



## *Preserving Turkey's Rule of Law in Challenging Times*

By Markus Zimmer, IJCA Executive Editor

On Monday, 22 November 2009, IACA convened its Fourth International Conference in Istanbul, Turkey. Istanbul originally was founded by Byzas, King of Thrace, in 667 BC. He named it Byzantion or Byzantium, having led a group of Greek settlers from Megara who colonized the site on the European side of the Bosphorus. Byzantion forces subsequently conquered and incorporated the settlement of Chalcedon, across the Bosphorus on the Asiatic side, strategically situated on the historic Silk Road. Subsequently besieged first by the Greeks, later by the Romans, this beautifully positioned ancient city attracted the attention of Emperor Constantine who remodeled it after Rome and made it his imperial residence. Upon his death, it was renamed Constantinople and served for centuries as the primary episcopal see of the Orthodox Catholic Church.

In 1453, the city was again besieged, this time by the Ottoman Turks who transformed it into a Muslim center and the seat of the Ottoman Caliphate/Empire, renaming it Istanbul. At its peak, the empire covered Anatolia, most of the Near East, North Africa, the Caucasus, and extended far into Eastern Europe. In the 19<sup>th</sup> Century, the Ottoman Empire stumbled into gradual decline, suffering eventual defeat and dissolution in the first two decades of the 20<sup>th</sup> Century. Seizing opportunity, Mustafa Kemal Atatürk, a visionary Turkish military officer and nationalist, led the Turkish National Movement to victory in the Turkish War of Independence and negotiated establishment of the modern Republic of Turkey as a secular state.

When IACA approached senior Turkish judicial and justice ministry officials in 2007 about hosting an international conference in their extraordinary metropolis, the response was overwhelmingly positive. They pledged and followed through with offers of assistance and support at multiple levels in an unprecedented cooperative effort, including hosting a regal conference banquet at the Çırağan Palace Kempinski. In addition, then-Mayor of Istanbul, Kadir Topbaş, personally hosted a dinner for IACA's senior officials on a plaza overlooking the Bosphorus. Seated next to him, I had the unusual opportunity to query this learned man with degrees in theology, architecture and a Ph.D. in art history and anthropology on Suleiman the Magnificent (محتشم سليمان Muhteşem Süleymân), Second Caliph of the Ottoman Caliphate, who is interred in Istanbul's majestic 16<sup>th</sup> Century Süleymaniye Mosque named in his honor. As a consequence of the Istanbul Conference, a strong and meaningful partnership took root between IACA and the judicial and justice sectors of the Republic of Turkey. That relationship has endured.

Recently, disturbing trends with ominous overtones for the rule of law have emerged in the relationship between the executive and the judicial powers in the Republic. Those trends are primarily attributable to the reign of Turkey's current President, Recep Tayyip Erdoğan, and the ruling Justice and Development Party (AKP) government.

During his reign as Prime Minister and more recently as President, Mr. Erdoğan has cultivated what many describe as mounting intolerance for domestic dissent and what he perceives as the regional and international roots of conspiracies that drive it. The individual Erdoğan, himself a devout Muslim, charges with leading the primary conspiracy is an ailing 77-year-old Muslim cleric, Fethullah Gülen, a former staunch AKP ally of his, who now lives in self-imposed exile in rural Pennsylvania in the U.S. and whose extradition to Turkey the president recently petitioned the United States government to facilitate. Gülen advocates a Sufi-inspired interpretation of Islam that focuses on education and nonviolent coexistence. His global followers number in the millions; he has established a worldwide network of Muslim schools and related organizations.

In 2013, a national investigation in Turkey revealed allegations of widespread government corruption that implicated high-level officials in Erdoğan's cabinet and that included, as alleged collaborators, the president and his two sons. When the graft allegations culminated in the arrest of three ministers' sons and close business associates of Erdoğan, the president charged that the investigation was spawned by a Gülen-inspired international conspiracy to remove him from power. Overnight, he initiated new purges of police officials; thousands at various levels had earlier been either reassigned or dismissed. In addition, 120 judges and prosecutors involved in the corruption investigation proceedings were summarily reassigned. New prosecutors assigned to the investigation dismissed all charges and released those who had been arrested and detained. In addition, the AKP government purportedly added 144 new positions to the Supreme Court of

Appeals and 33 to the Council of State, securing its control over those judicial bodies with the new appointees. Previously, the president had successfully engineered increased civilian control over the military, significantly weakening the latter's traditional role as the guardian of the republic's democratic and secular legacy, a role it has exercised since the Atatürk era.

The 2014 purges were dwarfed by those President Erdoğan and the AKP government more recently initiated in response to a failed coup staged on 15 July 2016 by a rebel faction of the military and allegedly supported by Gülen factions. Clearly taken by surprise, the president managed in short order to re-establish political stability, urging his supporters to take to the streets to demonstrate their solidarity against "the minority group" responsible for the aborted takeover. Erdoğan publicly referenced the insurrection as "a gift from god" that would empower him to cleanse Turkey's military of its "members of the gang." Within days, his government promulgated a three-month state of emergency authorizing the executive power, with the consent of the parliament, to institute new laws *not subject to judicial review* (author's emphasis). It also suspended Turkey's obligation to comply with the European Convention on Human Rights to which it is a signatory. In the week following the foiled coup d'état, the government commenced an extraordinary purge of circa 60,000 public officials and civil servants. In a 2 August 2016 article entitled "The Scale of Turkey's Purge is Nearly Unprecedented," the *New York Times*, (NYT) detailed the purged positions.

<b>Category</b>	<b>Number</b>	<b>Action Taken</b>
Judges and judicial staff	2,745	Suspended. As of early August, at least 1,684 judges and prosecutors were in pretrial detention
Police Officers	9,000	Dismissed by Interior Ministry. Some detained
Private teachers employed in Turkish schools that are part of Gülen's worldwide education network	21,000	Dismissed. Government plans to close 1,000 private schools, convert them into public schools, and hire 40,000 new teachers. Government also has requested other states with Gülen schools to shut them down.
Military officers/soldiers	10,012	Nearly half of the senior generals and admirals and 5,000-plus army officials are in pretrial detention
Ministry of Education officials and employees	21,700	Dismissed
Ministry of Finance officials and employees	1,500+	Suspended
University deans	1,500	Forced to resign their positions
Journalists and media professionals	28+	In pretrial detention. One-hundred-plus newspaper, broadcast, magazine and other media organizations have been shut down, giving the government almost complete control over Turkey's media

In its 22 August issue, *The Economist* reports that the total number had reached 80,000.

The scale and impact of these purges are difficult to fathom. The abrupt removal from office of 2,745 judicial officers is equivalent to more than three times the total number (874) of authorized Article III federal judgeships in the judicial branch of the United States. It is equivalent to removing from office every state court judge in California, Georgia, New York and Texas. According to the NYT, the government planned to recruit and appoint 5,000 new judges and prosecutors in August. On 5 August, Human Rights Watch (HRW) reported that in a 19 July news conference, Mehmet Yilmaz, deputy head of the Higher Council of Judges and Prosecutors, noted "An investigation has been going on for two years. The number of 2,740 judges and prosecutors is not a figure that has come out of the blue. This investigation is now taking shape... It will proceed fast. We will work with all our power within a legal framework without making anyone the victim."

Many of the purged judges and prosecutors have been arrested and placed into pretrial detention in Turkey's criminal justice system. Access to personal legal counsel has been significantly hindered, according to Amnesty International's (AI) 24 July report; many detainees were instead being assigned bar association legal aid advocates, many of whom are concerned that zealous advocacy of their clients' innocence may result in adverse action against them by the AKP government.

The haste with which the purge of this extraordinary number of judicial and justice system officials was initiated leaves in grave doubt the extent to which they were and are being accorded the benefits of due process and other basic rights to which those accused of crimes are entitled under international and regional laws and conventions. Under the three-month state of emergency declared by the government, the first decree extended from four to 30 days the time detainees can be confined without having been officially charged with specific violations of criminal law and denied access to legal counsel.

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According to HRW, that decree also provides that judges and prosecutors “assessed to be members of terrorist organizations or a structure, entity, or groups that carry out activities that the National Security Council has ruled are against national security or assessed to be connected or in contact with them” not only will forfeit their positions but be permanently prohibited from subsequent employment in the judicial and justice systems. Moreover, a court decision issued on 31 July froze the assets of over 3,000 judges and prosecutors currently being investigated.

On 17 August, the *Washington Post* reported that a decree in Turkey’s *Official Gazette* stated that the government would release 38,000 prisoners convicted of non-violent crimes who have served at least half of their sentence and have a maximum of two years remaining. Their release will enable the Department of Interior, which oversees the prison system, to accommodate additional post-coup detainees. Prior to the coup, that system already housed more than the 180,000 inmates it was constructed to confine. The sudden influx of thousands of new pretrial detainees has overwhelmed the system’s capacity with adverse consequences, triggering plans for this unprecedented release of current inmates. AI reports that detainees being held in police custody in Istanbul and Ankara are being denied food, water and medical treatment; there also are allegations of beatings, torture and sexual assault. Criminal defense attorneys have reported that some cells designed to house three inmates have six assigned to them; in some facilities, inmates are sleeping in bunk beds in shifts. A Justice Ministry statement, as reported in the 15 September *Washington Post*, implicitly acknowledged that the unprecedented release will not free sufficient space to accommodate the new detainees. The statement confirmed plans for the construction over the next five years of 174 new prisons, some of which were anticipated prior to the purge.

These developments and allegations, where confirmed, are very disturbing and have generated expressions of concern and demands, largely from Western governments, that the Erdoğan regime rein in these violations of legal process and basic human rights. His government’s response, to date, largely has been to deny such violations are occurring and to criticize the European Union and the United States for their failure to promptly announce support for a loyal ally under siege by terrorist operatives intent on undermining Turkey’s sovereign government. According to Erdoğan, Russia is the sole power that responded both appropriately and timely. As reported in the 17 August *Economist*, anti-Western attitudes on the part of Turkey’s population have surged to record levels, 84% according to one poll. Over 70% believe the U.S. played a covert role in supporting the attempted coup.

The republic now appears more vulnerable than it has in recent history. In the first eight months of 2016, the Islamic State (IS) mounted five terrorist attacks, including the recent troika of suicide bombers at Istanbul’s international airport. IS terrorist strikes targeting Kurds have undermined the tenuous truce between Turkey’s military and the Kurdistan Workers’ Party (PKK), reigniting violence in the country’s southeast. Governments often suspend civil rights when they perceive themselves to be under siege, but the international consensus among developed states appears to be that President Erdoğan is doing so to excess and that the rule of law may be at risk. Indeed, at a meeting of provincial officials on 25 September in Ankara, Turkey’s capitol, the president announced, following the National Security Council’s (NSC) recommendation noted in the 29 September issue of Turkey’s *Hürriyet Daily News*, that “It would be in Turkey’s benefit to extend the state of emergency for three months.” Erdoğan went on to note, as reported by Reuters, “They say one year isn’t right for Turkey. Let’s wait and see. Maybe 12 months won’t be enough.” The president chairs the NSC.

Many share the urgent concern expressed by international judicial and related organizations that Turkey’s government leaders extend to those accused of and detained for serious crimes the due process protections and rights provided for in international law and conventions and the European Convention on Human Rights to which Turkey is a signatory. Simultaneously, however, many organizations, including IACA, will continue to maintain the traditionally positive and mutually beneficial relationships they have nurtured over time with Turkey’s judicial and justice system leaders, offering their assistance and support to those leaders during these challenging and troubled times.

