



Europe, 26 July 2021

To

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Commissioner for Human Rights of Council of Europe

DG Enlargement

Commissioner Olivér Várhelyi

DG Justice

Commissioner REYNDERS

Your Excellencies,

This month marked the fifth anniversary of the attempted “Coup d’État” of July 15th, 2016, in Turkey.

On this date, the four organizations of Judges and Prosecutors that form the Platform for an Independent Judiciary in Turkey (AEJ, AEAJ, MEDEL and J4) would like to draw your attention once more to the situation of the Turkish judiciary, remembering how we got to this point and that long before the "Coup d’État" there were already clear indications of the tragic events that would later unfold.

In effect, since the attempted “Coup d’État”, the Turkish judiciary has seen one of the darkest pages in relation to the respect for the Rule of Law and the independence of courts.

Much earlier than July 2015, however, we already witnessed worrying signs of regression regarding the independence of the Turkish Judiciary:

- the amendments to the legal framework of the High Council of Judges and Prosecutors (some of which were prevented by decision of the Constitutional Court);
- the criminal cases against judges M. Başer and M. Özçelik;
- the numerous transfers of judges and prosecutors without their consent, in breach of the principle of irremovability;
- the disciplinary procedures and suspensions of judges on the basis of their decisions;
- the amendment of the Law on the Court of Cassation, by which most judges of the Court of Cassation lost their posts;
- the questionable policy of appointment of new judges in Serious Crime courts and the opening of Special Chambers in the Court of Cassation and the assignment of judges to these chambers;
- the changes to the initial training and appointment requirements for judges with a very short period of training before possible appointment.

These warning signs were already visible before the attempted Coup and had been pointed out by many international organizations:

- Audit on Turkey conducted by MEDEL in June 2012 (available at https://www.medelnet.eu/images/Monetti_Strecker_Report_on_a_visit_in_Turkey_20120704.pdf)
- European Parliament resolution of 10 June 2015 on the 2014 Commission Progress Report on Turkey (2014/2953/RSP)
- Declaration of the Venice Commission of 20 June 2015 on Interference with Judicial Independence in Turkey
- Comments of the CCJE Bureau of 12 June 2015, CCJE-BU (2015)5, on the alleged major threats on the personal and institutional independence of the judiciary

- CCJE Situation report on the judiciary and judges in the Council of Europe member States, updated version n° 2 (2015), which was welcomed by the Committee of Ministers
- Answer of CCJE Bureau to an AEAJ request on the enforced transfer of judges in Turkey of 5 July 2016, CCJE-BU(2016)3.

Despite all these reports and alerts, the reaction of the international community was not as strong as the importance of the matter would require, and so the path was open for the tragic backsliding that followed the July 15th 2016 events. We must see the subsequent developments against the background of the above-mentioned documented serious violations of the independence of Turkish judiciary.

The Platform for an Independent Judiciary in Turkey has received consistent reports on the way judges and prosecutors were detained, the conditions of their detention, as well as denial of basic pre-trial rights to guarantee fair trials.

Impressive first-hand reports of the unfolding of the events can be found in the ebook “Letters from the Turkish Judiciary”, where MEDEL gathered emails and letters received from Turkey in the months immediately after the Coup (<https://medelnet.eu/index.php/news/60-featured-news/640-letters-from-the-turkish-judiciary-23rd-of-may-alert-day-for-the-independence-of-justice-in-europe-2>).

Immediately after 15 July 2016, approximately 25% of all Turkish judges and prosecutors were taken into custody, as well as pre-trial detention. The majority of them suffered not only pre-trial detention, but also long imprisonments in life endangering detention conditions.

Approximately 33% of all Turkish judges and prosecutors were dismissed by two generalized decisions of the so-called High Council for Judges and Prosecutors (HSYK) in August 2016.

A representative of the government, the Minister of Economy, publicly announced on 1 August 2016 (referring to those who had been dismissed and arrested) that “These betrayers will be punished the way people want it. We will make them beg. We will stuff them into holes, they will suffer such punishment in those holes that they will never see God’s sun as long as they breathe,”.... “They will not hear a human voice again. ‘Kill us’ they will beg”.

Thousands of judges and prosecutors in Turkey were rapidly confronted with the need of mere survival. Besides publishing a staggering number of 95 public interventions about the ordeal of

Turkish judges and prosecutors, many of them within the present Platform, the European Association of Judges organized a Provident Fund to provide humanitarian assistance to those colleagues. During the past years around 250.000,00 Euros were donated to hundreds of families of Turkish judges and prosecutors; a maximum of 900 euros was delivered to each family. The number of requests still continues to increase until today (for possible donations, check the information here: <https://www.iaj-uim.org/news/bank-account-for-the-provident-fund-of-the-iaj-on-turkey-and-other-emergency-situations-affecting-the-judiciary-in-europe/>)

Against this backdrop, the Platform has repeatedly urged the European institutions to take proper responsibility in defense of the Rule of Law.

Also other European institutions, like the CCJE and many Human Rights Organizations, have raised voices to express their concerns regarding the deplorable situation of the Turkish judiciary, to name just a few:

- The UN Special Rapporteur on the Independence of judges and prosecutors, Mr. Diego García-Sayán, has publicly demanded fair trial rights on the criminal conviction of Mr. Murat Arslan, the president of the independent Turkish judge's association YARSAV;
- The European Judicial Training Network decided to suspend temporarily the observer status of the Academy of Justice of Turkey of 1 December 2016;
- The European Network of Councils for the Judiciary has decided to temporarily suspend the observer status of the Turkish High Council for Judges and Prosecutors (HSYK).

As regards the Platform, we addressed claims to different European institutions, as well as Turkish state representatives, during the last five years, such as:

- Appeal of the Platform of 17 July 2016, addressed to Turkish authorities and the Council of Europe, to end pressure on Turkish judges and prosecutors, to guarantee fair trial procedures, as well as to enable an international trial observation mission;
- Public statement of the Platform of 10 October 2016, addressed also to European institutions and warning that evidence against detained Turkish judges and prosecutors are often very weak as well as that the situation on detention centres amounted to torture;
- Letter of the Platform of 25 November 2016 sent to the European Network of the Councils of Judiciary on questions of independence of the Turkish Council for the Judiciary (HSYK);

- Open Letter of the Platform of 17 July 2017 with reference to the non-publication (i.e. non-approval by Turkey to publish) of the report visit of the European Committee for the Prevention of Torture in Turkish detention centres in August and September 2016, as well as specifically highlighting the denial of fundamental fair trial standards in criminal proceedings against Turkish judges and prosecutors and clear signs that Turkish judiciary lacks basic standards of independence;
- Open letter of the Platform addressed to the heads of EU member states governments ahead of their meeting with Turkish representatives in Varna, Bulgaria, of 22 March 2018, with specific reference to extremely low standards of ongoing criminal proceedings as well as indications that investigating judges are obeyed to orders;
- Letter of the Platform of 15 July 2020 addressed to the Secretary General of the Council of Europe with specific reference to extremely bad detention conditions and several shocking incidences of denial of basic medical treatments for detained judges and prosecutors.

Where do we stand five years later?

Five years later, the announcement of the Turkish Minister for Economy has unfortunately come to prove itself true. Insofar Turkish politicians have not even concealed their abusive intentions. The Rule of Law has been suspended for the last five years.

The Turkey Tribunal published in March 2021 an in-depth report *Judicial Independence & Access to Justice* (<https://turkeytribunal.com/judicial-independence-access-to-justice/>) reviewing the state of the Turkish judiciary since 2010 with a special focus on the dramatic decline in the independence of the judiciary after the failed coup attempt of July 2016. It concludes that the judiciary system of Turkey does not correspond to internationally protected standards of independence and impartiality. Therefore the judicial system of Turkey cannot ensure full access to justice and effective judicial protection in case of human rights violations.

On 18 July 2021 the Turkish parliament approved legislation that prolongs some of the powers introduced in the state of emergency declaration on 21 July 2016. Although these were nominally withdrawn on 18 July 2018, they were then given continued effect in Turkish law by Law 7145 adopted on 25 July 2018. For example the provisions regarding the power for authorities to remove public officials from their positions without due process or legitimate cause have been extended

for one more year as of July 31 2021. That means that judges and prosecutors long after the 2016 emergency may still be removed arbitrarily by the Council for Judges and Prosecutors, a body that does not comply with international standards of judicial independence.

The European Court of Human Rights (ECtHR) has issued several judgements on the conditions of pre-trial fundamental rights standards in the aftermath of 15 July 2016. The ECtHR has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if it is to be successful in carrying out its duties. Given the prominent place that the judiciary occupies among State organs in a democratic society and the growing importance attached to the separation of powers and to the necessity of safeguarding the independence of the judiciary, the ECtHR is particularly attentive to the protection of members of the judiciary when reviewing the manner in which a detention order was implemented from the standpoint of the provisions of the Convention (see the Case of Alparslan Altan v. Turkey, 16 April 2019 (12778/17) § 102 and the Case of Baş v. Turkey, 3 March 2020 (66448/17) §§ 144 and 158).

These cases of Alparslan Altan and Hakan Baş both regarded the pre-trial detention of a judge without prior lifting of immunity, on the basis of an unreasonable extension of the concept of in flagrante delicto. Their detention was based on the mere suspicion of membership of an illegal organisation, without any specific incriminating evidence. The Turkish Constitutional Court, however, in an inadmissibility decision adopted on 4 June 2020 (referring to the ECtHR's Hakan Baş v. Turkey ruling) determined that, while the ECtHR rulings remain binding for Turkey, the interpretation of Turkish laws on the imprisonment of members of the judiciary pertains to the Turkish courts, which are "much better positioned than the ECtHR for interpreting the provisions of the Turkish law." This decision has made the effectiveness of the ECtHR case-law highly questionable in Turkey as the Constitutional Court openly refused to comply with ECtHR's Alparslan Altan and Hakan Baş judgments.

A recent judgement of the ECtHR (Akgün (a former police officer) vs Turkey, 20 July 2021, 19699/18) again clearly shows that evidence, that merely states that a person is a user of a messaging system like "ByLock", cannot be regarded as sufficient evidence in order to deprive a person of his/her personal liberty, in line with Art. 5 ECHR. These concerns have publicly been brought forward by the Platform for years.

This judgement therefore underlines again that the post-coup dismissals of judges and prosecutors by the Turkish HSYK as well as the criminal convictions of judges and prosecutors for suspected membership of terrorist organisation FETÖ/PDY should be critically scrutinized as the mere use

of “ByLock” without further individually tailoring the evidence played an important part in both types of decisions that profoundly affect the life of the judges and prosecutors involved.

What the exact impact will be of such illegal decisions cannot be foreseen for the moment. Due to special circumstances - on the one hand, the far-reaching implications on the dismissal of thousands of judges and prosecutors as well as their socially stigmatized and economically threatened families and, on the other hand, the well-known chilling effect on the sitting judges and prosecutors - the usual Council of Europe (ECtHR) system to grant damages is clearly not sufficient.

Considering for example the latest Turkey report 2020 (SWD(2020) 355 final) of the European Commission, the European institutions and representatives of European countries are well informed about the circumstances that lead to the conclusion that Turkey is not a country governed by the Rule of Law.

However, so far, all the initiatives that have been taken in order to re-install Rule of Law in Turkey have not turned out to be effective, despite this Turkey still is a candidate to accession to the European Union and an actual member of the Council of Europe.

It must be stressed that the European Union is a community of fundamental values. It is of utmost importance to have clear actions and a strong, consistent view regarding such devastations of the rule of law – also in neighbouring countries.

Although any prospect of membership of Turkey to the EU seems to be clearly impossible for years, EU still evaluates the membership of Turkey and upholds its candidate status.

All these events logically should imply a strong reaction: namely that the European institutions will take their responsibilities and by all means demand the Turkish authorities to reinstall the Rule of Law in Turkey, consistently with its status as a candidate for membership in the EU.

Based on the above-mentioned circumstances, the Platform for an Independent Judiciary in Turkey:

- continues to stand in solidarity behind the unlawfully and illegally detained and/or dismissed Turkish judges and prosecutors;
- strongly urges the European institutions to call on Turkey to provide guarantees and standards for a *de iure* and *de facto* independence of the judges and prosecutors as well as to take responsibility to demand so in their various partnerships and relations with Turkey;
- strongly urges the European institutions to call on Turkey to carry out the European Court judgments and to review all decisions for dismissal of Turkish judges or prosecutors since 15 July 2016 and all pre-trial detention orders and criminal convictions regarding membership of an illegal organization;

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Filipe Marques m.p.

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