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Turkey: Independence and impartiality of the judiciary under threat

On 15 February the Turkish parliament adopted legislative amendments that significantly increase the influence of the Minister of Justice within the Higher Council of Judges and Prosecutors (HCJP), the body responsible for appointments and disciplinary procedures across the judiciary. Amnesty International is concerned that these changes will weaken the independence of the judiciary and reverse the important reforms to the HCJP brought in constitutional amendments adopted only four years ago.

The new legislation has been rushed through Parliament following attempts by the government to block a corruption investigation targeting public officials and business leaders close to the Prime Minister. Thousands of police officers and scores of judges and prosecutors have been transferred from their posts in the wake of the investigation.

Amnesty International has long held concerns regarding the fairness of trials in Turkey, particularly in relation to prosecutions of those critical of the state or expressing positions contrary to official positions on sensitive issues. Constitutional amendments secured by referendum in 2010 improved the representation of the judiciary within the HCJP, but these reforms are eroded by a move that will strengthen the hand of the executive over judicial appointments and disciplinary processes. There are also concerns that these changes will reduce the likelihood of public officials being brought to justice for abuses they commit.

The President must approve the amendments before they become law. The main opposition party has committed to challenging the changes at the Constitutional Court.

Under international human rights conventions to which it is a party, including the International Covenant on Civil and Political Rights, Turkey is required to guarantee the right to equality before the courts and tribunals and to a fair trial. The UN Human Rights Committee, the body mandated with interpreting the Covenant, has stated that the requirement of independence refers to the appointment of judges, their security of tenure, conditions governing promotion, transfer, suspension and cessation of their functions, and the actual independence of the judiciary from the executive.¹

Amnesty International is concerned that amendments relating to the HCJP risk undermining the independence of the judiciary in these areas by giving the Minister of Justice, as Chair of HCJP, increased powers of appointment and decision making within the body.

¹ See Human Rights Committee, General Comment 32, paragraph 19

The Chair of the HCJP, alongside the Deputy Chair, is responsible for disciplinary and criminal investigations conducted into members of the HCJP and issues the judgment in any resulting prosecution. A number of decision-making powers previously assigned to the General Council of the HCJP and to chairs of the departments of the HCJP are transferred to the Chair of the HCJP. The amendments also grant additional powers to the Chair of the HCJP to set the agenda of the HCJP and to participate in meetings related to disciplinary and criminal investigations into serving judges and prosecutors across the judiciary.

Under the amendments, the Chair of the HCJP is provided with the power to select which members of the General Council are appointed to which of its three departments and enhanced powers to appoint the body's personnel.

The composition and method of selection of members of the HCJP is unchanged by the amendments. It has 22 members of whom in addition to the Minister of Justice and his undersecretary, 15 are elected from within Turkey's court system, one is elected from the within the General Council of the Justice Academy and four are academics in the legal field and lawyers chosen by the President.

Amnesty International calls on the Turkish authorities to withdraw the amendments granting additional decision making powers and powers of appointment to the Minister of Justice which threaten the actual and perceived independence and impartiality of the judiciary in Turkey and the right to a fair trial.