

The Commission on Security and Cooperation in Europe

AT WHAT COST?
THE HUMAN TOLL OF TURKEY'S POLICY AT HOME AND ABROAD

Testimony of
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Co-chairman Hastings, co-Chairman Wicker, and distinguished Members of the Commission, thank you for inviting me to testify today.

My remarks will focus on the alarming situation with regard to the rule of law in Turkey and why this should matter to the United States.

Background

The rule of law in Turkey has suffered a precipitous decline as President Recep Tayyip Erdogan has consolidated his power over key state institutions.¹ Courts in the Republic of Turkey were never fully independent. But Erdogan's subjugation of the judiciary is unmatched in recent history.

During his eighteen years of uninterrupted rule, Erdogan has hollowed out Turkey's judiciary, packing key judicial institutions with government allies.² This process has taken place through constitutional and legal amendments in 2010, 2014, 2016, and 2017 that increased executive branch influence over judicial appointments.³ Since early 2014, Erdogan has overhauled the courts through several reshuffles and mass purges of judges and prosecutors seen as disloyal to the government.⁴ These purges accelerated after the failed coup attempt in 2016 and the ensuing two-year state of emergency.⁵

In 2017, Erdogan rammed through major amendments to the constitution, replacing Turkey's decades-old parliamentary democracy with a hyper-presidential system. This new system significantly expanded presidential powers, abolished the position of prime minister, removed the guardrails for legislative and judicial independence, and put the executive branch in effective control of nearly all judicial appointments.⁶

Over the last decade, Erdogan used his expanding influence over the judiciary to co-opt other key institutions. Government-sanctioned sham trials through 2008-12 removed hundreds of

1. "Turkey Ranks Worse in Rule of Law Index," *Bianet*, March 4, 2019, <http://bianet.org/english/law/206052-turkey-ranks-worse-in-rule-of-law-index>

2. Can Yeginsu, "Turkey Packs the Court," *New York Review of Books*, September 22, 2010, <https://www.nybooks.com/daily/2010/09/22/turkey-packs-court/>

3. Wendy Zeldin, "Turkey: Controversial Amendments to Constitution Proposed by Ruling Party," *Global Legal Monitor*, March 29, 2010, <https://www.loc.gov/law/foreign-news/article/turkey-controversial-amendments-to-constitution-proposed-by-ruling-party/>; Wendy Zeldin, "Turkey: New Amendments to Laws on Judiciary," *Global Legal Monitor*, March 10, 2014, <http://www.loc.gov/law/foreign-news/article/turkey-new-amendments-to-laws-on-judiciary/>; Humeyra Pamuk, "Turkey's parliament passes law to restructure judiciary, bolstering Erdogan," *Reuters*, July 1, 2016, <https://www.reuters.com/article/us-turkey-judiciary/turkeys-parliament-passes-law-to-restructure-judiciary-bolstering-erdogan-idUSKCN0ZH4IZ>; Wendy Zeldin, "Turkey: Parliamentary Commission Approves Amendments to Constitution that Would Enhance President's Powers," *Global Legal Monitor*, January 9, 2017, <https://www.loc.gov/law/foreign-news/article/turkey-parliamentary-commission-approves-amendments-to-constitution-that-would-enhance-presidents-powers/>; Freedom Alert, "Turkey's Judicial 'Reform' Will Undermine Democracy," *Freedom House*, January 13, 2014, <https://freedomhouse.org/article/turkeys-judicial-reform-will-undermine-democracy>

4. "Turkish HSYK changes posts of 96 judges and prosecutors," *Anadolu Agency*, January 21, 2014, <https://www.aa.com.tr/en/turkey/turkish-hsyk-changes-posts-of-96-judges-and-prosecutors/188814>; Daren Butler and Nick Tattersall, "Turkish judicial purge brings corruption investigation to halt," *Reuters*, January 22, 2014, <https://www.reuters.com/article/us-turkey-corruption/turkish-judicial-purge-brings-corruption-investigation-to-halt-idUSBREAOL1G220140122>; "Turkey's judicial board reshuffles 3,320 judges and prosecutors," *Hurriyet Daily News*, July 26, 2018, <http://www.hurriyetdailynews.com/turkeys-judicial-board-reshuffles-3-320-judges-and-prosecutors-135011>

5. Erin Cunningham, "Thousands of Judges Purged in Turkey After Failed Coup Attempt," *Washington Post*, July 21, 2016, https://www.washingtonpost.com/world/turkeys-suspension-of-thousands-of-judges-marked-the-start-of-a-widespread-purge/2016/07/20/dbf79e18-4c50-11e6-bf27-405106836f96_story.html

6. Alan Makovsky, "Erdogan's Proposal for an Empowered Presidency," *Center for American Progress*, March 22, 2017, <https://www.americanprogress.org/issues/security/reports/2017/03/22/428908/erdogans-proposal-empowered-presidency/>; Marc Pierini, "Turkey's Presidential Regime Rests on Zero Rule of Law," *Carnegie Endowment for International Peace*, August 27, 2019, <https://carnegieeurope.eu/strategieurope/79728>

generals and officers from the military.⁷ Politically motivated investigations aimed at bankrupting media conglomerates compelled most broadcast and print media to fold into government-friendly corporations, leaving few independent or opposition outlets and precipitating widespread self-censorship among journalists who fear government retribution for critical reporting.⁸

Today, Turkey's highly politicized judiciary functions as one of the primary facilitators of Erdogan's assaults on Turkish democracy. His government has weaponized the judicial system to target its real and perceived opponents in the state bureaucracy, media, parliament, business sector, and civil society. Prosecutors employ extremely broad definitions of "terrorism" to criminalize peaceful dissent, and routinely apply repressive laws that criminalize "conspiring" against the state; insulting the state; and insulting the president.

To build indictments, prosecutors often rely on secret witnesses whose testimonies are difficult to verify and refute.⁹ Many indictments run hundreds of pages, presenting mundane, innocuous details of defendants' lives as circumstantial evidence purporting to prove fantastical conspiracy theories.¹⁰ Due process is notoriously lacking: Judges use prolonged pretrial detentions as summary punishment; defense lawyers cannot access indictments; and judges seen as fair toward political defendants are reassigned from their cases.¹¹

And in another alarming sign of the breakdown of the rule of law, the lower courts recently have refused to follow the orders of the Constitutional Court when their rulings are not to the government's liking.¹² This is true even though Turkey's higher courts themselves make politicized decisions.¹³

Impact

The impact of this erosion of judicial independence and the rule of law has been vast. Today, nearly 50,000 people are imprisoned under "terrorism" charges.¹⁴ They include lawmakers, journalists, academics, and civil society leaders.

7. Dexter Filkins, "Show Trials on the Bosphorus," *The New Yorker*, August 13, 2013, <https://www.newyorker.com/news/daily-comment/show-trials-on-the-bosphorus>; Dani Rodrik, "Ergenekon and Sledgehammer: Building or Undermining the Rule of Law?" Turkish Policy Quarterly, Spring 2011, <http://turkishpolicy.com/article/418/ergenekon-and-sledgehammerbuilding-or-undermining-the-rule-of-law-spring-2011>

8. "Turkey accepts Calik's \$1.1 bln bid for ATV-Sabah," December 5, 2007, Reuters, <https://www.reuters.com/article/us-atvsabah-sale/turkey-accepts-caliks-1-1-bln-bid-for-atv-sabah-idUSIST00141020071205>; Sebnem Arsu and Sabrina Tavernise, "Turkish Media Group is Fined \$2.5 Billion," *New York Times*, September 9, 2009, <https://www.nytimes.com/2009/09/10/world/europe/10istanbul.html>; "It's an Erdogan-eat-Dogan World: Turkey's last big independent media firm is snapped up by a regime ally," *The Economist*, May 27, 2018, <https://www.economist.com/europe/2018/03/27/turkeys-last-big-independent-media-firm-is-snapped-up-by-a-regime-ally>; Ayla Jean Yackley, "Turkey's 'Climate of Fear' for Journalists," *The Atlantic*, January 23, 2019, <https://www.theatlantic.com/international/archive/2019/01/turkey-climate-fear-journalists-prison-fines/580933/>; Aykan Erdemir and Merve Tahiroglu, "The Islamist Takeover of Turkish Media" in *Digital Dictators: Media, Authoritarianism, and America's New Challenge*, ed. Ilan Berman (Lanham, MD: Rowman & Littlefield, 2018) 53-76.

9. United States Department of State, "Turkey 2018 Human Rights Report," Bureau of Democracy, Human Rights and Labor, June 28, 2019, <https://www.state.gov/wp-content/uploads/2019/03/TURKEY-2018-HUMAN-RIGHTS-REPORT.pdf>

10. "Turkey: Baseless Charges Over Landmark 2013 Protests," Human Rights Watch, March 25, 2019, <https://www.hrw.org/news/2019/03/25/turkey-baseless-charges-over-landmark-2013-protests>

11. "Court Board of Gezi Trial Changed," Bianet, July 31, 2019, <http://bianet.org/english/law/211104-court-board-of-gezi-trial-changed>

12. Umar Farooq, "Imagine the chaos if lower courts refused to abide by a Supreme Court ruling. That's happening in Turkey," *Los Angeles Times*, January 29, 2018, <https://www.latimes.com/world/middleeast/la-fg-turkey-constitutional-crisis-20180129-story.html>; Yildiz Yazıcıoğlu, "The judicial process of the case of Altan brothers and Ilıcak under debate," Voice of America, October 9, 2019, <https://www.amerikaninsesi.com/a/altan-kardesler-ve-ilicak-davasinda-yargi-sureci-tartisiliyor/5116714.html>

13. Evrem Kepenek, "Why Doesn't Constitutional Court Take Any Action About Application of Demirtaş?" BIANET, October 3, 2019, <https://bianet.org/english/politics/213933-why-doesn-t-constitutional-court-take-any-action-about-application-of-demirtas>

14. "Turkey: Events of 2018," Human Rights Watch, accessed October 29, 2019, <https://www.hrw.org/world-report/2019/country-chapters/turkey>

One of the most important political mass trials, the so-called Gezi case, illustrates the range of victims: the 16 defendants—who include civil society leaders, journalists, architects, actors, writers, and film producers—all face life sentences under baseless allegations of conspiring to overthrow the government through the nation-wide “Gezi protests” of 2013, allegedly funded by the American philanthropist George Soros.¹⁵

Indeed, politically motivated cases of this kind have targeted key civil society and human rights associations since 2016, including Amnesty International and Reporters Without Borders, among many others.

Journalists have been among the courts’ top targets. With more than 120 journalists in prison accused of bogus terrorism or propaganda charges, Turkey is the world’s top jailer of journalists.¹⁶ Their arrests have come as Erdogan has used “state of emergency” decrees to shut down more than 45 newspapers, 16 television channels, and 29 publishing houses.¹⁷

Politically motivated “terrorism” investigations have also targeted scores of Kurdish politicians since 2015, after the Kurdish-majority Peoples’ Democratic Party (HDP)’s historic election to parliament helped to unseat Erdogan’s ruling party from its decade-long parliamentary majority.¹⁸

Prosecutors recently also cracked down on the Istanbul chief of the main opposition People’s Republican Party (CHP), after she helped the party’s mayoral candidate beat Erdogan’s candidate in a landmark election in June.¹⁹ A court sentenced her to nearly 10 years in prison for “insulting the president” and spreading “terrorist propaganda,” based on six-year-old tweets.²⁰

Nor have professors been immune to the ongoing crackdowns. More than 1,000 academics have been jailed for signing a petition in support of peace with Kurdish insurgents—a case that even Turkey’s Constitutional Court determined violated defendants’ freedom of expression.²¹

Turkey’s mass detentions since 2016 have even ensnared foreign citizens. Several Americans, including Pastor Andrew Brunson, and at least three local employees of the U.S. diplomatic mission have been jailed under allegations of terrorism or attempting to overthrow the government.²²

15. The 16 defendants in the Gezi case are: Yiğit Aksakoğlu, Ali Hakan Altınay, Ayşe Pınar Alabora, Memet Ali Alabora, Handan Meltem Arikan, Şerafettin Can Atalay, Can Dündar, Yiğit Ali Ekmekçi, İnanç Ekmekçi, Hanzade Hikmet Germiyoğlu, Mehmet Osman Kavala, Tayfun Kahraman, Mine Özerden, Gökçe (Yılmaz) Tüylüoğlu, Çiğdem Mater Utku, Ayşe Mücella Yapıcı.

16. “Journalists in Jail,” Expression Interrupted, accessed October 29, 2019, <https://expressioninterrupted.com/census/>

17. Ceylan Yeginsu, “Turkey Expands Purge, Shutting Down News Media Outlets,” *New York Times*, July 27, 2016, <https://www.nytimes.com/2016/07/28/world/europe/turkey-media-newspapers-shut.html>

18. “Nine opposition HDP lawmakers arrested, including co-chairs,” *Hurriyet Daily News*, November 4, 2016, <http://www.hurriyetdailynews.com/nine-opposition-hdp-lawmakers-arrested-including-co-chairs--105756>; Constanze Letsch and Ian Traynor, “Turkey Election: Ruling Party Loses Majority as Pro-Kurdish HDP Gains Seats,” *The Guardian*, June 7, 2015, <https://www.theguardian.com/world/2015/jun/07/turkey-election-preliminary-results-erdogan-akp-party>

19. Pinar Tremblay, “Unlikely woman new heroine of Turkish opposition,” *Al-Monitor*, May 7, 2019, <https://www.al-monitor.com/pulse/originals/2019/05/turkey-elections-istanbul-unlikely-woman-appears-aa-heroine.html>

20. “CHP İstanbul Chair Kaftancıoğlu Sentenced to 9 Years, 8 Months in Prison,” *Bianet*, September 6, 2019, <https://m.bianet.org/english/politics/212734-chp-istanbul-chair-kaftancioglu-sentenced-to-9-years-8-months-in-prison>

21. Judith Butler and Başak Ertür, “In Turkey, academics asking for peace are accused of terrorism,” *The Guardian*, December 11, 2017, <https://www.theguardian.com/commentisfree/2017/dec/11/erdogan-turkey-academics-terrorism-violence-kurdish-people>; “Judicial Harassment Against The Members Of Academics For Peace,” *Frontline Defenders*, accessed October 29, 2019, <https://www.frontlinedefenders.org/en/case/judicial-harassment-academics-peace>

22. Aykan Erdemir and Merve Tahiroglu, “The Pastor is not the Only U.S. Hostage in Turkey,” *War on the Rocks*, August 23, 2018, <https://warontherocks.com/2018/08/the-pastor-is-not-the-only-u-s-hostage-in-turkey/>

Why It Matters for the United States

The breakdown of the rule of law in Turkey matters for U.S. interests in many different ways. I would like to highlight three of the most important.

First, U.S. citizens have been caught up in the dragnet directly. While U.S. diplomatic pressure helped to free American Pastor Andrew Brunson last year, the erosion of judicial independence in Turkey continues to expose U.S. citizens and employees of American companies, organizations, and even the U.S. government to the risk of arbitrary and politically motivated arrests.

Second, the crisis with the rule of law fuels anti-Americanism in Turkey. The media crackdowns reinforce self-censorship among a Turkish press corps that is nearly monopolized by the government. Pro-Erdogan outlets, which make up more than 90 percent of the media sector, continuously publish invectives against the United States. Sham trials like the Gezi case, which effectively pins mass anti-government protests on a Western-led plot to topple Erdogan, serve to fan conspiratorial suspicions against the United States. These crackdowns aim to intimidate NGOs and suppress their efforts to promote tolerance, pluralism, and other democratic values — values that are important to the United States and essential for Turkey's long-term peace and stability. Such an assault on democratic values should be of deep concern to the United States, wherever it occurs, but is perhaps even more alarming given Turkey's status as a NATO ally.

Third, it has emboldened Turkey's aggressive policies abroad by suppressing dissenting voices. Prosecutions of pro-Kurdish lawmakers, for example, have silenced Turkey's only party opposed to the current military operation in Syria, the HDP. In recent weeks, the detention of nearly 200 people for social media posts critical of Turkey's incursion into Syria has suppressed dissent even further.²³

Without free public debate, Turkish citizens have no opportunity to check their leaders' aggressive impulses, including towards neighbors like Syria, or allies like the United States.

The United States has a direct interest in ensuring fair trials, particularly in cases explicitly aimed at legitimizing conspiracy theories and discrediting democratic norms and institutions such as independent media, free civil society, and political pluralism.

There are so many issues on the U.S. agenda with Turkey at the moment, but it is vital for Washington to prioritize support for the rule of law. To help ensure that Turkish courts uphold constitutional freedoms and enforce due process, the U.S. must continue to monitor political cases, particularly those concerning freedom of expression and other basic democratic rights.

In spite of the Turkish government's growing repression, more than 50 percent of Turkey's population is still trying to resist Erdogan's authoritarianism under increasingly harsh conditions. It is incumbent upon the U.S. Congress to stand with the Turkish people in defense of their rights.

Thank you again for the opportunity to be here today. I look forward to your questions.

23. "Turkey arrests 24 over criticism of Syria offensive: news agency," Reuters, October 16, 2019, <https://www.reuters.com/article/us-syria-security-turkey-arrest/turkey-arrests-24-over-criticism-of-syria-offensive-news-agency-idUSKBN1WV13Y>