



H.E.
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President of the
Parliamentary Assembly
of the Council of Europe

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Your Excellency, Mr. President

I.1) Europe is facing the worst deterioration of the common values, on which Europe is built. Democracy and human rights are questioned in parts of society in several Council of Europe's member states. But the developments in Turkey have to be seen as destroying both: democracy and human rights. Especially the erasing of an independent judiciary is a key element to make these negative developments possible.

This extraordinary situation has induced all four European Associations of Judges to join together in their activities:

- 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)

And form a Platform: **Platform for an Independent Judiciary in Turkey**

European judges combined in the Platform are deeply shocked by so many death and wounded victims of the failed coup d'état, which shocked the country, and we express condolences to the Turkish people. There is no space for a putsch in a democracy!

I.2) We have reasons to assume that the putsch was seen as an opportunity to declare the status of emergency and to open wide possibilities to put aside procedural safeguards and fundamental rights:

Although the putsch was exercised by a small group within the military the reactions of the

government turned against a large numbers of persons, who are civilians, among them a large number of judges and prosecutors, journalists and teachers. It is obviously argued by the president that all of them are followers of Fethullah Gülen, who is said to run a terroristic organisation. So far no evidence of the existence of a terroristic organisation or the concrete membership of the detained people to a network, which is headed by Fethullah Gülen, has come to the knowledge of any of the members of the platform.

The Platform for an Independent Judiciary in Turkey was informed that:

- 2.745 magistrates (out of around 15.000 of them) were dismissed in the first 12 hours after the putsch, and arrest warrants were issued for all of them
- a majority of those judges and prosecutors is detained
- some lawyers which were defenders of detained magistrates have been detained afterwards
- 48 judges of the State Council are dismissed, which is more than a half of them (those who would decide on appeals against decisions of administrative courts), as well as 140 of 150 judges of the Cassation Court
- five judges, members of the HSYK - Turkish High Council of Judiciary were dismissed, who alongside two members chosen by the country's President, represent the most important, second chamber of the HSYK which decides on promotions and allocations of judges and prosecutors, as well as on disciplinary responsibility and dismissal of them
- the assets of 3049 judges and prosecutors who are under the investigation have been seized as of 28th July

It is evident that some of the detained persons, especially the journalists had published critical articles, which had not been in line with the politics of the president. Some of the detained judges and prosecutors have not been members of the government backed judges' association but of the independent judges' association YARSAV or of none of these associations and might not have voted for the government list at the last election of the High Council of Judges and Prosecutors. However, to our knowledge, there is no evidence published that there is any connection of these judges or prosecutors with the military coup.

Furthermore, there is evidence that the government was well prepared to fight these people with diverse means. The lists of the now detained people have been prepared long before the putsch. As far as judges and prosecutors are concerned the lists included persons, who died more than fifty days ago or had been transferred to other posts than indicated as their posts in the lists. As President Erdogan said "the coup was a gift of God". His fight against opponents now could be speeded up.

Therefore, the reactions towards members of the justice system are not evoked by the "Coup d'État" but they are in line with a step by step undermining of the independence of the Turkish judiciary, which started at the latest in December 2013. Some reported occurrences may serve as an example:

- There is the way in which the investigation of the weapon transport was stopped.
- There are 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
- There is the criminal case against the judges Baser and Öczelik
- There were numerous transfers of judges and prosecutors without their consent
- There were disciplinary procedures and suspensions of judges on the basis of their decisions
- There is the amendment of the Law on the Court of Cassation, by which most judges of the Court of Cassation lose their posts
- There was a very questionable policy of appointments 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.
- There was a change in the initial training and appointment requirements for judges with a very short period of training before possible appointment.

I.3) In line with these incidences since December 2013, the information of which we have received so far, we want to draw attention to similar indications, which have been asserted by European organisations:

- Progress Report on Turkey, European Parliament Resolution, 10th June 2014, Commission Progress turkey (2014/2953/RSP),
- Declaration of the Venice Commission of 20th June 2015 on Interference with Judicial Independence in Turkey,
- Comments of the CCJE Bureau of 12th June 2015, CCJE-BU (2015)5, on the alleged major threats on the personal and institutional independence of the judiciary,
- Report of the 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
- Comments by the CCJE Bureau following the request of AEAJ to provide opinion about certain aspects of the legislation in Turkey concerning judges and prosecutors, of 5th July 2016, CCJE-BU(2016)3.

I.4) To summarize: the Platform sees all these elements as clear indications of and puzzle stones in a strategy of the government, which aims at taking judiciary under its control.

An independent judiciary is a cornerstone in a democracy governed by the rule of law. It is not only in the interest of the Turkish people but also in the interest of all Council of Europe member states to re-establish this principle in Turkey. It is a task of the Council of Europe and its member states to try to stop this developments to abolish an independent judiciary and by this consequently to abolish democracy as such in Turkey.

I.5) Furthermore, we have received some appalling reports about the way judges and prosecutors are detained:

- the way how they were detained,
- the conditions of the detention (no necessary facilities etc.)
- no medical care
- heart attacks of detained judges
- no or reduced contact to family
- no contact with lawyers
- pressure on defense lawyers
- no possibility for secrete conversation between defense lawyer and client
- pressure on the judges, who are in charge of the procedures against their colleagues,
- no access to the files
- only a summary accusation "to be on a list" as official reason for being detained.

These reports could not be reviewed by us. However we have received all this information from colleagues who have proven to be trustful so far.

I.6) On the basis of our considerations under I.1) to I.5) we therefore urge the Council of Europe

- to establish, within the Parliamentary Assembly, an Independent Investigation Commission, composed by experts in Human Rights, on the situation of the independence of the Judiciary in Turkey, to gather the arguments of the Turkish authorities for their activities against the judiciary and the factual basis of these activities
- to remind Turkey of the European values and standards
- to send high ranking observers to Turkey to watch the situation of the detained judges and prosecutors

The Platform for an Independent Judiciary in Turkey is available to provide any assistance, if needed.

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