



Joint Statement

on the State of Access to Justice for Human Rights Violations in Turkey

The International Commission of Jurists and the Human Rights Joint Platform, after three years of intensive work on access to justice for human rights violations in Turkey, and having heard the views of stakeholders of all levels and groups, including civil society, judges, lawyers, prosecutors, government officers, international experts, international organisations, human rights defenders and victims of human rights violations, have reached the following conclusions and recommendations.

Preamble

Whereas, all human rights, including civil, cultural, economic, political, and social rights, are universal, indivisible, interdependent, interrelated and must be accorded the same importance and priority;

Recalling that the universal realization of human rights requires meaningful access to justice for all persons and it is the responsibility of States and other human rights duty bearers to act to remove barriers to the full access to justice;

Emphasizing that, without the availability to rights holders of avenues to seek and obtain effective remedies and reparations for violations, human rights guarantees may be illusory and go unrealized;

The ICJ and IHOP consider that, in recent years, Turkey has experienced a severe deterioration in the rule of law and, consequently, Turkish people are limited in their capacity to access justice for human rights violations, in particular, because of the following factors:

1. The abusive application of vaguely-defined offences related to terrorism, offences against the State, insult to the nation or its President, espionage or hate speech against lawyers and civil society, restricting their capacity to act.

2. The arbitrary and disproportionate restriction of freedom of expression, assembly and association, through abuse of extensively interpreted criminal offences and administrative powers.
3. The mass arrests and detentions of judges, prosecutors, lawyers, human rights defenders and the resulting pervasive chilling effect on the willingness and capacity of the judiciary, prosecution services, legal profession, and civil society more generally to conduct their professional activities in an effective and independent manner.
4. The mass dismissal of one third the judiciary during the State of Emergency and the undermining of the separation of powers, made permanent through the constitutional amendments of April 2017, which gave the executive and legislative powers control over the judiciary's self-governing body, the Council of Judges and Prosecutors.
5. The dramatic fall in the competence of judges and prosecutors following the replacement of judges subject to mass dismissals, alongside the increasing workload facing administrative courts and the Constitutional Court.
6. The lack of an effective remedy for redress of human rights violations arising from the mass dismissals of public officials, academics, lawyers, judges and prosecutors, as well as employees of public agencies and enterprises.
7. The undermining of the independence of the legal profession in Turkey by government-imposed reforms aimed at fostering the creation of rival bar associations, against the strong objections of the legal profession and in order to undermine the role of existing bar associations that seek to uphold the rule of law and human rights, and unduly restricting the freedom of expression of lawyers and their bar associations.
8. The continuing situation of impunity for gross human rights violations when committed by State actors or actors operating on behalf of the State.
9. The excessive restriction of the rights of suspects, including their rights of access to and to freely communicate with a lawyer, while in pre-trial detention and during trial.
10. The exclusion of any means of independent external appeal or review of decisions taken by criminal judges of the peace on the lawfulness of pre-trial detention and investigative measures.
11. New policies that fail to respect and protect – and often openly unduly restrict – the rights of persons from groups that are subject to systematic discrimination, such as women, LGBTI people, and ethnic, linguistic and religious minorities.
12. The lack of institutional independence of the National Human Rights Institution (NHRI).

13. The threat to withdraw from the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) would, if carried out, further undermine access to justice.

In order to reverse these negative impacts and restore and build the Turkish legal system's capacity to provide access to justice for victims of human rights violations, the ICJ and IHOP recommend Turkish authorities to:

1. Revise the constitutional amendments on the appointment of members of the Council of Judges and Prosecutors to ensure that a majority of the board are judges and prosecutors elected by their peers, and that chambers dealing with appointment, career, transfer and dismissals of judges and prosecutors are made up only of judges and prosecutors elected by their peers, and introduce the right of a judge or prosecutor who is subjected to discipline, suspension or removal to judicial review of the relevant decision of the CJP.
2. Ensure the independence of the legal profession and of its members, as well as their freedom of expression, by protecting their human rights mandate and refraining from or reversing reforms to legal professional bodies imposed against the objections of the legal profession or for improper aims.
3. Restore the criminal procedural rights that existed prior to the declaration of state of emergency and revisit the reform of the judges of the peace to allow external appeals against their decisions.
4. Abolish Article 26 of Law no. 7145, which essentially extended the emergency powers over judges and prosecutors for a further three years as well as the Commission on State of Emergency Measures; and provide direct access to administrative courts in compliance with due process guarantees, full legal representation, access to all files, and the opportunity to have a hearing with an adversarial procedure.
5. Reform the Anti-Terrorism Law no. 3713 and other legislation in order to ensure that any offences relating to terrorism, offences against the State, espionage and hate speech are defined with precision in compliance with the requirement of legality and other requirements of international human rights law, and abolish offences of insult to the nation or its President.
6. Release and discontinue the prosecution of all human rights defenders and lawyers who are subject to prosecution as a result of activities carried out as part of their legitimate professional functions or the exercise of internationally protected human rights and fundamental freedoms.
7. Promote and protect the work of civil society and the legal profession for the respect, protection, fulfilment and advancement of human rights and the rule of law, including when critical of the State's laws, policies and actions.

8. Abrogate any provision that grants retroactive immunity from any legal, administrative, financial and criminal liability with respect to the perpetration of acts of torture or other ill-treatment, particularly article 37 of Decree Law n° 668.
9. Introduce reforms to protect the rights of groups at particular risk of discrimination and other human rights violations in compliance with Turkey's obligations under international human rights law, and ensure the independence of the NHRI in Turkey.
10. Accelerate the review by the Council of States of cases of judges and prosecutors who were dismissed under state of emergency legislation, as extended, and let lapse the mandate of the State of Emergency Commission to allow administrative courts to promptly address such cases.
11. End all arrests and detentions of human rights defenders, judges, prosecutors, political opponents and journalists that abuse criminal justice processes for ulterior purposes.
12. End the practice of systematically replacing elected local authorities, in particular in regions with a predominantly Kurdish population, with government-appointed trustees, without a clear, strictly-interpreted ground prescribed by law, with an assessment of necessity and proportionality of the decision and in line with international human rights law.
13. Systematically, promptly and effectively implement the rulings of international human rights courts and the decisions and recommendations of treaty bodies and other international bodies concerned with human rights and the rule of law.

Done in Geneva and Ankara, 17 December 2020