



H.E. Europe, 25<sup>th</sup> of November 2016  
Nuria DIAZ ABAD  
President of the  
European Network of Councils for the Judiciary (ENCJ)

Rue de la Croix de Fer 67  
1000 BRUSSELS  
BELGIUM

Dear Madam President,

The Platform for an Independent Judiciary in Turkey, which is formed by the four European judges associations

The Association of European Administrative Judges (AEAJ),

The European Association of Judges (EAJ),

The Judges for Judges and

The Magistrats Européens pour la Démocratie et les Libertés (MEDEL)

is very much concerned about the recent developments in Turkey, which it follows quite closely. It was informed that the European Network of the Councils for the Judiciary is also alarmed and that the board of the ENCJ had convened an extraordinary meeting of the general assembly to consider and decide on the proposal to terminate the observer status of the Turkish High Council of Judges and Prosecutors (HSYK).

The attempts to undermine the independence of the judiciary and to attack judges and prosecutors, who had not been in line with the expectations of governments, which started long before the terrible coup d'état, were intensified after July 15<sup>th</sup> 2016. Government authorities intensified the persecution of various parts of the Turkish society, such as the free press, academics, teachers or public administration functionaries and, last but not least, judges and prosecutors.

In the early hours following the coup, thousands of Judges and Prosecutors have been arrested under charges of links with terrorist organizations, based on a list of names that, evidently had been pre-prepared long before the coup.

They have been permanently dismissed from their positions by the High Council of Judges and Prosecutors (HSYK) without a fair and contradictory process, their assets have been frozen, they are forbidden to leave the country and the association that independently represented them (YARSAV) has been administratively disbanded.

The Turkish High Judicial Council (HSYK) plays a central role in this undermining of the Rule of Law in Turkey. The Platform for an Independent Judiciary in Turkey, composed of all four European judges associations, strongly welcomes that the European Network of the Councils for the Judiciary (ENCJ) obviously shares this view and intends to suspend the HSYK from his status as an observer with the ENCJ.

Indeed there is nothing left but its name, which identifies the HSYK as a council for the judiciary, which meets European standards, most of which to the attention of Council of Europe's member states are laid down in Opinion No 10 (2007) of the Consultative Council of European Judges "On the Councils for the Judiciary at the Service of Society (hereinafter Opinion) and in the Recommendation (2010) 12 of the Committee of Ministers of the Council of Europe on Judges: Independence, efficiency and Responsibilities (hereinafter Rec.):

European standards	Activities of the HSYK
<p>The mission of a council for the judiciary is to defend both the independence of the judiciary and the independence of the individual judge. (Opinion para 8; Rec. para 26 and 29)</p> <p>Raise voice change of law; emergency decrees, asset seize</p> <p>Immunity of judges</p>	<p>HSYK did not defend the judiciary against measures of the executive and legislative power, which infringed the independence of the judiciary e.g. by</p> <ul style="list-style-type: none"> <li>• the changes of the law regarding the High Council of Judges and Prosecutor</li> <li>• the amendments of the law on the Cassation Court and the Council of State, which deprived judges of their positions in these court</li> <li>• the influence which government took on the election of the members of the HSYK;</li> </ul> <p>HSYK ignored the independence of numerous individual judges e.g. by</p> <ul style="list-style-type: none"> <li>• lifting the immunity and allow criminal investigations against judges without previous examination if there is any suspicion that the claims, which were put forward have any basis.</li> <li>• starting disciplinary proceedings on the basis of the content of decisions (establishing of facts and interpretation of law)</li> <li>• transferring judges without following the existing legal framework</li> </ul>
<p>A council for the judiciary should protect the image of justice (Opinion para 80 to 86; 14) especial against undue attacks of media and politicians, the latter should restrain from undue critics, which may undermine the image of the judiciary (Rec para 18)</p>	<p>It was never reported, that HSYK raised its voice against attacks of media or politicians. Instead of appropriate commenting representatives of the HSYK applauded to the speeches of President Erdogan.</p>
<p>All international documents stress that a transparent procedure and reasoned decisions</p>	<p>The performance of the HSYK is not transparent. In many cases judges concerned</p>

<p>as fundamental requirements for the functioning of a council for the judiciary must be guaranteed (e.g. Opinion para 91-93; Rec. para 28)</p>	<p>had no possibility to present their view. The decisions of the HSYK are not motivated. It was several times argued that HSYK had adopted a decision with 62 pages of reasoning, when the dismissed thousands of judges. In fact these 62 pages give an overview about the legal framework, about the way the so called network of Gülen is said to act, and about 17 concrete criminal cases, (several of them pending, which makes the reference to them problematic in respect of the presumption of innocence), in which concrete judges or prosecutors were involved. But the necessary argument why each of the more than 2000 judges in the attached list are concerned is missing. This means that the relevant motivation, why the judges concerned are dismissed is missing.</p>
<p>Security of tenure of office is a core element of the independence of a judge. Therefore it is an undisputed European and international standard that the dismissal of judges is an exception which can follow in case of extreme misuse of the exercise of office. Such decisions need utmost care, transparency and a fair procedure. (e.g. UN Basic principles on the Independence of Judiciary, Opinion para 95, 92, 63 , Rec para 49 and 50)</p>	<p>The way the HSYK has chosen to dismiss judges (see above) completely contradicts these requirements. Even to decide on suspension without sufficiently involving the persons concerned would have been questionable, but to adopt decisions on dismissal in the way described is unprecedented. It is especially totally inadequate when parallel criminal investigations are still in a pre-trial stage with no proved evidence put forward. In his way the principle of the presumption of innocence, which is enshrined in Article 5 of the ECHR is ignored.</p>

Already these few examples show that the HSYK fails to act as a council for the judiciary which meets well established European standards. The Platform for an Independent Judiciary in Turkey considers it as a logical consequence when the ENCJ terminates the observer status of HSYK.

We should also note that even for the European Commission, the role of the HSYK is not in accordance with European principles. In its report of November 9th 2016, concerning the membership process of Turkey to the EU, it is clearly stated that *"The extensive changes to the structures and composition of high courts are of serious concern as they threaten the independence of the judiciary and are not in line with European standards. Judges and prosecutors continued to be removed from their profession and in some cases were arrested, on allegations of conspiring with the Gülen movement. The situation worsened further after the July coup attempt, following which one fifth of the judges and prosecutors were dismissed and saw their assets frozen. There was no progress on the outstanding issues identified in previous reports and the recommendations made last year can therefore largely be restated: (...)*

→ *limit the role and influence of executive power within the High Council of Judges and Prosecutors and provide sufficient guarantees against transfers of judges against their will;*

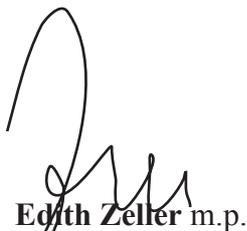
→ *introduce further safeguards against any interference by the High Council of Judges and Prosecutors in judicial proceedings*".

Arguments which are put forward by Turkish authorities, which tour European countries, refer to the putsch and the victims of this terrible event, which indeed everybody has to confirm as an unacceptable criminal act. They claim that an independent judiciary is going to deal with the measures in a fair procedure, which is in contradiction with the actions mentioned above. They also report about evidence by confessions and other means, which nobody could proof so far. All relevant cases are declared as top secret by the prosecution and the criminal courts, not even the defense lawyers are sufficiently informed on what is put forward against their clients, so that it is not possible that members of the HSYK could be informed without breach of confidentiality.

But even if these arguments were true, this does not give any justification that the HSYK deviates from international standards as described above.

In a study which was elaborated by the International Association of Judges in 2003 one of the conclusions was that if a council for the judiciary is not setup in the adequate way regarding composition and procedure it cannot fulfill its main task to protect the judiciary from other powers of the state but it could be the opposite, it could be an instrument to influence and suppress judiciary and destroy their independence. Unfortunately there is strong evidence that the HSYK suffered such a transformation.

The Platform for an Independent Judiciary in Turkey therefore welcomes that the ENCJ shares its considerations and is going to draw the consequences by terminating the observer status of HSYK. This will be a strong signal to confirm what councils for the judiciary are and what they stand for. The ENJC would also send a strong and clear message to Turkey to respect the basic international standards and return to the Rule of Law.



**Edith Zeller** m.p.

President of the Association of European Administrative Judges (AEAJ)



**José Igreja Matos** m.p.

President of the European Association of Judges (EAJ)



**Tamara Trotman** m.p.

President of Judges for Judges

A handwritten signature in blue ink, reading "Gualtiero Michelini". The signature is fluid and cursive, with a long horizontal stroke at the end.

**Gualtiero Michelini** m.p.

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