



Europe, 17<sup>th</sup> July 2017

I.) The terrible attack on Turkish democratic institutions on 15<sup>th</sup> July 2016 was the reason to establish the state of emergency in Turkey, going hand in hand with a broad range of emergency legislations. These circumstances constitute so far a new - much worse – dimension of pressure on the Turkish judiciary.

The members of the Platform for an Independent Judiciary have closely watched the developments of Turkish judiciary over the past years, not only since 15<sup>th</sup> July 2016, as undue pressure on judges has been constantly rising.<sup>1</sup>

Thus the developments since 15<sup>th</sup> July 2016 with the following mass dismissals of more than 4000 Turkish judges and prosecutors as well as mass arrests of around 2450 Turkish Judges and Prosecutor so far are the climax of this constantly rising pressure and constitute an intolerable violation of the rule of law. To summarize the basic facts is that since 15<sup>th</sup> July 2016 more than 4,000 Turkish judges and prosecutors, a quarter of the total, have been dismissed by decree since last summer, mostly because of alleged links to the Gulenists. The vast majority, including two members of the constitutional court, are held in - overcrowded - prisons, some - especially the higher judges - are even held in solitary confinement. Only a fraction has heard formal charges so far.<sup>2</sup> Also the Venice Commission has already stressed the need of individualized charges, having been so far weak<sup>3</sup>. Basic fundamental rights, guaranteed under Art. 5 and 6 ECHR are disregarded so far. This was given legal foundation and legal simplification of procedures by the declaration of the state of emergency on 20<sup>th</sup> July 2016, which has already been heavily criticised by the Venice Commission and the Commissioner for Human Rights of the Council of Europe<sup>4</sup>. More than a dozen of emergency decrees are so far in force.

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<sup>1</sup> See in detail the summary given in the letter of the Platform for an Independent Judiciary (European Association of Judges, European Association of Administrative Judges, Judges4Judges and Medel) of 4<sup>th</sup> August 2016, inter alia on: [http://www.aeaj.org/media/files/2016-08-09-75-Platform%20Letter%20Council%20Europe%20-%201-8-2016-4SG\(Final\).pdf](http://www.aeaj.org/media/files/2016-08-09-75-Platform%20Letter%20Council%20Europe%20-%201-8-2016-4SG(Final).pdf)

<sup>2</sup> [http://www.economist.com/news/europe/21722200-president-erdogans-drive-power-includes-putting-judges-under-his-thumb-turkeys-purges-are?cid1=cust/ddnew/n/n/n/20170518n/owned/n/n/nw/n/n/eu/Daily\\_Dispatch/email](http://www.economist.com/news/europe/21722200-president-erdogans-drive-power-includes-putting-judges-under-his-thumb-turkeys-purges-are?cid1=cust/ddnew/n/n/n/20170518n/owned/n/n/nw/n/n/eu/Daily_Dispatch/email)

<sup>3</sup> See Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)027, para. 119 et seq and para. 132 et seq.

<sup>4</sup> See : Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)027, para. 101 et seq. and see the Memorandum of the Commissioner for Human Rights of 7<sup>th</sup> October 2016, CommDH(2016)35

Furthermore, YARSAV, the independent association of judges and prosecutors (member for Turkey of the international associations IAJ/EAJ, AEAJ and Medel) was dissolved by means of a decree-law dated 23<sup>rd</sup> July 2017. Murat Arslan, Yarsav's president was dismissed on 1<sup>st</sup> September 2017 and has been in detention since 20<sup>th</sup> October 2017.

II.) Now, one year later, the Platform for an Independent Judiciary in Turkey must stress that the devastation and intentional extinction of the Turkish judiciary is still ongoing:

Different events after the attempted coup d'état clearly show that not (only) a prosecution of potential terrorists was planned, but that specifically mistreatment of the Turkish imprisoned judges and prosecutors and a shutdown of the functioning judiciary were organized, planned and executed:

1.) Inter alia, the speech of the Minister of Economy, Mr Zeybekci , on 1<sup>st</sup> of August 2016, noting 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,<sup>5</sup>" shows remarkably clearly the intentions that it was planned from the beginning.

2.) It is also remarkable that a visit of the European Committee for the Prevention of Torture (CPT) has taken place between 28<sup>th</sup> August to 6<sup>th</sup> September 2016 in Turkey. Interestingly no report has been published so far. This is quite unique in the practise of the Committee and only done so, if the respective country does not agree to have the report published.

3.) On the basis of one of the emergency decree laws, the Supreme Court (with respect to its own members) and the HSYK (for all lower court judges and prosecutors) were given competences to dismiss "suspect" judges and prosecutors. Furthermore, when for instance the Turkish Constitutional Court decided on 4<sup>th</sup> August 2016 on the dismissal of two of its members, the judgment did not refer to any evidence against the two judges concerned. The reasoning shows that it sufficed for the majority of the Constitutional Court to be subjectively persuaded that a link between a member of the Constitutional Court and the Gülenist network exists<sup>6</sup>.

4.) The General Assembly of the European Network of Councils for the Judiciary (ENCJ) has suspended the observer status of the Turkish High Council for Judges and Prosecutors (HSYK) in December 2016. This decision is founded on the conviction that the HSYK is currently not an institution that is independent of the executive and legislature ensuring the final responsibility for the support of the judiciary in the independent delivery of justice. There are no signs that the new Council of Judges and Prosecutors would have a different setting in order to regard it as

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<sup>5</sup> <http://www.diken.com.tr/bakan-zeybekciden-adil-yargilama-sinyali-gebertin-bizi-diye-yalvaracaklar/>

<sup>6</sup> <http://www.kararlaryeni.anayasa.gov.tr/Karar/Content/717f7c20-b696-4379-84f6-dfb568f8844a?excludeGerekce=False&wordsOnly=False>

And see also: Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)027, para. 135 et seq.

independent, on the contrary! The new Council of Judges and Prosecutors shows even more relevant deficiencies<sup>7</sup>.

5.) The mass dismissals and mass arrests without proper individualized accusations clearly have “chilling effect” within the judiciary<sup>8</sup>. This means that those judges and prosecutors, who are still in power, fear to be subject to such arbitrary measures themselves. These judges and prosecutors can no longer be seen to be independent, as the pressure is too high on them. As for the mass dismissals no minimum procedural requirements (not even a hearing as a basic bench-mark for adversarial procedures) were followed.

To give further examples, the Istanbul 25th Heavy Penal Court ordered the release of 21 arrested suspects out of 29 on 31<sup>st</sup> March 2017. The 21 suspects could not be subsequently released due to the objections on the same day. In addition the judges who had ordered to release the 21 suspects were suspended by the HSYK<sup>9</sup>. Again, it must be given mention to the suspension decision of the European Network of the Councils for the Judiciary of the HSYK in December 2016<sup>10</sup>. The now new Council of Judges and Prosecutors (HSK) (having started to work after the Constitutional Amendments) has already announced and decided on the transfer of 780 judges and prosecutors. This method to put pressure on judges seems to be not new. Within this context specific reference must be given to the Comments by the CCJE Bureau of 5<sup>th</sup> July 2016, CCJE-BU(2016)3 to an AEAJ request on enforced transfers of judges in Turkey.

6.) Reliable reports say that 800 of the 900 newly appointed judges have direct links to the ruling Justice and Development Party (AKP)<sup>11</sup>.

All these signs show until now that the rule of law has not been re-installed in Turkey. The independence of judiciary is neither granted nor is it visible. The protection of the fair trial rights nor of their private and professional life of the arrested judges and prosecutors is granted in any way. Therefore observation of ongoing proceedings is a first and absolutely vital requirement.

**Edith Zeller m.p.**

President of the Association of European Administrative Judges (AEAJ)

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<sup>7</sup> See Venice Commission Opinion on the amendments to the Constitution, CDL-AD(2017)005, adopted by the Venice Commission on 10-11 March 2017, para. 114 et seq.

<sup>8</sup> in detail see Venice Commission, Opinion on Emergency Decree Laws CDL-AD(2016)027, para. 147 et seq.

<sup>9</sup> <http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-for-ordering-release-of-gulen-suspects.aspx?pageID=238&nID=111576&NewsCatID=509>

<sup>10</sup> [https://www.encj.eu/index.php?option=com\\_content&view=article&id=227%3Ahsyk-suspended&catid=22%3Anews&lang=en](https://www.encj.eu/index.php?option=com_content&view=article&id=227%3Ahsyk-suspended&catid=22%3Anews&lang=en) )

<sup>11</sup> <http://theglobepost.com/2017/05/11/top-judge-defends-purge-state-of-emergency-measures/>

**José Igreja Matos m.p.**

President of the European Association of Judges (EAJ)

**Tamara Trotman m.p.**

President of Judges for Judges

**Gualtiero Michelini m.p.**

President of Magistrats Européens pour la Democratie et les Libertés (MEDEL)