

**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM
SPECIAL PROCEDURES DATED 23 MAY 2017**

(Reference: OL TUR 5/2017)

1. With reference to the letter of the joint communication sent by the Special Rapporteur on the independence of judges and lawyers, and the Working Group on Arbitrary Detention dated 23 May 2017 which transmitted claims concerning the dismissal, arrest and detention of judges and prosecutors, the Government would like to submit its observations in the following paragraphs.

2. At the outset, the Government would like to underscore that the scope and the necessity of measures taken in Turkey with respect to the July 15 terrorist coup attempt should be better assessed by paying attention and also giving due consideration to the severity of the threats posed by its perpetrators, namely Fetullahist Terrorist Organization/the Parallel State Structure (“FETÖ/PDY”). An information note on Fetullah Gülen, the founder and leader of the FETÖ/PDY and FETÖ/PDY is enclosed herewith for reference and perusal.

A. Measures Taken within the Scope of State of Emergency

3. Following the July 15 terrorist coup attempt, in order to restore public order, to reinstate democratic institutions and to eliminate promptly the threat faced with and to fight effectively and swiftly against the armed terrorist organizations, a State of Emergency (SoE) has been declared throughout the country for 90 days by Decree Law of the Council of Ministers as from 21 July 2016 under Article 120 of the Constitution and Article 3 § 1 (b) of Law no. 2935 on State of Emergency and this decision was approved by the Grand National Assembly of Turkey.

4. The legal framework governing State of Emergency is stipulated by Articles 119 to 122 of the Constitution and by Law on State of Emergency no. 2935. Under emergency rule, the Council of Ministers, headed by the President, is empowered to issue Decree Laws relating to matters necessitated by the State of Emergency, under Article 121 of the Constitution. No other law is required for the exercise of this power. Moreover in Article 15 of the Constitution, it has been stated that “the exercise of fundamental rights and freedoms may be partially or entirely derogated [...] to the extent required by the exigencies of the situation, as long as obligations under international law are not violated.

5. Under Article 15 of the Constitution, there shall be no provision against the right to life, prohibition of torture and ill-treatment, prohibition of accusation and coercion due to religion, conscience and expression, the principle of lawfulness in offences and punishments, the ban on slavery and presumption of innocence in the Decree Laws to be issued during emergency periods. The individual rights and freedoms apart from these may be restricted by the laws or decree laws issued during the emergency period. However, such restrictions must be in accordance with the principle of “proportionality”.

6. As can be seen above, Article 15 of the Constitution is in similar wording with Articles 4 of the International Covenant on Civil and Political Rights (ICCPR) and 15 of the European Convention on Human Rights (ECHR). Thus the national protection and legal review in this respect is in conformity with those at the international level.

7. Apart from judicial and administrative investigation measures and in the unique nature of the SoE conditions, with an aim to eliminate security risks targeting the State, Decree Laws no. 667 and 668 provided that “public officials who are considered to be a member of, or have relation, connection or contact with terrorist organizations or structure/entities, organizations or groups, established by the

National Security Council as engaging in activities against the national security of the State” shall be dismissed from public service”.

8. In the meantime, with Article 10 of Decree Law no. 673 dated 15 August 2016, the following sentence was added to Article 3 of Decree-Law no. 667 on the Measures to Be Taken under the State of Emergency, dated 22 July 2016: *"The decisions, which shall be rendered on objections against or requests for re-examination of the decisions on dismissal from profession which are filed in accordance with the provisions of the relevant laws, shall also be promulgated in the Official Gazette and they shall be regarded as notified to the concerned persons on the date of their promulgation."* In this context, members of the judiciary who are dismissed from the profession may file an objection in line with the provisions contained in the relevant laws or may request for re-examination. Council of Judges and Prosecutors (CJP)¹ also stated that a request for re-examination may be made to the General Board of the CJP within ten days from the date of notification of the decision.

B. The Arrangements Introduced within the Scope of the Right to Access to a Lawyer

9. Taking into account the high number of members of the FETÖ terrorist organization and those who took part in the attempted coup, measures were taken in relation to investigation and prosecution proceedings.

10. In the investigations conducted in the scope of Decree Law no. 667, the defense lawyer selected under Article 149 or assigned under Article 150 of Code of Criminal Procedure (CCP) no. 5271, may be banned from taking on his/her duty if an investigation or a prosecution is being carried out in respect of him/her due to the offences defined in Chapter Four, Five, Six and Seven of Part Four of Book Two of Turkish Criminal Code no. 5237, the offences within the scope of Anti-terrorism Act no. 3713 and the collective organized crimes.

11. The decision on banning is rendered by Magistrate's Office on a case-by-case basis and is immediately served on the suspect and the relevant Bar Presidency with a view to assigning a new lawyer. Therefore, those investigated due to the offences within the scope of the said Decree Law are still able to get legal assistance of other lawyers. Thus, aforementioned arrangement cannot be considered as a restriction imposed on the right to access to a lawyer and complies with the criteria of "the extent required by the exigencies of the situation" envisaged in the Constitution and ECHR.

12. It is specified that by adding a second paragraph to Article 2 of Decree Law no. 676 and Article 154 of Law no. 5271, the right of the suspect, who is under custody due to the offences defined in Chapter Four, Five, Six and Seven of Part Four of Book Two of Turkish Criminal Code, the offences within the scope of Anti-terrorism Act and the offences of manufacturing and trafficking drugs and stimulants committed through the organisational activities, to confer with his/her defendant can be restricted for twenty four hours upon the request of the public prosecutor and he/she cannot be interrogated during this period. The objective of the aforementioned provision is to prevent the terrorist organisations from putting the pressure on the suspects through their lawyers and avoid the dissemination of information to other people who will be probably arrested in accordance with the evidence obtained during the investigation, through the lawyers.

13. Within this framework, Decree Law no. 667 stipulates that, as regards those detained on suspicion of the offenses under the Decree-Law, if there is a risk that public security and the security of the penitentiary institution is endangered to the effect that the terrorist organization or other criminal organizations are directed, that orders, instructions, secret, clear or encrypted messages are

¹ Formerly known as "High Council of Judges and Prosecutors (HCJP)".

transmitted during the interviews between the detainees and defense lawyers, the public prosecutor may order that interviews be recorded by audiovisual means using technical devices. In such cases, the presence of an official can be ordered to monitor conversations between the detainee and the lawyer. Documents or copies of the documents to be given to the defense lawyer by detainee as well as files and notes that may be taken by them during the interviews could be seized or the days or hours of the interviews could be limited. Objections may be raised against these decisions or measures.

14. Moreover, no restrictions have been envisaged concerning holding hearings during the review by courts regarding the state of detention or the taking of opinions from the defendant, suspect or the defense counsel. These issues have been left to the discretion of the relevant judge or court.

15. The aforementioned matters are the measures taken for the purpose of preventing the members of a terrorist organisation from establishing an organisational communication through their lawyers and fighting against terrorism effectively. The right of the suspects to confer with their lawyers is not definitely forbidden with these measures. The suspects can always get the assistance of a lawyer to be assigned by the bar association.

16. Furthermore, Article 149 of Code of Criminal Procedure (CCP) no. 5271 stipulates that, the suspect or accused may benefit from advice of one or more defense lawyers at any stage during the investigation or prosecution; and if there is a legal representative, he/she may also choose a defense lawyer on behalf of the suspect or accused. In the investigation phase, during the interview, the maximum number of lawyers allowed to be present shall be three and also, up to three attorneys shall be present at the hearing in proceedings in respect of the offences committed within the framework of organizational activity.

17. Article 150 of the CCP also stipulates that, the suspect or the accused shall be asked to choose a defense lawyer on his/her behalf. In cases where the suspect or accused declares that he/she is not able to choose a defense lawyer, a defense lawyer shall be appointed on his/her behalf, if he/she requests such. If the suspect or the accused who does not have a defense lawyer is a child, or an individual, who is disabled to that extent that he/she can not make his/her own defense, or deaf or mute, then a defense lawyer shall be appointed without his/her request. In cases of the investigation or prosecution for offences that carry a punishment of imprisonment at the lower level of more than five years, a defense lawyer shall be appointed without request.

18. As is seen, the measures taken with Decree Law no. 667 are not arrangements applied to all investigation procedures. These arrangements enable to complete properly the proceedings and the procedures of the offence of terrorism and the offences against state security, which were committed during the July 15 terrorist coup attempt and are still committed after that attempt, to the extent required by the exigencies of the situation, to prevent the terrorist organisations from further violating the criminal investigations, public order and security, are limited with the period of the state of emergency and comply with the Constitution and the international law.

19. In conclusion, rule of law, democracy and human rights are the fundamental principles of the Republic of Turkey. The Government fights against terror related offences and the coup attempt with due respect to these principles and in accordance with its international obligations. In this respect, the main objective in this emergency period is to proceed to the ordinary period by fulfilling the requirements of the state of emergency. All the arrangements have the characteristics of the obligatory, urgent and proportional measures taken to fight against the terrorist organisations and prevent a new coup attempt.

C. Determining the Connection and Affiliation of the Suspended Members of Judiciary

with FETÖ/PDY

20. The CJP, that has taken office after its elections held in 2014, rendered decisions on launching inquiries and investigations about the allegations raised in respect of the members of judiciary, who carried out investigations or prosecutions in that period and earlier such as “17-25 December”, “Selam-Tevhid”, “Unlawfull Wiretappings”, “Ergenekon”, “Balyoz”, “Military Espionage”, “Cosmic Room”, “MIT Trucks”, Oda TV” on the grounds that they were performing their judicial duties unlawfully and under FETÖ/PDY’s directives.

21. The names of many judges and prosecutors connected and affiliated with FETÖ/PDY were determined in the investigations conducted by the Inspection Board of CJP within the framework of the aforementioned investigations. In regard to the gravity of the situation, the working area for determining the members of judiciary connected and affiliated with the FETÖ/PDY was expanded and the names of many members of judiciary were found.

22. After the Chief Public Prosecutor of Ankara initiated the investigation, a certain number of judges and prosecutors connected and affiliated with the aforementioned terrorist organisation were suspended.

23. During the process, the suspension decisions were also made for the members of judiciary, whose connection and affiliation to terrorist organization was found out by witness reports, confessor statements, the determination of Bylock use, denunciations etc. and submitted to the CJP.

D. The Criteria for Suspending and Dismissing the Members of Judiciary

24. As is emphasized in the dismissal decision of CJP, the decisions were made by reaching a conclusion about each member of judiciary by means of evaluating the following criteria individually for the dismissed judges and prosecutors:

- *Analysis of information on the activities of the relevant people, which start with admission to candidacy, in the training centre and the Justice Academy of Turkey,

- * Analysis of information on participation in in-service training and foreign language training, overseas appointments, assignments as specially authorized prosecutors or for administrative duties in the courts and the criteria taken into consideration in assignments in the capacity of chairman, vice chairman or inspector, investigation judge to the administrative institutions, head of department or vice head of department, director general or deputy director general, etc. to the Inspection Board as judges or having title for specially authorized courts, which were taken advantage as an organizational weapon by the FETÖ/PDY;

- * Analysis of information on other documents in their personal files,

- * Analysis of their social media accounts,

- * Analysis of the complaint, denunciation, inquiry and investigation files about the relevant people submitted to the Council of Judges and Prosecutors and the decisions made on these files,

- *Investigations conducted locally,

- *The procedures and decisions of the judges and the public prosecutors in the files related with FETÖ/PDY terrorist organisation,

- *The recordings in the encrypted programme used by the members of the organisation for communication,

- *The disciplinary punishments and dissenting opinions of the Council of Judges and Prosecutors about the members of the organisation, who were confirmed with the reports issued by the anti-terrorism units of the Directorate General of Security that they were members of FETÖ/PDY,

- *Information as well as documents obtained from the Chief Public Prosecutor of Ankara,

*The nature of the investigation initiated by the Chief Public Prosecutor of Ankara for the relevant people and the imputed offences as well as detention and arrest warrants,
*Statements and interrogation reports of the judges and prosecutors
*Confessors' statements.

25. In brief, there is a file for each dismissed member of judiciary in CJP and the evidence collected about the relevant people are conveyed to these files.

26. While the disciplinary investigations are ongoing for the members of judiciary suspended after the coup attempt, following the entry into force of Decree Law no. 667, CJP decided to dismiss the relevant judges and prosecutors in accordance with the regulation in the Decree Law.

27. By virtue of the authority entrusted by Decree Law no. 667, as legislation and executive powers do not have any authority over whether to dismiss the members of judiciary or not, the General Board which is the highest authority of CJP has applied the procedure of dismissal for the relevant judges and prosecutors. Therefore, it is possible for the concerned to use the remedy of objection before the General Board.

28. Following the July 15 terrorist attempt, an investigation commission was established before the General Board and those who were suspended and dismissed from profession were ensured to use their right of petition and defense. And, all pleas and claims in every petition were meticulously investigated by the officials in the commission and submitted to the General Board. As a matter of fact, former decisions for the suspension and/or dismissal of 444 members of judiciary from profession at the date of 08/06/2017 were abolished upon their demands for re-examination, and they were reinstated to their professions.

E. Conditions of the Dismissed Members of the Council of Judges and Prosecutors

29. The conditions of the members of the Council of Judges and Prosecutors, about whom investigation was launched because of the offences of violating the Constitution, committing offences against the legislative power and the Government, armed attack against the Government of the Republic of Turkey and being a member to the FETÖ/PDY armed terrorist organisation, were discussed in the General Board of the CJP.

30. It should be pointed out that sub-paragraph (h) of Article 8 of Law no. 2802 on the Council of Judges and Prosecutors stipulates that in order to become a judge and a prosecutor, one should not be under an investigation or prosecution because of a criminal act requiring a punishment restricting freedom for more than three months with the exception of negligent offences. Furthermore, sub-paragraph (a) of the first paragraph of Article 18 of Law no. 6087 on the Council of Judges and Prosecutors states that the prerequisite for being a member to the Council of Judges and Prosecutors is not to have a condition which poses an obstacle for being a judge.

31. In this regard, since it was understood that criminal investigation was launched against the members of the Council of Judges and Prosecutors on the basis of the offences of violating the Constitution, offences against the legislative power and the Government, armed rebellion against the Government of the Republic of Turkey and being a member to the FETÖ/PDY armed terrorist organisation by Ankara Chief Public Prosecutor's Office, decision on termination of their membership to the Council was rendered by the General Board of the CJP pursuant to Article 28 of the same law, considering the fact that the continuation of their duties would harm the prestige, impartiality and reliability of judiciary and on the basis that they lost the conditions for membership to the Council during the fulfilment of this duty. As a result of the examination conducted upon the re-examination demands of those related, the demands were rejected separately and thus, the decision was finalized.

F. The Procedure Followed in Criminal Investigations and Detentions Related to the Members of Judiciary

32. Considering the fact that the members of judiciary about whom legal action was taken regarding the coup attempt, were held responsible for the offences in general such as “violating the Constitution, committing offences against the legislative power and the Government, armed rebellion against the Government of the Republic of Turkey and being a member to the FETÖ/PDY armed terrorist organization”, it is understood that these persons were subjected to investigation because of their “personal offences”.

33. In Article 82 and other Articles under the Chapter of “Investigation and Prosecution” of Law no. 2802, “offences committed because of or during their duty” and “personal offences” as regards the members of judiciary were separated, and different investigation and prosecution procedures were adopted regarding these two types of offences.

34. Between Articles 82 and 92 of the Law in question, the procedure of investigation and prosecution to be conducted due to the offences on duty has been regulated. However, since offences committed within the context of the coup attempt cannot be regarded as offences committed on duty, these Articles cannot be applied to the members of judiciary charged.

35. The regulation regarding “personal offences” is present in Article 93 of the Law in question, and this Article is applied with regard to the aforementioned offences. Moreover, “joint provisions” have been regulated in terms of both the offences committed on duty and personal offences between in between Articles 94 and 98 of the Law in question. In accordance with the regulation in Article 94: *“For the flagrante delicto offences which fall within the competence of assize courts, the preliminary investigation shall be undertaken according to the general provisions. Preliminary investigation shall be undertaken by the authorized public prosecutors, in person.”*, it is certain that legal action will be taken in line with the general provisions regarding the crimes (which are not open to discussion whether there is a flagrante delicto offence requiring heavy penalty). According to the procedure of general investigation regarding the criminal investigation in the Criminal Procedure Code No. 5271; if it is decided that the members of judiciary about whom investigation is launched for their personal offences are directed to be arrested by the public prosecutor who is authorized and competent according to ordinary procedures, they will be sent to magistrate’s court which is the authorized and competent authority in accordance with general provisions.

36. The first paragraph of Article 93 of Law no. 2802 includes the provision that *“The investigations and prosecutions for the personal offences of judges and prosecutors shall be conducted by the Provincial Chief Public Prosecutor and the assize court in the same Province where the district court whose jurisdiction covers the person concerned.”*, and no special investigation procedure is envisaged for such offenses. The members of judiciary are treated in the same way as any other citizen regarding their personal offences apart from the aforementioned exception, and no immunity or special status has been granted to them in terms of private and administrative laws.

37. On the other hand, considering that the concerned members of judiciary were held responsible because of their personal offences, not because of their judicial duties, it should also be emphasized that this situation is compatible with regulation that ***“When not exercising judicial functions, judges are liable under civil, criminal and administrative law in the same way as any other citizen.”*** in Article 71 of the *“Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member states on judges: Independence, Efficiency and Responsibilities.”*

G. Information on the Number of Judges and Prosecutors that have been Suspended

Since the July 15 terrorist coup attempt within the Scope of the Investigation of the FETÖ/PDY Terrorist Organisation and Dismissed in Accordance with Decree Law No. 667 and Law No. 6789

38. As of 8 June 217:

There are 3833 judges and prosecutors who were dismissed from profession and whose decisions were finalized, while there are 113 judges and prosecutors who were dismissed from profession and whose decisions have not been finalized yet in accordance with Decree Law no. 667 and Law no. 6789.

There are 181 judges and prosecutors about whom the decision of dismissal from profession and suspension was abolished, while there are 263 judges and prosecutors about whom the decision of suspension was revoked according to Decree Law no. 667 and Law no. 6789.

There are 111 judges and prosecutors about whom the decision was taken that there was no need to decide to reinstate them since their dismissal was revoked according to Decree Law no. 667 and Law no. 6789 and some of them quitted their jobs because of retirement/resignation, while there are 8 judges and prosecutors about whom the decision was taken that there was no need to decide on their suspension since they quitted their duties because of resignation.

The number of judges and prosecutors who were suspended and whose investigations still continue is 12.

39. A total of 528 persons were dismissed from profession without being suspended. In this regard, the total number of judges and prosecutors dismissed from profession except for those about whom the decision of dismissal/suspension was abolished and those who resigned/retired is 3946.

H. Works carried out for Promotion of Independence of the Judiciary

40. The Strategic Plan of the Council of Judges and Prosecutors for 2017-2021 in which it determines the aims and objectives for the forthcoming five years was published on its web site on 02/01/2017 and entered into force. The issue of “*Strengthening the Independence and Impartiality of Judiciary*” was determined as the first objective.

41. In this scope, in order to strengthen the independence and impartiality of judiciary, situation analysis will be carried out at first. And, works will be conducted for increasing awareness of primarily the members of judiciary and other institutions and organizations by means of co-ownership of the concepts of independence and impartiality in society. Moreover, some activities have also been planned for creating awareness in public opinion for this purpose. In this regard, meetings and seminars will be held with the actors of judiciary, media, non-governmental organizations and universities by making a proper planning. Also, the examples of good practise will be examined and outcome report will be prepared. Action plan will be prepared after evaluation of this report together with the other outcomes.

42. The strategies envisaged in this objective’s section titled “Objective 1.1” with the content of “*Awareness will be increased regarding the importance of independence and impartiality of judiciary.*” are as follows:

“STRATEGY 1: Situation analysis will be conducted for determining the elements posing a threat against the independence and impartiality of judiciary.

STRATEGY 2: The examples of good practise in comparative law regarding the independence

and impartiality of judiciary will be examined and reported.

STRATEGY 3: In the light of the outcomes obtained, an action plan will be prepared for the issues within the jurisdiction of the Council.

STRATEGY 4: Legislative work will be carried out to eliminate the issues affecting judicial independence and impartiality negatively.

43. As is seen, Turkey attaches importance to the independence of the judiciary as well as the CJP and develops strategies to achieve aims in this direction.

I. The Change in the Structure of the Council with Constitutional Amendment

44. As is known, CJP is a constitutional institution that functions according to the principles of the independence of the courts and the security of tenure of judges. In the reasoning of the amendment to Article 159 of the Constitution, it was stated that “*with Article, the structure of the Council is being redesigned to eliminate the problems that arise in the current structure and practices of the Council of Judges and Prosecutors*”. It is emphasized that the amendment was made to fulfil the emerging need and to ensure democratic legitimacy by pointing out “the democratic legitimacy of the Council is strengthened envisaging that the Parliament will also select members for the restructured Council.”

45. By the amendments, changes were made in the title, structure and electoral procedures of the Council. The word “high” was removed from its title², the number of its members was reduced to 13 and it was arranged to comprise 2 chambers.

46. As to the electoral procedures of the CJP, the amendments envisage that “the applications for the memberships to be elected by the Grand National Assembly of Turkey shall be made to the Office of the Speaker of the Assembly. The Office of the Speaker conveys the applications to the Joint Committee composed of members of the Committee on Justice and the Committee on Constitution. The [Joint] Committee shall elect three candidates for each vacancy with a two-thirds majority of total number of members. If the procedure of electing candidates cannot be concluded in the first round, a three-fifth majority of total number of members shall be required in the second round. If the candidates cannot be elected in this round as well, the procedure of electing candidates shall be completed by choosing a candidate by lot, for each membership among the two candidates who have received the highest number of votes. The Grand National Assembly of Turkey shall hold a secret ballot election for the candidates the Committee has identified. In the first round a two-thirds majority of total number of members shall be required; in case the election cannot be concluded in this round, in the second round a three-fifth majority of total number of members shall be required. Where the member cannot be elected in the second round as well, the election shall be completed by choosing a candidate by lot among the two candidates who have received the highest number of votes.”

47. The electoral procedure of the members selected by the Parliament for the Council has the potential to create an impact that will enable to seek reconciliation in the Parliament in terms of democratic customs. In case the qualified majority sought in the first two rounds cannot be achieved, determining the members in the third round by the casting lots between the two candidates having the most votes in the second round may be regarded as an obstacle to the election of the candidate of the political tendencies that have majority in the Parliament. In this scope, it is observed that the practice of selecting the majority of members by legislative body in determining the Council members instead of the selection system is compatible with the principles of certain international documents related to the judiciary. In the second sentence of paragraph 50 of the Venice Commission’s Report on Judicial Appointments (CDL-AD (2007) 028), it is stated that “*In order to provide for democratic legitimacy of the Judicial Council, other members should be elected by Parliament among persons with appropriate legal qualifications.*”

² By the amendment, the “High Council of Judges and Prosecutors (HCJP)” has been renamed as the “Council of Judges and Prosecutors (CJP)”

48. Apart from these, CJP members will be elected for four years and those who have completed their term of office will be able to sit for another four years. The amendment concerns reducing the number of members. Thus, it is aimed to enable the Council to function more effectively. In addition, some of the members will be selected by the President and the other by the GNAT, and it is clear that members to be selected by both the elected President and the Parliament will have an effect on increasing the democratic legitimacy of the Council.

49. The four members to be selected by the President and the four members to be selected by the GNAT will be judges and the President will select among first-class judges and prosecutors, while the GNAT will select among judges working in high judicial organs. This will allow the judges and prosecutors to have the opportunity to be represented in the Council.

50. Examining the comparative law, it is seen that there are many different systems related to appointment of judges and prosecutors and their personal rights. There is also no structure in the form of Council of Judges and Prosecutors even in some western democratic countries. It should be noted that the Council of Judges and Prosecutors is not a judicial institution, but a judicial administration institution. What is important in this process is to establish a system that will ensure the impartiality and independence of the judiciary.

J. Admission of Judges and Prosecutors to the Profession

51. Qualifications of the candidates to be admitted to the profession of Judges and Prosecutors are regulated in Article 8 of Law on Judges and Prosecutors no. 2802. According to this,

“To be assigned as candidate;

a) To be Turkish citizen,
b) Not to have turned thirty-five years old as of the first day of January in the year of entrance exam.

c) For judicial candidates; to graduate from law faculty or a foreign law faculty and to get a certificate of achievement after taking exams for the missing courses considering the courses in law faculties in Turkey,

For administrative judicial candidates; to graduate from law faculty or a foreign law faculty and to get a certificate of achievement after taking exams for the missing courses considering the courses in law faculties in Turkey, for the candidates who graduate from other faculties rather than that of law, to have completed at least four years of higher education in the fields of political science, administrative sciences, economics and finance which have law lessons in its curriculum or to graduate from foreign educational institutions that are accepted as equivalent to these fields, considering the need and not more than twenty percent of the number of candidates to be admitted for each term.

d) Not to be banned from public rights,

e) No military obligation or to have performed active service or to have postponed military service or to be in reserve list,

f) Not to have handicaps that could prevent the profession of judge and prosecutors from constantly making their duties all over the country such as body and mental illness or disability, unusual speech that is found odd by others and the difficulty of controlling the movement of organs.

g) Excluding involuntary offences, (...)even if granted amnesty, not to be sentenced to imprisonment of more than three months for the crimes against the personality of the State, not to be convicted for dishonourable offences or infamous crimes such as embezzlement, corruption, bribery, theft, fraud, forgery, breach of trust, fraudulent bankruptcy or smuggling, conspiracy in official bidding or purchasing, disclosure of state secrets or excluding those offences or involuntary offences not to be investigated or prosecuted for an offence which requires a penalty of more than three

months' imprisonment,

h) To be successful at written and oral exams,

i) Not to display attitudes and behaviours that are not compatible with the profession of judges and prosecutors,

i) For those who wish to move from the profession of lawyer to the candidature; having necessary qualifications except for subparagraph (i) above, it is necessary to have worked for at least three years in the profession, not to have turned forty-five years old as of the first day of the January of the examination year and to be successful in the written and oral exams,

Procedures and principles regarding written and oral exams for the judge and prosecutor candidacy are regulated in Article 9/A of the same law. The mentioned article "The interview is an evaluation method by giving points to the relevant person's;

a) Reasoning competency,

b) Ability of understanding, summarizing and expressing a subject,

c) General and physical appearance, compliance of behaviour and reactions with the profession and merit,

d) Ability and culture,

e) Openness to the contemporary scientific and technological developments.

52. The interview is made by evaluating the above-mentioned features on twenty points for each of them. The points awarded by each member of the Interview Board are written to minutes separately. It is provided that "In order to be considered successful, arithmetic average of the scores given by the members must be seventy out of hundred full score." The formation of the interview board has also been regulated in the mentioned article. According to this; Interview board consists of seven members in total, under the chairmanship of Undersecretary of the Ministry of Justice or the Deputy Undersecretary to be appointed by himself who are also lawyers themselves, Chairman of the Board of Inspectors, General Directors of Criminal Affairs, Legal Affairs and Personnel and two members to be appointed by the Executive Committee of the Justice Academy of Turkey for each examination. If the Court of Cassation and the Council of State members have members in the Executive Committee of the Justice Academy of Turkey, these members are appointed as the regular members in the Interview Board. If the number of members of the Court of Cassation and the Council of State is more than one in the Executive Board of the Justice Academy of Turkey, for the quota of the Court of Cassation, among the members of the Court of Cassation and for the quota of the Council of State, among the members of the Council of State; if one or both members of the Court of Cassation or the Council of State are absent, the other members of the Board of Directors are elected by secret ballot. Appointments for judges and prosecutors are made on the basis of objective criteria in accordance with the provisions mentioned above.

53. Therefore, the allegations that the qualifications required for recruitment of new judges and prosecutors are weakened and the candidates who are tied to the ruling party are preferred are unfounded. All the interviews with candidates are made by the interview board consisting of independent and impartial judges and prosecutors. No changes were made to the structure of the interview board during the State of Emergency process or by the amendments to the Constitution.

K. Conclusion

54. In light of the above explanations, the Government is of the opinion that, the allegations that the measures taken after the failed coup attempt and the recent amendments to the Constitution interfere with the fundamental human rights and independence of judiciary and legal profession are manifestly ill-founded and should be rejected.

Enc.