

From the President

President
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Dear President

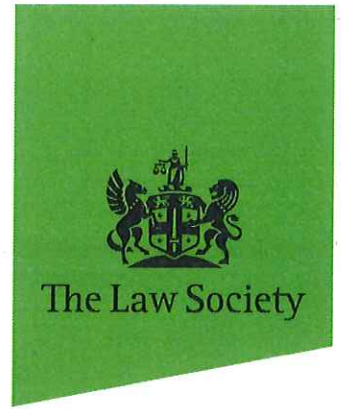
Dismissal of 2,745 Judges

The Law Society of England and Wales is greatly concerned about the recent developments in Turkey following the coup attempt. Disciplinary actions against the alleged initiators of the coup have extended to the judicial system. On Saturday 16 July 2016, the High Council of Judges and Prosecutors (HCJP) announced the dismissal of 2,745 judges. We understand that the mass dismissal took place because of an alleged involvement of the judges in the coup attempt. However, the Law Society believes that no dismissal should be effective until an independent investigation has been carried out to verify such involvement. Whilst suspension might ultimately be appropriate, we are concerned that while investigations continue the proper administration of justice will become ever more difficult after the dismissal of so many judicial officers.

Institutions of the European Union and Council of Europe have previously expressed concern regarding the lack of independence of the HCJP. We understand that the Minister of Justice acts as its *ex officio* president and has a veto right to decide on disciplinary proceedings against judges and prosecutors. We are aware that in 2014, legislation also gave the Minister increased powers to appoint the staff of the Council's secretariat. We understand that, with the exception of dismissals, HCJP decisions such as transfers of judges against their will are not open to judicial review. We have also been informed that the HCJP launched several cases against prosecutors and judges dealing with high-profile cases, including allegations of corruption and alleged transfer of weapons to Syria and that these cases have led to their suspension or dismissal, as well as to detentions. A number of disciplinary and criminal cases against judges and prosecutors seem to have lacked due process.

The Law Society notes that the recent dismissal of 2,745 judges was preceded in recent months by mounting pressure on the judiciary and other members of the legal profession. It expresses its grave concern about the passing of legislation by Parliament, on 30 June 2016 and submitted to it by the Ministry of Justice, which aims to amend the Codes of the Supreme Court and the Council of State and allowed for the removal of the majority of judges of both institutions. Moreover, at least since the end of 2013, following corruption allegations against senior State officials, reports have been made that there has been public criticism by your Presidency and other authorities of the judiciary, as well as political interference in the corruption investigations and other cases before domestic courts. At the same time, there was an apparent increase in the removal, suspension, re-assignment or prosecution of judges, prosecutors and law enforcement officers, in particular those leading the corruption investigations. We understand that State officials have also undermined the credibility of the judiciary by discrediting judges and prosecutors and accusing them of conspiracy and membership of an alleged 'parallel structure' under the influence of the Gülenist movement or of a terrorist organisation.

These developments represent a worrying erosion of the principle of the separation of powers. The Law Society is greatly concerned for the negative effects that this has on the independence of the judiciary and other members of the legal profession, as well as on the right to a fair trial of all Turkish citizens. The Law Society believes that members of the legal profession, including judges and prosecutors, can only carry out their work in a democracy that is based on the rule of law.



In this regard, we would like to draw your attention to **Resolution 2121 (2016) of the Parliamentary Assembly of the Council of Europe, "The functioning of democratic institutions in Turkey"** of 22 June 2016, which states:

"[The Council of Europe monitoring mechanism Group of States against Corruption (GRECO)] noted in its March 2016 report that the appointment of the elected members of the High Council of Judges and Prosecutors in 2014, the use of disciplinary proceedings, including the dismissal of a number of members of the judiciary, and the potential influence by the executive within this body, have further triggered the debate concerning the role and the independence of the High Council of Judges and Prosecutors, which seriously undermines the trust of the public in its judicial institutions. The Assembly shares these concerns and calls on Turkey to:

- 33.1. implement GRECO's recommendations, in particular to strengthen the security of tenure of judges and to ensure that evaluations of the performances of judges and prosecutors, as well as disciplinary procedures against them, are free from undue influence;
- 33.2. further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive within the Council".

We also draw your attention to the **Venice Commission Declaration on Interference with Judicial Independence in Turkey** of 20 June 2015, which states:

"[S]everal cases of apparent serious interference with the work of judges and prosecutors in politically sensitive cases] point to a pattern of interference with the independence of the judiciary in clear violation of European and universal standards:

- (i) Judicial decisions and requests from prosecutors were not executed in violation of the law;
- (ii) Prosecutors were suddenly removed from cases prepared by them over a long period;
- (iii) Judges and prosecutors allegedly were arbitrarily transferred to other courts;
- (iv) Judges were dismissed for decisions taken by them;
- (v) Alarmingly judges and prosecutors were even arrested for decisions taken by them".

"The Venice Commission stresses that measures against judges for their decisions can only be taken if there is sufficient proof that they did not act impartially but for improper reasons. The Venice Commission is particularly concerned that the High Council of judges and prosecutors took immediate and direct action against judges and prosecutors on account of their decisions in pending cases. This practice of the High Council contradicts basic principles of the rule of law. The Venice Commission notes that on 15 February 2014 the law on the High Council of Judges and Prosecutors was amended, strengthening the powers of the Minister of Justice within the High Council. The facts described above clearly demonstrate that there are insufficient guarantees for the independence of the judiciary in Turkey. The Venice Commission calls on the Turkish authorities:

- (i) To review the measures taken against the judges and prosecutors concerned;
- (ii) To further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive power within the Council;
- (iii) To outlaw any interference by the High Council of Judges and Prosecutors with pending cases;
- (iv) To provide judges with legal and constitutional guarantees against transfer against their will, except in cases of reorganisation of the courts".

Furthermore, the **Turkey 2015 Report of the European Commission** of 10 November 2015 notes with regard to the rule of law that:

"[T]here has been no progress since early 2014. The independence of the judiciary and respect of the principle of separation of powers have been undermined and judges and prosecutors have been under strong political pressure. In the coming year, Turkey should in particular: (i) create a political and legal environment that allows the judiciary to perform its duties in an independent and impartial manner, with the executive and legislature fully respecting the separation of powers; (ii) limit the role and influence of executive power within the High Council of Judges and Prosecutors and provide sufficient guarantees against transfers of judges against their will; (iii) introduce further safeguards against any interference by the High Council of Judges and Prosecutors in judicial proceedings".

The Law Society also draws your attention to the **Basic Principles on the Independence of the Judiciary**, endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.
2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.
20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

The Law Society supports the continuation of the democratically elected parliament and is relieved that the coup has been unsuccessful. In support of the need to respect the separation of powers and the rule of law in Turkey, however, the Law Society respectfully urges you:

- 1) to reinstate the judges who were dismissed, pending investigations into their alleged involvement in the coup attempt;
- 2) to follow international standards regarding the suspension, re-assignment and removal of judges in any disciplinary or other proceedings brought;
- 3) to respect the independence of the judiciary and to ensure that other members of the legal profession, such as prosecutors and lawyers, can carry out their professional duties without hindrance and improper interference; and
- 4) to adopt the recommendations made by the Parliamentary Assembly of the Council of Europe, the Venice Commission, and the European Commission regarding the rule of law and judicial independence in Turkey.

Yours sincerely,



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Endorsement: This letter is endorsed by Lawyers' Rights Watch Canada, Vancouver, B.C., Canada.

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