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Mandate of the Special Rapporteur on the independence of judges and lawyers

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the independence of judges and lawyers pursuant to Human Rights Council resolution 17/2.

In this connection, I would like to bring to your Excellency's Government's attention information I have received concerning **interference and intimidation against members of the justice system, in particular judges and prosecutors, who have reportedly been investigating corruption cases**. In this context, a draft law reforming the High Council of Judges and Prosecutors (HSYK) and the Justice Academy was approved by the Justice Commission of the Grand National Assembly and adopted by the Grand National Assembly on 15 February 2014; the law was subsequently submitted to the President of the Republic for ratification.

According to information received:

Following a lengthy investigation lasting 14 months, a number of arrests were made in relation to anti-corruption investigations, starting from 17 December 2013. It was reported that the sons of three Ministers, a mayor, dozens of prominent businessmen, officials from different State branches, and a number of other people, including the Director of the State-owned HalkBank were arrested and questioned. Three Cabinet Ministers resigned in December following the arrests of their sons.

It is reported that the Prime Minister has qualified these investigations as a "dirty operation" that was against the ruling Justice and Development Party (AKP), aiming to topple his government. In addition, the Prime Minister allegedly defined these investigations as a "judicial coup" and the Minister of Justice has announced that he had filed a complaint against police officers and prosecutors in charge of these investigations for having violated the confidentiality of these investigations.

Furthermore, the Chief Public Prosecutor of Istanbul was allegedly pressured to terminate these corruption investigations. Prosecutors leading corruption

investigations that erupted in December were removed, specifically 115 prosecutors and judges serving at the Istanbul Courthouse were reassigned. Overall, it is now reported that hundreds of prosecutors and thousands of police officers have been reassigned or dismissed since 17 December 2013, allegedly for being under the control of Fethullah Gülen.

On 21 December 2013, the Judicial Police Regulation was amended, obliging police officers, when working under the order of prosecutors, to inform their superiors about all judicial investigations in advance. Similarly, according to the amendments, public prosecutors are obliged to inform chief public prosecutors about judicial investigations underway.

On 26 December 2013, it is reported that the High Council of Judges and Prosecutors (HSYK) issued a press release and declared that the amendments of the Judicial Police Regulation were unconstitutional and violated the Turkish Criminal Code, which stipulates the confidentiality of investigations. It is alleged that two days later the Council of State suspended the execution of the amendments until a final verdict was reached.

On 22 December 2013, Istanbul Police Department issued a press release indicating that journalists could no longer enter police department buildings.

On 26 December 2013, the High Council of Judges and Prosecutors (HSYK) issued a statement saying that State institutions and executive officers must act in line with the principle of equality before the law in all activities, adding that an independent judiciary is a guarantee for citizens against rulers. After that, the Minister of Justice supposedly ordered, on 30 December 2013, that the High Council be no longer allowed to give press statements without first informing the Minister.

On 16 January 2014, the Justice Commission of the Grand National Assembly approved a draft law aiming to restructure the High Council of Judges and Prosecutors (HSYK) and the Justice Academy.

After the vote was first suspended, the draft law was re-introduced and adopted by the Grand National Assembly on 15 February 2014. According to the law, the role of the Minister of Justice would be expanded over the selection of members of the High Council of Judges and Prosecutors and the functioning of the Justice Academy. Furthermore, according to the law, the Minister of Justice, as the President of the High Council of Judges and Prosecutors, would have the power to appoint the Head and the Deputy Head of the Inspection Board, as well as the Deputy Secretary General. He would also be empowered to initiate and decide on disciplinary action, including criminal investigations, against Council Members. In addition, the Minister of Justice would also be able to prepare the agenda of meetings of the High Council and to decide on the allocation of Council Members among its three constituting Chambers. Finally, the President of each Chamber,

the reporter judges and the inspectors would be recommended by the Minister of Justice and appointed by the Plenary Session. The staff of the High Council would also be appointed by the Minister of Justice and the Head of the Inspection Board would be answerable to the Minister of Justice.

It confirmed, the allegations would demonstrate increasing interference in the independence of the judiciary by the executive and legislative branches of government. The measures allegedly taken against police officers, judges and prosecutors, and the law related to the High Council of Judges and Prosecutors undermine the principle of the separation of powers enshrined in the Constitution of Turkey and violate the fundamental principle of judicial independence prescribed in international treaties ratified by the State.

I would like to appeal to your Excellency's Government to take all necessary measures to guarantee the independence of the High Council of Judges and Prosecutors and to ensure that judges and prosecutors are able to perform their professional functions without improper interference, pressures or threats. In this sense, I would like to urge the President of the Republic not to ratify the law related to the High Council of Judges and Prosecutors.

Furthermore, I would like to refer your Excellency's Government to the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. In particular:

-Principle 2, which states: "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";

-Principle 4, which states: "There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law";

-Principle 18, which states: "Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties";

-Principle 19, which states: "All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct"; and

-Principle 20, which states: "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".

Furthermore, I would like to refer your Excellency's Government to the Bangalore Principles of Judicial Conduct, adopted in The Hague in 2002 (E/CN.4/2003/65), and in particular:

-Principle 1, which states: "Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects";

-Principle 1.1, which states: "A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason"; and

-Principle 1.3, which states: "A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom".

Regarding the measures taken against prosecutors, I would like to refer your Excellency's Government to the Guidelines on the Role of Prosecutors, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, and in particular:

-Guideline 4, which states: "States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability";

-Guideline 11, which states: "Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest";

-Guideline 15, which states: "Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences";

-Guideline 21, which states: "Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review"; and

-Guideline 22, which states: “Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines”.

Furthermore, regarding the law of judicial reform, I would like to refer your Excellency's Government to the aforementioned Basic Principles on the Independence of the Judiciary, and in particular principle 1, which states that “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”.

I would also like to draw your Excellency's Government's attention to the fact that the approved law, which would expand the power of the Minister of Justice over the High Council of Judges and Prosecutors and the Justice Academy, is contrary to the recommendations contained in the report on the official visit I conducted to Turkey in October 2011 (A/HRC/20/19/Add.3). In particular, concern was expressed in the report regarding the position and functions of the Minister of Justice within the High Council of Judges and Prosecutors, which may jeopardize the full respect for the independence and impartiality of the judiciary and the public's confidence on the proper functioning of the justice system. In addition, concern was expressed that the Minister of Justice has a large influence on judicial activities, as he retains a key role in the administration and management of the budget of the judiciary and has a high level of control over the legal profession (paras.32-34). In that sense, I had recommended that the High Council of Judges and Prosecutors should be made totally independent from the executive branch, both structurally and functionally (para.81).

Regarding the situation of judges and prosecutors, I had also mentioned in my report the perception that the appointment and transfer system could be used, depending on the case, as a punishment or reward mechanism (para. 41). As a result, I recommended that the decision on the transfer or assignment of judges and prosecutors to other posts should be guided by objective criteria and that judges and prosecutors should have the right to challenge –including in court- all decisions modifying the status of their conditions of service (paras. 89-91).

It is my responsibility under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. Since I am expected to report on these cases to the Human Rights Council, I would be grateful for your cooperation and your observations on the following matters:

1. Are the facts alleged in the above summary of the case accurate?
2. Please indicate how the law related to the High Council of Judges and Prosecutors respects international principles, including the aforementioned standards, on the independence of the judiciary and the role of prosecutors. Please explain in particular

how the new functions of the Minister of Justice in the High Council of Judges and Prosecutors will guarantee the independence of this institution.

3. Please provide details about the current situation of the judges and prosecutors removed from their duties or relocated to other posts.

4. Please indicate which measures have been taken to ensure the independence of the justice system, prevent undue interference, pressure, threats and intimidations against judges and prosecutors and other members of the judiciary, and punish the perpetrators of any such interference.

I undertake to ensure that Your Excellency's Government's response to each of these questions is accurately reflected in the report I will submit to the Human Rights Council for its consideration.

In light of the potentially serious implications of this case, I am considering to publicly express my concerns in the near future.

Please accept, Excellency, the assurances of my highest consideration.

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Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers