



Judicial shake-up in wake of Turkey's failed coup

Dimitar Ganev - 20 July, 2016

The aftermath of Turkey's unsuccessful military coup last week has affected every walk of the country's life, much so in the reorganisation of its judiciary. CDR speaks to leading Turkish lawyers about the far-reaching judicial consequences.

One of Turkey's most affected sectors after the military coup attempt on 15 July was the judiciary, with over 2000 judges and prosecutors having been detained – “almost one-fifth of the judicial workforce in one go”, **Mehmet Gün**, the managing partner of Istanbul-headquartered law firm **Gün+Partners**, tells *CDR*.

He highlights the additional workload the huge amount of charges brought before the courts against judicial, military and public personnel has created, but feels confident that the remaining judges, who continued working “without any interruption”, will manage to deal with the additional workload as the Higher Council for Judges and Prosecutors (HSYK) had cancelled their annual holidays.

He expects delays in ordinary judicial matters, because “judges will have to be replaced in pending proceedings” and the new ones will need time to adapt.

“The one-fifth of judges who were on arrest lists may have been lacking the essential element of impartiality that the judiciary's appointment and promotion systems failed to eliminate upon appointment. I am hopeful that the failed coup may result in further improvement of the judiciary's institutional systems where meritocracy, transparency and accountability prevail once again,” says Gün.

Orçun Çetinkaya, partner at Istanbul-headquartered firm **Moro?lu Arseven**, agrees with the opinion on the alleged impartiality of the detained judges, saying that “[t]he view amongst a large portion of Turkish lawyers is that those judges paralysed the judiciary's function so much so that they had given more weight to their religious ideology and agenda rather than the rule of law,” adding that in the past five years his firm witnessed biased criminal investigations, imprisonment decisions and administrative or commercial court decisions affecting many individuals and companies.

According to Çetinkaya, the coup attempt has changed the nature of the pre-existing investigations against judges and prosecutors, prompting interim measures which will in some cases speed up the process which otherwise may have taken months or even years.

He suggests that the “cleansing” of judiciary was necessary, “but, following a proper, thorough and open investigation”, and that the arrests and depositions of judges and prosecutors have rightfully begged questions “about the timing, grounds and existing evidence, as administrative and criminal investigations are conducted in secret”.

He believes that any concerns will disappear if the investigations are conducted objectively, lawfully and without being politicised.

The coup occurred just before the launch of Turkish Cassation Courts which aim to introduce a three-tiered court system to the country's litigation structure. "The launch of these courts is undoubtedly a reform [to] Turkish litigation but the discussions around the sufficiency of existing pool of Judges were widespread," says Çetinkaya.

Referring to the negative impact the coup attempt will have on the Turkish economy, he suggests that if the economy does not improve, companies would experience unexpected exchange rate losses, which could result in disputes between investors and shareholders.

Çetinkaya adds that an eventual increase in the exchange loss would prevent Turkish companies from performing their obligations towards contractors, but hopes that government incentives and reliefs will be provided.

In a similar vein, **Can Yeginsu**, barrister and arbitrator at **4 New Square Chambers** in London, is more optimistic. He claims that while the position in Turkey remains fluid, the maintainance of the rule of law and respect of human rights would clearly reassure the markets and strengthen the lira. Further, the failed coup gives the country a chance to strengthen its institutions, including its judiciary: "That is obviously not going to be achieved through haphazard judicial reform, or worse, a settling of scores with the third branch."

He adds that the situation is being closely monitored by the EU and Turkey's NATO allies, including the United States.

Legal professional bodies have also monitored the situation: Law Society of England & Wales president **Robert Bourns** underlined in a statement the social and commercial importance of the rule of law, saying: "Given the importance of judicial independence, no member of any judiciary should be dismissed or suspended except for reasons of incapacity or behaviour that renders them unfit to discharge their duties, in accordance with the United Nations Basic Principles on the Independence of the Judiciary."

Chantal-Aimée Doerries QC, chairman of the Bar Council of England & Wales, warned that this is not the first instance of civil and democratic unrest in Turkey, referring to the March arrest of nine human rights lawyers, and said: "The judiciary and legal profession in any jurisdiction should not and cannot fulfil their duties under the threat of arrest."