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**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by Maat for Peace, Development and Human Rights Association, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[04 June 2020]

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\* Issued as received, in the language(s) of submission only.

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## The independence of judges and lawyers in Turkey

### Arbitrary structural changes to the Turkish judicial system

Forms of pressure on the entire judicial system have multiplied, depriving it of its independence, and transforming it into a device subject to the executive authority through multiple and systematic means and mechanisms, as the Turkish authorities have tightened their grip on judiciary institutions and public prosecutor, through the arbitrary arrest, removal, and transfer of judges and prosecutors, in addition to threatening lawyers. Maat for Peace, therefore, is deeply concerned about the structural changes that have been unconstitutionally and arbitrarily introduced to the Turkish judicial system, which in turn undermines the judiciary. Maat would also like to indicate that Turkish Law No. (667), which is related to the supreme judicial bodies (the Constitutional Court, the Cassation Court, and the Supreme Administrative Court) has granted the appellate judicial bodies the power to dismiss their members, which has led to the dismissal, arrest, and detention of a large number of judges and prosecutors, over alleged links to the Gulen Network. Around 4,240 judges and prosecutors were dismissed by executive orders from the Supreme Judicial Council, and the Constitutional Court removed two of its judges from the bench, and 6 members of the Supreme Council of Judges were dismissed, 3,500 of them were arrested, and at least 600 judges and prosecutors were held in solitary confinement.<sup>1</sup> Almost two-thirds of them were removed from the union on July 16, 2016, the following day after the attempted coup, and their bank accounts were frozen before any charges were brought against them, and their names were broadcasted in the media and they became convicted of crimes they know nothing about.

For further collective persecution, spouses of arrested judges and lawyers, employed in the government sector, were dismissed and their savings and properties were confiscated. Moreover, judges' immunity was lifted by the government, and any prosecutor rejects the inhuman and degrading treatment of detainees, or any judge refuses to give an arbitrary arrest warrant, became a traitor.

### Incidents of imprisonment and detention of members of the judicial system

In January 2020, the Turkish government dismissed 20 public prosecutors for alleged links to terrorism, while a Turkish court issued a decision to imprison Murat Arslan, a former Chair of the Association of Judges and Prosecutors, for 10 years on the background of his relationship to terrorism.<sup>2</sup> In the same context, a Turkish court sentenced a former judge to a 15-year prison sentence for alleged links to the Gulen movement, and another judge was sentenced to six years and 3 months for the same charge.<sup>3</sup> Judge Osman Yurdakul was sentenced to 11 years, 9 months, and 15 days in prison for terrorism-related charges and the Turkish judge Muhammad Tank was sentenced to 8 years and 4 months.<sup>4</sup> It was also reported that woman Judge Ayşe Neşe Gül, is still being held for supporting terrorism and extremism,<sup>5</sup> and this context illustrates the Turkish government's violent attitude against members of the judicial system whose interests are incompatible with theirs.

About 570 lawyers have been arrested, and 1,480 lawyers have faced different forms of prosecution, and 79 were sentenced to long terms in prison. Moreover, about 34 lawyers' unions have been shut down on the background of alleged links to a terrorist organization. In

<sup>1</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, Available at: [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/35/22/Add.3](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/22/Add.3).

<sup>2</sup> ، 2019 ، <https://bit.ly/2zca9oG> السجن 10 سنوات بحق قاض في تركيا فاز بجائزة لحقوق الإنسان، تي ار تي 2019 ،

<sup>3</sup> <https://bit.ly/2Vi70fo> ، العين الاخبارية ، سبتمبر سجن قاضي تركي بارز سابق 15 عامًا.. والتهمة غولن.

<sup>4</sup> The support of European judges. WomanJudgeTR Apr 22, 2018 <https://bit.ly/3bfRDtA>.

<sup>5</sup> Woman Judge Ayşe Neşe Gül, arrested over coup pretext Magduriyetler2 .Jul 10, 2018 <https://bit.ly/2XHOijb>.

addition to the fact that official investigations and prosecutions against the persistent allegations of widespread torture and other inhuman treatment seemed extremely rare, creating a strong feeling that impunity for acts of torture has become a reality, in addition to the fact that lawyers of persons convicted of terrorism-related charges are constantly persecuted by Turkish authorities for the same charges brought against their clients, or for national security-related crimes. Therefore, Maat for Peace is extremely concerned about the existence of those obstacles that impede the right to full enjoyment of the right to fair trials, as well as access to justice, and the right to an attorney, and an effective remedy under fair trials and investigations.<sup>6</sup>

In November 2019, 12 subsidiary bar associations in Turkey issued a joint statement condemning the increasing arrests of lawyers recently, due to the legal services they provide to detainees, and the statement stressed that lawyers in Turkey are systematically attacked by the government, noting that lawyers are subjected to abuse and violations because of the cases they defend. It is worth noting that the Gaziantep District Court issued an order to prevent 11 lawyers from defending their clients.<sup>7</sup> Also, 1546 Turkish lawyers have been persecuted on various charges since the attempted coup and until now, preventing them from performing their work through targeting and intimidating them.<sup>8</sup> This explains that the Turkish government is trying to intimidate lawyers not to defend their clients, impeding justice.

### **The politicization of judges to achieve the goals of the Authority**

The Turkish authorities have often used various legal procedures to prevent lawyers from defending their clients. This is clearly indicated by the cases of the two Kurdish politicians Gultan Kisanak and Sebahat Tuncel, who were accused of joining to a terrorist organization and disseminating terrorist propaganda, and in whose cases 16 judges have been punished, a context that does not allow lawyers to defend the accused since it was impossible to know who would pronounce the verdict. Moreover, judges were continuously replaced without explanation and most of them were young and unexperienced. Every hearing was attended by different judges, so lawyers were made to start every time from scratch with no basis to build on, and at last, they were judged in Diyarbakir court without clear evidence and a context indicating their condemnation. The continuous change of judges is a very effective mechanism adopted by the Turkish government to prevent lawyers from providing an integrated defense for their clients. It is worth noting that Gultan Kisanak and Sebahat Tuncel are two prominent politicians defending the rights of the Kurdish minority in Turkey.<sup>9</sup>

In this context, the Turkish government deals with unsubstantiated communications as facts to condemn oppositions. It used a statement from a suspect named Davut Shafak to condemn several judges and prosecutors of belonging to the Gulen movement and arrest them on no reasonable grounds.<sup>10</sup> This led to the dismissal of Chancellor Kizliar, the investigating judge in the Supreme Court of Appeal, Judge Hansikiran, Judge Ozelik and the Attorney General of Urdu Gultekin,<sup>11</sup> while the Turkish Council of Judges and Prosecutors decided to investigate the members of Istanbul Criminal Court that acquitted Osman Kavala, a Turkish opponent in the Gezi case, which is composed of the President of the Court, Ghalib Muhammad Park, and two of its members, Ahmed Tariq Cevcioglu, a first member, and Taleb Arjan, a second member, so that other judges do not issue such rulings.<sup>12</sup> The Turkish Council of Public Prosecutors and Judges decided to open an investigation with female Judge

<sup>6</sup> OHCHR, "Report on the impact of the state of emergency on human rights in Turkey, including an update on the south-east, Available at: <https://www.refworld.org/docid/5ab146c14.html>.

<sup>7</sup> <https://bit.ly/2y9lmGr>. بيان مشترك المحامون يتعرضون للاعتقال في تركيا، تركيا زمان، نوفمبر 2019،

<sup>8</sup> تقرير عن نتائج الاستعراض الدوري الشامل لتركيا، مؤسسة ماعت للسلام والتنمية وحقوق الإنسان، فبراير 2020، <https://bit.ly/2X6GaqB>.

<sup>9</sup> How Turkey's courts turned on Erdogan's foes. Reuters. May 4, 2020. <https://reut.rs/2X49T3m>.

<sup>10</sup> أردوغان يستخدم ادعاءات مدانين بالاعتصام لتلفيق قضايا ضد معارضيه، أخبارك نت، أبريل 2020، <https://bit.ly/3fXvTFK>.

<sup>11</sup> التهم الملفقة عصا أردوغان المرفوعة في وجه معارضيه، المرجع، مايو

<sup>12</sup> <https://bit.ly/2KdCKvQ>. تركيا التحقيق مع هيئة محكمة قضية عثمان كافالا، تركيا زمان، فبراير 2020،

Aisha Sarisu Behlevan, on the background of her solidarity with the left-wing singer Ibrahim Gokcek, who died due to the hunger strike in a Turkish prison.<sup>13</sup> These facts demonstrate how the Turkish government uses various legal measures to obstruct justice or target judges to implement the government's agenda regarding punishing political opposition.

### **Recommendations**

- The need to take serious and concrete steps to ensure the independence and impartiality of the Turkish judiciary, as it is the main pillar in adjudicating these violations, especially cases of detention of journalists, torture and ill-treatment by police and state officials.
- The need to release all judges and general prosecutors who have been arbitrarily arrested, and to consider the return of those arbitrarily dismissed.
- The need to refrain from taking any actions not compatible with the principle of separation of powers, and work to ensure the independence of the judiciary.
- The need to stop targeting judges who make decisions against the political interests of the Turkish government, with the need for adopting clear mechanisms to protect them from interference by Turkish executive and legislative bodies in their decisions.
- The need to stop increasing arrests by the Turkish government against lawyers due to the legal services they provide to the detainees.

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<sup>13</sup> <https://bit.ly/3cKioHy> تركيا التحقيق مع قاضية أعلنت تضامنها مع مغن يساري، تركيا زمان ، مايو 2020 ،