



### **Venice Commission Declaration on Interference with Judicial Independence in Turkey**

The Venice Commission was contacted by judges and prosecutors from Turkey, bringing to its attention several cases of apparent serious interference with the work of judges and prosecutors in politically sensitive cases (see Appendix).

These cases point to a pattern of interference with the independence of the judiciary in clear violation of European and universal standards:

- Judicial decisions and requests from prosecutors were not executed in violation of the law;
- Prosecutors were suddenly removed from cases prepared by them over a long period;
- Judges and prosecutors allegedly were arbitrarily transferred to other courts;
- Judges were dismissed for decisions taken by them;
- Alarming judges and prosecutors were even arrested for decisions taken by them.

The Venice Commission stresses that measures against judges for their decisions can only be taken if there is sufficient proof that they did not act impartially but for improper reasons.

The Venice Commission is particularly concerned that the High Council of judges and prosecutors took immediate and direct action against judges and prosecutors on account of their decisions in pending cases. This practice of the High Council contradicts basic principles of the rule of law.

The Venice Commission notes that on 15 February 2014 the law on the High Council of Judges and Prosecutors was amended, strengthening the powers of the Minister of Justice within the High Council. This step reversed the positive achievements of the reform carried out in 2010 following the constitutional referendum. While many of these amendments were declared unconstitutional by a decision of the Constitutional Court of 10 April 2014, prior to this decision the Minister of Justice had already replaced key members of the administrative staff of the High Council and reassigned members of the Council to other chambers. These decisions were not reversed since the judgment of the Constitutional Court had no retroactive effect.

The facts described above clearly demonstrate that there are insufficient guarantees for the independence of the judiciary in Turkey.

The Venice Commission calls on the Turkish authorities

- To review the measures taken against the judges and prosecutors concerned;
- To further revise the Law on the High Council of Judges and Prosecutors to reduce the influence of the executive power within the Council;
- To outlaw any interference by the High Council of Judges and Prosecutors with pending cases;
- To provide judges with legal and constitutional guarantees against transfer against their will, except in cases of reorganisation of the courts.

The Venice Commission asks the President to follow the situation of the judiciary in Turkey.

Venice, 20 June 2015



### **Appendix: Cases brought to the attention of the Venice Commission**

The first group of cases concerns prosecutors Zekeriya Öz, Celal Kara, Mehmet Yüzgeç and Muammer Akkaş and judge Süleyman Karaçöl, who were dealing with investigations into high level corruption. Responsibility for these investigations was suddenly taken away from these prosecutors in December 2013 and their decisions, although they were legal and valid, were not executed. The four prosecutors and judge Karaçöl were transferred outside the normal procedure to other jurisdictions in early 2014, suspended from office by the High Council of Judges and Prosecutors (HSYK) in December 2014 and dismissed by the High Council on 12 May 2015.

The second group of cases concerns judges Metin Özçelik and Mustafa Başer, who granted on 25 April 2015 a request for the release of media representatives and police officers, who were detained on remand due to their involvement in the anti-corruption investigations. In their decisions the judges referred to the respective case law of the European Court of Human Rights. Not only were these release orders, although they were legal and valid, not implemented but, two days later, on 27 April 2015 the judges were suspended by the High Council of Judges and Prosecutors, which authorised their arrest. The President of the second chamber of the HSYK stated: "I apologise to the public. Our ruling was delayed due to the weekend."

The third group of cases concerns prosecutors Süleyman Bağrıyanık, Ahmet Karaca, Aziz Takçi and Özcan Şişman, who gave orders in January 2014 to stop and search Syria-bound trucks allegedly carrying weapons. Following their decisions the prosecutors were transferred to other posts. In January 2015 they were suspended from office by the HSYK and in May 2015 the HSYK authorised post factum their arrest.