Justice. To fully grasp YBD's inception, organizational structure, and subsequent activities in relation to the Erdoğan-AKP government, it becomes imperative to consider the criticisms and observations leveled against the Turkish judicial system by both national and international reputable individuals and organizations. The remaining 39 members wield pivotal roles within the judicial system, serving as members of Regional Administrative Courts, Presidents of Regional Courts of Justice, Presidents of Heavy Penal Courts, Presidents of Administrative or Tax Courts, Chief

⁵⁹ <https://hukukpenceresi.com/wp-content/uploads/2022/01/3.-YARGIDA-BIRLIK-UYE-LISTESI-3-olagan-genel-kurula-katilma-hakki-olanlar-listesi-12.pdf> (30.12.2023)

⁶⁰ Mehmet Bakır ÖZKAN & Dr. Hasan DURSUN, *ibid.*

Public Prosecutors, Deputy General Directors at the Ministry of Justice, or Heads of Departments.⁶¹

Given that the majority of Chief Public Prosecutors, Chairs of the Adjudication and Administrative Judiciary Commissions, Presidents of Heavy Penal Courts, and peace judges in first-instance judicial units are affiliated with the YBD, the cumulative influence of this Association on the judicial system becomes even more apparent.

Based on this data, a clear assertion can be made: the Turkish Judiciary is effectively under the sway of YBD. Considering the pronounced influence of the Erdoğan-AKP government on YBD since its inception, it becomes evident that the Turkish judicial system has undergone a process of politicization through YBD. The system's discourse and decisions seem to be shaped not by constitutional laws or international standards but rather by the policies, discourse, actions, decisions, and suggestions of the government.

The appendix of the report includes the names of bureaucrats in the Ministry of Justice, members of the HSK, Court of Cassation, Council of State, the Constitutional Court, and the High Election Board who are YBD members as of the report date. Additionally, their numerical data is provided for reference.

G. Global Responses to YBD

The comprehensive report "Türkiye: The Judicial System in Peril," published by the International Commission of Jurists in 2016, delves into the Turkish judiciary's loss of independence and impartiality from the corruption investigation in December 2013 until 2016.⁶² International judicial associations, cautious about affiliating with YBD's organizations, voiced apprehensions about the disregard for judicial independence.⁶³ Despite being shut down by emergency decrees, YARSAV continues to maintain its membership.⁶⁴

⁶¹ Mehmet Bakır ÖZKAN & Dr. Hasan DURSUN, *ibid.*

⁶² <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf> (06.01.2024)

⁶³ <https://t24.com.tr/haber/avrupa-yargiclar-birligi-yargida-birlik-dernegini-yarginiz-bagimsiz-degil-diyerek-reddetti,309486> & <https://haber.sol.org.tr/turkiye/avrupa-yargiclar-birliginden-yargida-birlik-dernegine-ikinci-kez-red-yarsava-destek-olun> (05.01.2024)

⁶⁴ <https://medelnet.eu/medel-at-the-side-event-revisiting-the-functioning-of-democratic-institutions-and-rule-of-law-in-turkey-role-of-judiciary-in-current-situation-of-turkey-in-honouring-the-obligations-deriving/> (06.01.2024)

MEDEL, Judges for Judges, the Association of European Administrative Judges (AEAJ) and The European Association of Judges initiated a fund to support judges dismissed after the July 15 coup attempt, eliciting disapproval from YBD.⁶⁵ The International Association of Judges censured on numerous occasions YBD's influence over HSK, citing unjust dismissals and procedural non-compliance.⁶⁶ Christophe Regnard, the then President of the International Association of Judges, warns of the deteriorating situation in Turkish judiciary, emphasizing the disappearance of the rule of law.⁶⁷ The European Network of Councils for the Judiciary (ENCJ) explicitly stated that “*The Council for Judges and Prosecutors is a Council in name only, as none of its actions or decisions demonstrate any concern for the independence of the judiciary.*” and cited Erdogan's reassurance as indicative of YBD's dominance.⁶⁸

The European Commission's 2018 Türkiye Report noted the impact of state of emergency closures on judges' associations, identifying the Judges Unity Association as government-associated. The 2020 Türkiye Report underscores the deterrent effect on judicial members, signalling the erosion of pluralism in judge associations.⁶⁹

Endorsing the United Nations Working Group on Arbitrary Detentions (WGAD) findings⁷⁰, MEDEL, NGO Turkey Tribunal, and Van Steenbrugge Advocaten (VSA) submitted a Communication to the International Criminal Court, providing evidence of crimes against humanity committed by Erdogan's regime through instrumentalization of YBD-driven judiciary after 2016.⁷¹

Council of Europe Parliamentary Assembly (PACE) Resolution 2518 (2023) calls for "Magnitsky sanctions" to Judges and Prosecutors, marking a historic proposal. The resolution

⁶⁵ <https://www.trthaber.com/haber/turkiye/feto-sanigi-hakime-alman-savcindan-saklanma-parasi-367915.html> & <https://yargidabirlik.org.tr/kamuoyuna-duyuru.html> & <https://www.aa.com.tr/tr/turkiye/yargida-birlik-dernegi-akpmnin-feto-sanigina-odul-vermesini-kinadi/934103> (02.01.2024)

⁶⁶ https://www.questionegiustizia.it/data/doc/2990/report_luca_perilli_independence_access_to_justice_turkey_tribunal.pdf & <https://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/> (04.01.2024)

⁶⁷ <https://www.iaj-uim.org/iuw/wp-content/uploads/2017/03/IAJ-Appeal-for-Turkey- March-2017.pdf>

⁶⁸ <https://www.ency.eu/node/578> & <https://www.ency.eu/node/449> (03.01.2024)

⁶⁹ <https://neighbourhood-enlargement.ec.europa.eu/system/files/2019-05/20180417-turkey-report.pdf>

⁷⁰ See footnote 20 above

⁷¹ <https://medelnet.eu/medel-ngo-turkey-tribunal-and-van-steenbrugge-advocaten-vsa-jointly-submitted-a-communication-to-the-office-of-prosecutor-of-the-icc-concerning-the-situation-in-turkey-other-countries-and-state-pa/> (03.01.2024)

emphasizes the failures of the Turkish judiciary to uphold the rule of law, specifically in cases like Osman Kavala's, and suggests targeted sanctions against those responsible for human rights abuses within the judiciary. It stresses the urgent need for changes to improve the rule of law, the independence of the judiciary, and the overall justice system in Türkiye.⁷²

To sum up under this chapter, according to the concrete evidence presented, the Turkish judiciary is now under the command of the YBD, serving as a tool for Erdogan's political ambitions. We face an association whose organizational structure lacks inherent legitimacy and is influenced by non-democratic forces and driven by motives to eliminate dissent within society. The consequences of a government-sponsored takeover of the judiciary by associations like YBD are profound, impacting judicial independence, the rule of law, civil society, democratic values, and potentially steering towards authoritarianism.

IV- CONCLUSION

This brief submission brings forth concrete evidence, exposing a disconcerting reality: the Turkish judiciary is now under the command of the YBD, and that the YBD has been playing the key role in eroding the rule of law from within the judiciary.

Essentially, the YBD's control over the judiciary, a cornerstone of an authoritarian regime, has been facilitated under the guise of political and social diversity. However, this legitimacy pretext is constrained within a non-democratic framework imposed by the executive branch.

The consequences of a government-sponsored takeover of the judiciary by associations like YBD are profound, impacting judicial independence, the rule of law, civil society, democratic values, and potentially steering towards authoritarianism.

As organizations endeavouring for the rule of law, stressing once again that the lack of independent judiciary constitutes the root cause of these violations and the erosion of the rule of law, we sincerely ask the Committee to take into account our individual and collective losses and human rights violations that the country has to endure.

⁷² <https://pace.coe.int/en/files/33147/html> (04.01.2024)