



A REPORT TO THE GROUP OF STATES AGAINST CORRUPTION (GRECO)



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ASSEDEL, L'Association européenne pour la défense des droits et des libertés

9, Place de l'Esplanade, 67000 Strasbourg, FRANCE

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I. ABOUT ASSEDEL

ASSEDEL, L'Association européenne pour la défense des droits et des libertés, is a Strasbourg-based human rights advocacy association. Its main goal is to promote and defend human rights and fundamental freedoms as well as to guide and stand by the victims of human rights violations.¹ One of the main concerns of ASSEDEL is the human rights violation issues in Turkey.

II. INTRODUCTION

Once has been considered a developing democracy, Turkey is losing grounds for fundamental human rights in most universal indexes in recent years. According to data released by Transparency International², the backsliding of Turkey continues under authoritarian rule. Turkey has lost 9 points (its score being 49) since 2012³ during which the country had ranked 54th in the Corruption Perceptions Index. Based on the CPI 2020, Turkey ranks 86th out of 180 countries with a score of 40.

Considering the lack of transparency, the tendency of authoritarianism, and the corruption allegations, the purpose of this document is to shed light on the gravity of the current level of corruption in Turkey and to indicate how it paralyzes the functioning of the democratic institutions in the country by means of analyzing the notion of corruption in the light of interrelated subjects.

III. A GENERAL OUTLOOK ON THE CONCEPT OF CORRUPTION

A) Definition: A Universal Problem without a Universal Definition

Corruption is one of the deep-rooted matters that States have tried to overcome both in the private and in public sectors. Even if the acts leading to corruption are criminalized by national and international instruments, there does not exist a universally recognized definition of corruption. The lack of a single comprehensive definition simply stems from the fact that corruption may originate from all kinds of human activities illustrated in all parts of daily life⁴.

Nonetheless, the definition given by Transparency International could be used at least to have an opinion about this concept. The organization defines corruption as “the abuse of entrusted power for private

¹ <https://assedel.org>

² Transparency International uses the Corruption Perceptions Index which scores 180 countries and territories by their perceived levels of public sector corruption, according to experts and businesspeople. The Index uses a scale from 0 (highly corrupt) to 100 (very clean). Source: CPI 2020 Report, p.4, available at, <https://www.transparency.org/en/cpi/2020/index/nzl>

³ <https://www.transparency.org/en/news/cpi-2020-eastern-europe-central-asia>

⁴ Larmour, Peter; Wolanin, Nick, Corruption and Anti-Corruption, Pearson, Zoe, An international human rights approach to corruption, ANU Press, 1999, p.32

gain⁵". However, after highlighting the insufficient character of this definition, the UN Special Rapporteur on torture and other cruel, inhuman, or degrading treatment for example use as a basis another definition for corruption by incorporating the terms of "appropriated power and "undue advantage "and by taking into consideration the possibility of an action benefiting a public entity. The term "undue advantage "is not limited to economical gain and encompasses any kind of favor including acts or omissions carried out to ensure the favorable conclusion at the end of an administrative or judicial process. In this regard, the latter adopts the following definition: "abuse of entrusted or appropriated power to secure an undue advantage for any person or entity⁶"

B) Different Categories of Corruption

Corruption is a disorder that can adapt to various conditions. While it can take more sophisticated forms in developed countries, it is considerably easier to detect in developing countries. Its insidious, adjustable, and evolving nature and the wide spectrum of potential factors which may be involved in acts of corruption compromise the exercise of a considerable number of fundamental rights ranging from right to education, right to property or right to work to the right to a fair trial and right to non-discrimination.

Petty and grand corruption constitute two main categories of this notion. In the corruption dictionary created by Transparency International, petty corruption is defined as follows:

"Everyday abuse of entrusted power by public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments, and other agencies."⁷

To put it simply and briefly, petty corruption can also be called "day-to-day "or daily corruption. Due to the ordinary and widespread character of this kind of corruption, people engage in this category to obtain much more individualized gain or advantage in exchange for small amounts of money.

On the other hand, grand corruption necessitates high-level power, larger sums of money, hence high-level officials and has a broader range in terms of the damages caused. In the same dictionary, the following definition is used for grand corruption:

⁵ <https://www.transparency.org/en/what-is-corruption>

⁶ United Nations Human Rights Council, Report of the Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or punishment, 25 February–22 March 2019, p.5, §13

⁷ <https://www.transparency.org/en/corruptionary/petty-corruption>

“The abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society.”⁸ ”

Corruption through distortion of government expenditure could be mentioned as one of the variations of grand corruption. In this kind of corruption, the decision-makers tend to spend the public money on large-scale projects (ex; infrastructure projects) rather than education or health. The main reason for this choice is that these types of projects are cut out for corrupt use of large amounts of public funds which are supposed to be directed to the public welfare instead of being diverted to the personal advantages of decision-makers⁹.

Even though it is not categorized as a third form of corruption and is often related to grand corruption, political corruption has also an important place in this classification. The political version of grand corruption becomes apparent when political decision-makers manipulate the policies, institutions, and procedures to sustain their power and position and to acquire personal, undue advantages or provide their personal or political entourage with these undue advantages. While misallocation of resources or corruption in public procurement can be given as examples of grand corruption, resorting to illicit ways when it comes to campaign funding or neutralizing the civil and political opposition can be observed within the scope of political corruption¹⁰.

IV. CORRUPTION AND SOME RELATED NOTIONS

A) Corruption and Human Rights

Corruption is a multifaceted fact that creates a vicious circle. Alongside all its damaging effects, it creates an environment conducive to not only human rights abuses ranging from suppression of media, journalists, or any kind of opposition to torture and ill-treatment but also the reproduction of these problems. Another major problem that manifests itself in respect to the assessment of the corruption levels and the harmful effects is the inherently secret character of this crime¹¹. Due to its complicated nature, it is nearly impossible to measure corruption, however, Corruption Perceptions Index (CPI) developed by Transparency International draws a global picture by ranking the countries based on their perceived levels. The countries that have fallen into the lowest ranks in this Index are the seats of mass human rights violations¹².

⁸ <https://www.transparency.org/en/corruptionary/grand-corruption>

⁹ Morgan, Amanda, CORRUPTION: CAUSES, CONSEQUENCES, AND POLICY IMPLICATIONS, A Literature Review, October 1998, p.30

¹⁰ United Nations Human Rights Council, Report of the Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or punishment, Fortieth session, 25 February–22 March 2019, p.5, §16

¹¹ Larmour, Peter; Wolanin, Nick, Corruption and Anti-Corruption, Pearson, Zoe, An international human rights approach to corruption, ANU Press, 1999, p.39

¹² Peters, Anne, Corruption as a Violation of International Human Rights, *European Journal of International Law*, Volume 29, Issue 4, November 2018, p.1252, available at, <http://www.ejil.org/pdfs/29/4/2923.pdf> (accessed 28 June 2021)

According to the World Bank report¹³, when fighting against corruption, two main aspects are completing each other. While the first aspect (preventive approach) focuses on the “probable ”corruption (corruption ex-ante), the second one (curative approach) deals with the corruption that has already happened (corruption ex-post). On the one hand, codes of ethics, codes of conduct, in-service training, and mechanisms for counseling when there occurs a situation of conflict of interest (especially for top executives, parliamentarians, judges, and prosecutors) could be considered as means within the scope of the preventive approach. Legislation related to anti-corruption, procedural rules, and in-house mechanisms could be mentioned within the context of the curative approach. To eradicate or at least curb the level of corruption, these two approaches should be adopted and implemented in a combined way.

When a corruption case is determined, a state is under the obligation of responsibility of investigation if the fundamental human rights were violated. Globally, states have three main obligations in this regard: respecting, protecting, and fulfilling fundamental human rights. The first one brings the state under the negative obligation to abstain from infringements in terms of enjoyment of human rights. The second one requires states to protect individuals and groups against human rights violations. And the third one charges the states with the positive obligation of acting for the people to enjoy their fundamental rights.

In this regard, a state may violate human rights by action or omission¹⁴, in other words by neglecting its positive obligations. Instead of implementation and application of these measures, if the authorities do adopt a negligent approach, an act of omission occurs at the hands of state officials¹⁵. Consequently, this omission opens the door to human rights violations originating from both the corruption itself and from the deficiency of anti-corruption measures. According to Peters, because of the state’s failure related to its obligations to protect and fulfill (including prevention), the latter should be held responsible under international law¹⁶.

B) Corruption and Democracy

“Power tends to corrupt, and absolute power corrupts absolutely.”

Lord Acton (1834-1902)

¹³ Ofosu-Amaah, W. Paatii; Soopramanien, Raj; Uprety, Kishor, *Combating corruption: a comparative review of selected legal aspects of state practice and major international initiatives (English)*. Washington, D.C.: World Bank Group, 1999, available at <https://documents1.worldbank.org/curated/en/122181468762029898/pdf/multi-page.pdf> (accessed 28 June 2021)

¹⁴ Maastricht Guidelines on Violations of Economic, Social and Cultural Rights, Maastricht, January 22-26, 1997, §11, available at http://hrlibrary.umn.edu/instree/Maastrichtguidelines_.html (accessed 28 June 2021)

¹⁵ Peters, Anne, Corruption as a Violation of International Human Rights, *European Journal of International Law*, Volume 29, Issue 4, November 2018, p.1259, available at, <http://www.ejil.org/pdfs/29/4/2923.pdf> (accessed 28 June 2021)

¹⁶ *ibid*, p.1260

Democracy is founded upon certain principles such as rule of law, independence of the judiciary, separation of powers, and the existence of mechanisms playing the role of checks and balances. Hence, to be able to mention the existence of an effective democratic system:

- The justice mechanism should be independent of any kind of influence or pressure irrespective of the identity of the actors employing this influence or pressure.
- Freedom of the press and freedom of expression should be enjoyed in compliance with the limits determined by the national and international instruments.
- The notions of accountability and responsibility in governance should be established and endorsed with the participation of civil society in the political decision-making process.
- As a right emanating from the principle of transparency, the right to access to information (United Nations Convention against Corruption, **Article 13**) should be guaranteed¹⁷.

In a country where the information spreads in a way free from manipulation and when the rights to freedom of the press, freedom of assembly and association, and freedom of expression are put into practice effectively, the corruption rate will automatically decrease thanks to their rapid identification and denunciation¹⁸. Nonetheless, in the case of an opposite scenario, the absence of these rights not only undermines democracy but also hinders the development of successful anti-corruption policies¹⁹. Research conducted in this regard confirms the existence of a causal link between the level of press freedom and the level of corruption. Owing to its role as a control mechanism, an independent press brings along a lower rate of corruption²⁰.

“Turkey’s status declined from Partly Free to Not Free due to a deeply flawed constitutional referendum that centralized power in the presidency, the mass replacement of elected mayors with government appointees, arbitrary prosecutions of rights activists and other perceived enemies of the state, and continued purges of state employees, all of which have left citizens hesitant to express their views on sensitive topics.”²¹

Freedom House

¹⁷ United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, Challenges faced, and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, Forty-fourth session, 15 June–3 July 2020, p.7, §32

¹⁸ Bacio-Terracino, Julio, Linking Corruption and Human Rights, Proceedings of the Annual Meeting (American Society of International Law) Vol. 104, International Law in a Time of Change (2010), p.244

¹⁹ United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, Challenges faced, and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, Forty-fourth session, 15 June–3 July 2020, p.5, §22

²⁰ Brunetti, Aymo; Weder, Beatrice; A free press is bad news for corruption, Journal of Public Economics 87 (2003), p.1821

²¹ <https://freedomhouse.org/report/freedom-world/2018/democracy-crisis>

Because of the pivotal role that they play regarding fighting against corruption and of the risks that they take for the authors of corruption practices to be held accountable²², the journalist should take their place among the primary beneficiaries of the freedom of expression. Besides the investigators of corruption claims (i.e., police officers, prosecutors), reporting allegations (i.e., journalists) or prosecuting and trying suspected perpetrators (i.e., judges) carry a high risk of victimization in terms of human rights violations and thus should benefit from comprehensive protection²³. However, the reality in Turkey contradicts this universal commonsense. Turkey is being considered today as the largest prison in the world for journalists while occupying the world ranking the 154th place among 180 countries based on the freedom of the press of the Reporters Without Borders (RSF)²⁴. Besides, in 2021 Freedom in the World Report prepared by Freedom House concerning civil and political rights, Turkey is still classified as a “not free ” country²⁵. Furthermore, according to the data presented by the Stockholm Center for Freedom, as of June 9, 2021, there are 79 convicted journalists behind bars, while the number is 93 concerning the jailed journalists pending trial and 167 as to the journalists who are in exile and against whom arrest warrants have been issued²⁶.

As the flag bearers of the freedom of expression and freedom of the press, of which the journalists are the prominent victims though, the victims subjected to investigations, detentions, or arrests while benefiting from their rights and liberties are not only composed of journalists. As a result of resorting to Article 216 of the Turkish Penal Code in a twisted manner, the number of people investigated for “inciting hatred and hostility among the public” in 2019 reached 15,044 while there are investigations launched against 36,066 people for the last year on the ground of insulting Turkish President²⁷.

The approach of the Turkish government to the Boğaziçi University incidents could be assessed as a different dimension of this situation. In this regard, hate speech is faced by the LGBT students at the hands of certain state officials (called “terrorists by President Recep Tayyip Erdoğan, “perverts” by the Interior Minister Süleyman Soyulu) was strongly condemned by the EU²⁸ as well as the opposition in the country. Finally, the Turkish government has started to impose bans and fines on some of the social media companies under the new social media law adopted by the Turkish Parliament in late July 2020. In this vein, both non-governmental and international organizations expressed their concerns related to

²² <https://www.coe.int/en/web/commissioner/-/corruption-undermines-human-rights-and-the-rule-of-law?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner>

²³ <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/Corruption.aspx>

²⁴ <https://rsf.org/fr/turquie>

²⁵ <https://freedomhouse.org/country/turkey/freedom-world/2021>

²⁶ <https://stockholmcf.org/updated-list/>

²⁷ <https://boldmedya.com/2021/02/10/73u-cocuk-15-bin-44-vatandasa-kin-ve-dusmanlik-suclamasi/>

²⁸ https://eeas.europa.eu/headquarters/headquarters-homepage/92622/turkey-statement-spokesperson-detentions-students-and-developments-around-boğaziçi-university_en

its possible undermining effects in terms of freedom of expression (which have been confirmed as of today)²⁹.

As in other authoritarian regimes, the power is narrowly concentrated in the hands of a ruling minority in Turkey. This concentration tends to generate a monopoly along with the power of discretion. The idea of maintaining this position leads to silencing of opposition, including the press and the journalists. Thus, once the opposition is taken out, according to Robert Klitgaard's corruption equation (Corruption = Monopoly + Discretion – Accountability)³⁰, the non-existence of the accountability creates an environment inclined to the emergence of new corruption cases to which will be resorted by the regime in power. When the opposition and the media are neutralized and monopolized by a highly dominant political opinion, it simply cannot be possible to investigate, report or announce the cases of corruption. Such a vicious circle prevents the progress of developing anti-corruption policies.

C) Corruption and Discrimination

Besides the encompassing characteristic of corruption detailed above, there are much more vulnerable groups in the society to suffer severely and disproportionately from the corruption, such as women, children, people with disabilities, refugees, prisoners, or the poor in general³¹. In a corrupt governance, these groups often find themselves in a dilemma that leads to a human rights violation in either case. Corruption is a crime resulting in discriminatory access to public goods and services by way of privileging those who have the means to influence authorities to gain an undue advantage³². Quite often, corruption has a motivation based on race, color, sex, language, religion, political opinion, national or social origin, or sexual orientation³³. Therefore, when a person belonging to a disempowered or marginalized group is exposed to grievance due to corruption, he or she not only is subjected to a corruption case but also his rights are violated due to discrimination or at least because of the absence of equal treatment. Thus, on the one hand, corruption undermines the functioning of a state and its institutions by eradicating the principle of rule of law³⁴ and on the other hand, by feeding the sense of inequality and discrimination, it creates a much more erosive environment in terms of the protection of those minorities' rights.

Moreover, when certain groups or individuals are subjected to direct or indirect discrimination, by being excluded from the society due to their opinion, race, or gender, or if they are disempowered

²⁹ <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26129&LangID=E>

³⁰ K. Anukansai, '*Corruption: The Catalyst for the Violation of Human Rights*', available at, <http://www.nacc.go.th/images/journal/kanokkan.pdf> (accessed 27 June 2021), 2010, p.7

³¹ <https://www.du.edu/korbel/hrhw/workingpapers/2012/70-gebeye-2012.pdf>

³² United Nations Human Rights Council, Report of the Office of the United Nations High Commissioner for Human Rights, Challenges faced, and best practices applied by States in integrating human rights into their national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector, Forty-fourth session, 15 June–3 July 2020, p.4, §19

³³ <https://www.du.edu/korbel/hrhw/workingpapers/2012/70-gebeye-2012.pdf>

³⁴ <https://www.ohchr.org/EN/Issues/Development/GoodGovernance/Pages/Corruption.aspx>

economically, they become much more vulnerable in terms of being exposed to a serious number of abused practices of arbitrary arrests, mass detentions, hate speeches at the hands of the officials, gender-based violence and even corruption and torture or ill-treatment³⁵. In addition, due to having been marginalized, they usually suffer both from these abuses rarely being investigated, prosecuted, or adjudicated, and from the regime of impunity ensured to law enforcement officials.

D) Corruption and Torture

“From a systemic perspective, corruption and torture or ill-treatment are better understood as two concurrent effects of the same original cause, namely a failure of the surrounding governance system to prevent the abuse of power through effective checks and balances.”³⁶

The structural and systemic nature of corruption triggers state violence in the form of torture and ill-treatment³⁷. The common assumption that these actions were carried out only by some "corrupt" people, unfortunately, does not correspond to the facts. However, when corruption becomes widespread, involving not only individuals but also the judiciary and politicians, high corruption rates and related torture and ill-treatment practices become commonplace. Simply put, in a country equipped with effective mechanisms where corruption is pursued and those responsible are held accountable, those prone to such acts will not have the opportunity to thrive. In a country where the judiciary effectively stands in the way of corruption, the existence of high levels of corruption is unlikely to happen.

Throughout her essay about police misconduct, Professor Ivković highlights the organizational character of police misconduct, corruption, and torture or ill-treatment. She indicates that by not remaining limited to an individual officer, these practices extend to their units or even entire police departments. Because of their professional environment's representing a "fertile" ground for such practices, "rotten apples" (individual officers) resort to corruption or torture³⁸. Moreover, the collusion or acquiescence on the part of the judiciary and open or implicit complacency on the part of policymakers exacerbates the prevalence of these practices³⁹.

³⁵ United Nations Human Rights Council, Report of the Special Rapporteur, Torture and other cruel, inhuman or degrading treatment or punishment, 25 February–22 March 2019, p.16, §57-58

³⁶ *ibid*, p.7, §25

³⁷ Larmour, Peter; Wolanin, Nick, Corruption and Anti-Corruption, Pearson, Zoe, An international human rights approach to corruption, ANU Press, 1999, p.41

³⁸ Sanja Kutnjak Ivković, "Rotten apples, rotten branches, and rotten orchards: a cautionary tale of police misconduct", *Criminology & Public Policy*, vol. 8, No. 4 (November 2009), pp. 777–785, at p. 780, available at Wiley Online Library, (accessed 01/07/2021)

³⁹ United Nations Human Rights Council, Report of the Special Rapporteur, Torture and other cruel, inhuman, or degrading treatment or punishment, 25 February–22 March 2019, p.6-7, §21

In addition to the systematic nature of these two practices, they also have an interrelated connection. Besides the fact that each one of these two breeds and exacerbates the other, they also originate from systemic governance failures such as⁴⁰;

- Systemic tolerance for unchecked power
- Normative and institutional shortcomings
- Insufficient accountability of corporate actors
- Inadequately resourced public services and institutions
- Socioeconomic marginalization and discrimination
- Excessive incarceration and involuntary institutionalization.

If the operation of a system allows for the uncontrolled use of power, this power combined with the negative effects of uncontrolled and unbalanced administration creates an environment conducive to impunity, corruption, and torture. Moreover, when civil society and opposition are silenced and jailing of journalists in a country is perceived as "normal", the resulting concentration of power can easily lead to corruption. This is because such systems do not have mechanisms to prevent acts of corruption from taking place.

V. ANALYSIS OF THE CURRENT SITUATION IN TURKEY IN THE LIGHT OF REPORTS RELATED TO THE FOURTH EVALUATION ROUND

A) Independence of the Judiciary

"It is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done"⁴¹.

Lord Hewart

Corruption in the judicial system undermines not only the public trust in judgment mechanism but also in the sense of justice. Therefore, Lord Hewart's principle necessitates another corresponding principle. In addition to serving the purpose of bringing justice to the fore, the judiciary should also be seen as independent of any executive interference⁴².

The justice system in a country must identify with the concept of accountability and be entrusted with this function. When corruption finds ways to penetrate the shortcomings of this system, it not only violates the right to a fair trial but becomes a contributing factor to impunity for other human rights

⁴⁰ *ibid*, p.13-16

⁴¹ *The King v. Sussex Justices, ex parte McCarthy*, 1 KB 256–260, at 259 (9 November 1923), Lord Hewart CJ

⁴² <https://www.barandbench.com/columns/the-origins-of-justice-must-be-seen-to-be-done#:~:text=Few%20sentences%20have%20been%20quoted,%5B1924%5D%201%20KB%20256>

violations. The impact of corruption can extend to some extent to the occurrence of cases of mass arrests, detentions, inhuman or degrading treatment, and even torture, as we explained above.

Regardless of the effectiveness of preventive or curative approach of which combination is adopted by states to deal with corruption holistically, to be able to reach the goal of exterminating the concept of corruption, the independence of the judiciary must be ensured.

However, the situation in Turkey changes for the worse day by day. Here are some key factors that demonstrate explicitly the fact that there is a lack of independence of the judiciary from the executive and legislative branches:

- Regarding the composition of the Constitutional Court, twelve of its 15 members are appointed by the President, and the rest by parliament⁴³.

- Concerning the composition of the Council of Judges and Prosecutors (considered not independent from the executive according to the European Commission⁴⁴), four of its 13 members are appointed directly by the President. Two of the members are the Minister of Justice, who acts as president of the Council, and the Undersecretary. These two members are also appointed by the President. As for parliament, the latter chooses seven members⁴⁵.

(* President is allowed to be a member of a political party in Turkey's presidential system. In addition, the parliamentary and presidential elections are held on the same day. Therefore, as it can be seen currently in Turkey, these reforms facilitate a potential political alignment between the executive and legislative branches. In addition to the fact that none of the members of these institutions are elected by the judiciary, in other words by their peers, these mentioned reforms raise questions about the capacity of the parliament regarding choosing independently from the executive branch 3 members to the Constitutional Court and 7 to the CJP.)

- Both the Turkish President⁴⁶ and lower courts⁴⁷ reject the rulings of the Turkish Constitutional Court in certain cases.

- The Council of Judges and Prosecutors initiated an investigation against the 3 judges of the Istanbul 30th Heavy Penal Court who ruled for the acquittal of 9 individuals in the Gezi trial, including Mr. Kavala⁴⁸.

⁴³ <https://www.anayasa.gov.tr/en/court/the-structure-and-duties-of-the-court/election-of-the-justices/>

⁴⁴ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, p.24, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁴⁵ <https://www.cjp.gov.tr/About.aspx>

⁴⁶ https://www.bbc.com/turkce/haberler/2016/02/160228_erdogan_dundar_aym

⁴⁷ Adar, Sinem; Seufert, Günter, Turkey's Presidential System after Two and a Half Years, An Overview of Institutions and Politics, SWP Research Paper 2021/RP 02, 01.04.2021, 39 Pages, available at, <https://www.swp-berlin.org/en/publication/turkeys-presidential-system-after-two-and-a-half-years>, p.15

⁴⁸ <https://www.haberturk.com/son-dakika-haberi-hsk-davanin-3-hakimi-icin-sorusturma-izni-verdi-2589069>; EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

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- "Multiple Bar System" which was put into effect with the adoption of the new legislation on 11 July 2020 prepares the ground for President Erdogan's Party and Nationalist Movement Party (MHP) alliance to interfere with the electoral system of Bar Associations and the selection of their heads⁴⁹.
 - Around 4 000 judges and prosecutors, nearly one-third of the judiciary, (In total, 4,399 according to the European Commission 2020 Report⁵⁰) have been dismissed after the controversial coup attempt (15 July 2016)⁵¹ and over 5 000 new judges and prosecutors have taken office in their place⁵² through a fast-track procedure and non-transparent selection process⁵³.
 - In the lack of any constitutional guarantee in this regard, 4,027 judges and prosecutors were exposed to transfers without their consent and without being given any reason in 2019⁵⁴.
 - Despite having crucial powers ranging from detaining individuals to seizing property, the decisions of the criminal judges of peace are not subjected to a reexamination by a higher judicial body except by another criminal justice of the peace⁵⁵, in other words only a horizontal control is possible.
 - Some basic principles such as the presumption of innocence or judicial independence have not prevented some of the members of the legislative and executive branches from making comments related to ongoing cases⁵⁶.
 - During the state of emergency period, two of the judges of the Constitutional Court have also been dismissed and detained on the grounds of having links to the Gulen Movement and based on "information from the social environment" and the "common opinion emerging over time" among members of the Constitutional Court. However, in the case of *Alparslan Altan v. Turkey*, ECtHR rendered a judgment on 16 April 2019 according to which the applicant's initial pre-trial detention was not lawful due to the disregard related to procedural safeguards afforded to the members of the Constitutional Court and to the lack of factual evidence that would serve as a cause for the initial detention⁵⁷. The Court has rendered also a similar decision in the case of *Tercan v. Turkey* on 29 June 2021. The latter has concluded that Turkey had violated article 5§1 of the Convention as a result of the absence of plausible reasons at the time of the applicant's arrest and pre-trial detention. According to the aforementioned decision, the applicant's detention had deprived him of the benefit of the procedural guarantees granted to the members of the Constitutional Court⁵⁸.

⁴⁹ <https://www.duvarenglish.com/columns/2020/07/02/the-defense-takes-to-the-streets>

⁵⁰ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁵¹ Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.9, §19

⁵² <https://www.dunya.com/gundem/yaklasik-4-bin-fetocu-hakim-savci-meslekten-ihrac-edildi-haberi-410349>

⁵³ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *ibid*

⁵⁷ *Alparslan Altan v. Turkey*, judgment of 16 April 2019

⁵⁸ *Affaire Tercan c. Turquie*, judgment of 29 June 2021

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- Concerning the composition of the interview committee responsible for the selection of candidate judges and prosecutors, out of 7 members, 5 members are representatives of the Ministry of Justice⁵⁹.
 - With the declaration of the state of emergency, a total number of 9 914 judges and prosecutors have been recruited through an accelerated procedure and there exist reports claiming that the loyalty to the ruling AKP-MHP coalition has played a key factor in the selection of candidate judges and prosecutors⁶⁰.
 - Induction ceremonies for new judges and prosecutors and the opening of the judicial year are now held in the Presidential Palace⁶¹.
 - Presidential decree constitutes the legal basis of the Justice Academy to which the status of “related institution” is accorded. Thus, in addition to being organically attached to the Ministry of Justice, the very existence of the Justice Academy is at the hands of the executive⁶².
 - If a judge renders a controversial judgment, he or she runs the risk of being arbitrarily moved to another court. Hence, his or her security of tenure has been disregarded⁶³.
 - Besides the constant criticism of the courts, judges, and judgments by the members of the executive and the legislature, pro-government media contributes to the policy of influencing the outcomes of the ongoing cases by its smear campaigns⁶⁴.

B) Transparency and Consultation in the Legislation and Policy-making Processes

1) Presidential Decrees

Presidential decrees constitute one of the instruments that caused the parliament to lose its legislative monopoly. According to data collected by the main opposition party (CHP), as of June 2020, while the parliament discussed only 1 429 sections of legislation since the transition into the new presidential system, President Erdogan single-handedly wrote and approved 2 229 sections⁶⁵. These numbers utterly demonstrate the impact of the presidential decrees in the legislation process. Under normal circumstances, only the areas that are not already covered by legislation are open to regulation by means of presidential decrees. However, when it comes to its limits during the state of emergency periods, the situation is dramatic, because there are no limits. Throughout these periods, parliament’s approval is not

⁵⁹ GRECO, FOURTH EVALUATION ROUND, Corruption prevention in respect of members of parliament, judges, and prosecutors, SECOND INTERIM COMPLIANCE REPORT TURKEY, 18.3.2021, p.7, §43

⁶⁰ Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.10, §23

⁶¹ GRECO, FOURTH EVALUATION ROUND, Corruption prevention in respect of members of parliament, judges, and prosecutors, SECOND INTERIM COMPLIANCE REPORT TURKEY, 18.3.2021, p.13, §76; Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.10, §23

⁶² GRECO, FOURTH EVALUATION ROUND, Corruption prevention in respect of members of parliament, judges, and prosecutors, SECOND INTERIM COMPLIANCE REPORT TURKEY, 18.3.2021, p.15-16, §92-94; Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.10, §24

⁶³ Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.11, §26

⁶⁴ *ibid*, p.11, §27-29

⁶⁵ Pinar Tremblay, “Is Turkey Already Done with Executive Presidency?” *Al Monitor*, 18 June 2020, available at <https://www.al-monitor.com/originals/2020/06/turkey-executive-presidency-proved-to-be-fail-in-two-years.html>

needed in terms of these decrees being put into effect. Moreover, in these times, it is not possible to appeal with the Constitutional Court to impede these decrees to enter into force⁶⁶.

2) Civil Society and NGOs

Corruption is a pervasive phenomenon that can permeate through any kind of systematic and legal loopholes. Therefore, trying to tackle and combat corruption without adopting a holistic approach that would be put into effect by means of cooperation between public institutions, civil society, and the private sector is almost impossible⁶⁷.

To ensure the effective participation of the citizens in the decision-making processes both locally and nationally, several key rights should be established. This would only be possible when, in addition to the right to vote, people could benefit from their freedom of association to organize themselves, when they could communicate their opinions through their freedom of expression, and when they could have the means to be informed properly through their right to access to information⁶⁸. However, even if we presuppose that people could enjoy these rights in Turkey, this whole process is overshadowed with the local government being undermined when 47 democratically elected mayors are replaced by the centrally- appointed trustees just after the 31 March 2019 local elections⁶⁹, the total number being 95⁷⁰ according to the report published by People's Democratic Party (HDP).

A powerful and qualified civil society is a prerequisite for a strong and functioning democratic system and plays a crucial role in fighting against corruption. Human rights defenders and NGOs can play a crucial role like the role of the press, especially if the latter is under ceaseless pressure. However, they are also exposed to some serious difficulties in Turkey. They are subjected to constant pressure, public stigmatization, and bans related to their activities. When they criticize the policies of the government, not only they are punished by being deprived of public funds which are allocated to pro-government NGOs but also their members face the risk of being detained, arrested, or imprisoned⁷¹. NGOs that are subjected to inspections the most are the ones that are active in advocating for human rights. In addition, the state of the emergency period has exacerbated this pressure. 1 410 associations, 109 foundations, and 19 trade unions have been shut down by the government without being given any explanation or legal justification. Furthermore, membership in these closed NGOs has been considered as evidence of being

⁶⁶ Adar, Sinem; Seufert, Günter, Turkey's Presidential System after Two and a Half Years, An Overview of Institutions and Politics, SWP Research Paper 2021/RP 02, 01.04.2021, 39 Pages, available at, <https://www.swp-berlin.org/en/publication/turkeys-presidential-system-after-two-and-a-half-years>, p.9

⁶⁷ <https://www.transparency.org/en/what-is-corruption>

⁶⁸ <https://www.du.edu/korbel/hrhw/workingpapers/2012/70-gebeye-2012.pdf>

⁶⁹ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁷⁰ KAYYIM RAPORU (AĞUSTOS 2019 – AĞUSTOS 2020) - 1 YILLIK PANORAMA, available at <https://www.hdp.org.tr/Images/UserFiles/Documents/Editor/2020/1-yillik-kayyim-raporu-2020.pdf>

⁷¹ Commissioner for Human Rights of the Council of Europe, Report following her visit to Turkey 1 to 5 July 2019, p.33, §134-135

affiliated with a terrorist organization. Because of being a member of an NGO, a considerable amount of people have been dismissed from public service⁷². Moreover, their potential contribution regarding the legislative consultation and policy-making processes has been left out⁷³ as mentioned also by the Second Interim Compliance Report.

3) Omnibus Law

Omnibus law presents itself as one of the problems of the old Turkish parliamentary system and the new “Turkish type” residential system. Within the scope of an omnibus law, a considerable number of diverse and unrelated topics are adopted without due debate. In this regard, governments (the Turkish government as well) tend to resort to this method to pass controversial amendments under the cover of also passing some significant amendments within the same omnibus law. In addition to the civil society being excluded from the legislative consultation processes, new laws are passed without even being discussed properly in the parliament. This is one of the reasons why omnibus legislation is considered to be anti-democratic⁷⁴.

VI. CONCLUSION

*“Corruption remained widespread and continued to be an issue of concern. There was no progress in addressing the many gaps in the Turkish anti-corruption framework, which is a **sign of a lack of will to fight decisively against corruption**. The corruption allegations were seldom reported and only in a small number of media.*

The absence of an anti-corruption strategy and action plan demonstrates a lack of will to fight decisively against corruption.⁷⁵”

European Commission

The continuing poor track record of investigation, prosecution, and conviction especially in high-level corruption cases in which politicians and public officials have been involved, the lack of permanent and independent anti-corruption body, insufficiency of the legal framework, and the current legislation not being in line with the EU *acquis* are also some other key points highlighted in the European Commission 2020 Report.

⁷² *ibid*, p.34-35, §141-144

⁷³ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

⁷⁴ <https://www.torontosun.com/2012/06/18/omnibus-bills-in-hill-history>

⁷⁵ EUROPEAN COMMISSION, COMMISSION STAFF WORKING DOCUMENT, Turkey 2020 Report, available at https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/turkey_report_2020.pdf

In the Fourth Evaluation Round-Second Interim Compliance Report, GRECO has concluded that out of 22 recommendations related to corruption prevention in respect of members of parliament, judges, and prosecutors, three were considered to be satisfactorily implemented, and nine partially implemented, while 10 recommendations had not been implemented.

Consequently, the above-mentioned indications overlap utterly with the fact that the current level of recommendations made by GRECO remains “globally unsatisfactory” and they respond to the question of why these recommendations remain unfulfilled by Turkish officials.

Besides, even if these recommendations are undertaken at a high level, the question of how their application and control would be measured in terms of effectiveness raises some serious concerns when the weakened civil society, silenced opposition, oppressed freedom of press and freedom of expression, insufficient check-and-balance mechanisms and especially the judiciary whose independence is highly questionable are taken into consideration.

In the First Interim Compliance Report, GRECO has decided to apply paragraph 2.i) of **Article 32** of the Rules of Procedure and resort to Paragraph 2, subparagraph (ii. a). In the Second Interim Compliance Report, in addition to the application of paragraph 2.i) of **Rule 32** of the Rules of Procedure, GRECO has resorted to Rule 32, paragraph 2, sub-paragraph (ii. b) by granting time until 31 October 2021 for the Turkish delegation to provide a report on measures taken to implement the meritorious recommendations.

Considering the systematic nature of the corruption, the existence of the serious questions related to the independence of the judiciary, the status of the basic human rights, the media, the press, civil society, and NGOs, **unless there is a step in the right direction on the part of Turkey at the end of the given time.**

To prevent corruption from spreading further and from paralyzing the country’s institutions, ASSEDEL kindly requests GRECO to resort to the application of Rule 32, paragraph 2, subparagraph (ii. c) alongside paragraph 2.iii) of Rule 32 within the scope of the non-compliance procedure. ■