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European Association of Judges



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MEDEL

Magistrats Européens pour la
Démocratie et les Libertés

To

-Europe, 16th August 2016

the President/Head of the High Council of Judges and Prosecutors of Turkey

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Honorable President,

The international associations of judges, united in this platform, have learnt that the High Council of Judges and Prosecutors (HSYK) is currently dealing with the removal and dismissal of 3500 judges and prosecutors who are suspended and under criminal investigation. A majority of this group is presently detained.

Regarding this difficult, highly sensitive and far-reaching act, the below mentioned international associations, strongly appeal to the High Council of Judges and Prosecutors that these decisions on the dismissal/removal of judges should be in line with international and European standards.

In the light of the fact that irremovability of judges is an essential element of judicial independence, these standards provide only for very limited and specific exceptions from this principle to be applied only within the framework of due procedure.

"A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing" (see para. 17 UN Basic Principles on the Independence of the Judiciary).

Recommendation CM//REC (2010)12 of the Committee of Ministers of the Council of Europe holds in Art. 50:

"The term of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions..."

And Art. 69 of the respective Recommendation says:

"Disciplinary proceedings may follow where judges fail to carry out their duties in an efficient and proper manner. Such proceedings should be conducted by an independent authority or a court with all the guarantees of a fair trial and provide the judge with the right to challenge the decision and sanction. Disciplinary sanctions should be proportionate."

And:

“The tenure of individual judges can only be questioned if some breach of disciplinary rules or the criminal law by an individual judge is clearly established in accordance with proper judicial procedures” (see CCJE Opinion No 18, para. 44).

Therefore according to international law, judges can be suspended or removed only on serious grounds of misconduct or incompetence after fair proceedings.

Even though Turkey has invoked article 15 of the European Convention to derogate from certain rights enshrined in the Convention, a State may take measures derogating from its Convention obligations only to the extent strictly required by the exigencies of the situation. Derogations may furthermore not be inconsistent with the State’s other obligations under international law. That is to say that judges cannot be removed/dismissed on the basis of the Turkish Emergency Law without careful case-by-case assessment and proper legal procedure and defense.

Any sanctions taken without first properly investigating and evidencing allegations of wrong doing of each concerned judge are not in line with international and European standards on judicial independence. Therefore the international Associations mentioned below strongly appeal to the High Council of Judges to apply and to observe these standards when it decides on the question of dismissal on the judges, who are under investigation.

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

Edith Zeller m.p.

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Christophe Regnard m.p.

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Tamara Trotman .

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