

BRIEF INFORMATION ON YARSAVİ

-The Turkish Constitution was amended in 1995 due to the membership process to the European Union.

-The introducing of a new Law on Associations in 2004 after this amendment abated the ban on the association of judges and republic prosecutors.

-On 26.06.2005, 501 judges and republic prosecutors founded on this ground the Union of Judges and Prosecutors which's abbreviation is YARSAV.

-YARSAV has been established as a professional organization. It's aim is to strive for the success of the universally acknowledged principles and rules as regards the independence of judiciary, judicial assurance and judicial issues.

-The founding members of YARSAV are judges and republic prosecutors who are on duty in all levels of the ordinary, administrative and constitutional judiciary including the high courts.

- 96 of the 501 founding members were high court judges of the Court of Cassation and 21 were high court judges of Council of State (240 high court judges are working presently in the Court of Cassation and 96 high judges in the Council of State). Furthermore 8 of the 10 elected members of the High Council of the Judges and republic prosecutors were founding members.

- The other founding members were consisting of judges and republic prosecutors from all regions of Turkey without exception. YARSAV has been established to represent all judges and republic prosecutors of Turkey. The member structure is reflecting that also.

-The members of YARSAV are not only judges, but republic prosecutors too. In our country the mutual shifting between the duties of judges and republic prosecutors is possible without a request. Therefore, it is decided that the judges and republic prosecutors assemble themselves under one roof considering the actual structure of the judiciary. (In this context it will be useful to explain, that regardless of the shifting of the duties the ones who have discharged judicial functions in a trial, cannot take part as republic prosecutors in the same trial. In opposition to this the ones who have acted as republic prosecutors in a trial too, cannot discharge judicial functions in the same trial.)

-YARSAV is an over- and non-political organization. The only provision for being a member of YARSAV is to be a judge or republic prosecutor. Everyone complying these conditions has been accepted as member.

-The number of the memberships of the Union is currently at 1200. But in Turkey at present there are nearly 11000 judges and prosecutors on duty and there is no other association organized in the same field.

-The most important cause of the shortfall in the membership figure was the unlawful obstructive conduct faced through the Ministry of Justice after the founding of the association.

-No one of the judges working in the head organization of the Ministry of Justice in administrative function could be a member of YARSAV due to administrative coercion.

-The Government and the Ministry of Justice declared in their discourse and political commitments in EU circles that they had eliminated the barriers as regards the freely organization of the judges and republic prosecutors.

-But they began to work for the establishment of an another professional organization with the character of a public body as soon as YARSAV was founded.

-The aim was clear: to hinder the membership accesses to YARSAV.

-Perplexing by adding to the draft bill, an article for the termination of YARSAV, the Ministry of Justice tried to block the participations to our Union through statements.

-However in the answers given to the European Union's "Report of an Advisory Visit" prepared in the years 2004 and 2005 the Ministry of Justice had expressed that there weren't any restrictions as regards the association of judges and republic prosecutors.

-But as YARSAV was founded and made use of the right of the association the attitude and conduct of the Ministry of Justice became concrete trough hindering of the usage of this freedom.

-After YARSAV was founded the Ministry of Justice sent to the Ministry of Interior an advisory writing. Although there were no legal obstacle, it expressed that the association of judges and republic prosecutors were under a ban.

-Some examples of the concrete infringments on the right of association are given below:

- After a correspondence with Ministry of Justice the Ministry of Interior notified through the Governorship of Ankara YARSAV on 28.08.2006 that the judges and prosecutors could not organize themselves.

-The defending of the independence of the judiciary was a duty of the state.

-The functioning of YARSAV in fields of the independence of judiciary and judicial assurance was unlawful. The founding of an association by the judges and prosecutors on duty is under a ban.

-The expelling of the judges and prosecutors from YARSAV which had founded the association was necessary. The association should not function in the field of judicial issues.

-The disobeying to this formal request of the Governorship of Ankara, which is the local representative of the Ministry of Interior, started a process of annihilation by suit regarding the Turkish Civil Law.

-YARSAV prevented this attempt through filing of a suit before the High Administrative Court(Council of State) and gaining a stay of execution.

-(After a long process the mentioned High Court decided that the establishing of the association was lawful.)

-During this trial YARSAV held its General Assembly and established through free-will and elections its bodies on 26.11.2006.

-This time the Ministry of Interior, showing unlawful reasons, asserted that YARSAV could not hold a General Assembly. An abrogation of the General Assembly was necessary. It procured that a criminal investigation was opened in February 2007 against the President of YARSAV which had gathered the General Assembly.

- This criminal investigation which had no legal bases was carried on because of an undertaking of the Ministry of Interior by the Chief Public Prosecution Service of Sincan.

- (This investigation ended with a dismissal of proceedings. The Republic Prosecution Service decided that the gathering of the General Assembly was legal.)

-The Ministry of Justice had come to the idea to establish a “counter organization”. Brought its idea before the legislative body through introducing of a bill in February 2007.

-In this bill, it was anticipated to annihilate the associations founded by judges and republic prosecutors. In this context the termination of YARSAV was foreseen.

-According to this bill the judges and republic prosecutors could be only members of a professional union established by law. This union showed in mind of the Ministry the characteristics of a public body.

-Because of the ending of the legislative period 2007 this bill was abated.

-In the meantime the Ministry of Interior laid a claim against YARSAV to the Chief Public Prosecution Service of Ankara because of the following reasons: It had not expelled the judges and prosecutors on duty and it was furthermore functioning in the field of the problems of the judiciary.

-(This investigation brought into action by interference of Ministry of Justice and Ministry of Interior ended with the legal success of the association too. The filing of a suit for the closure of YARSAV due to mentioned reasons were rejected by the Republic Prosecution Service.)

-The political will which comprehended the difficulty of the annihilation of YARSAV through law, putted in an Article 30 of a Constitutional Draft a clause which foresaw the restraining of the association rights of judges and prosecutors.

-The Government and the Ministry are waging unfortunately an unlawful approach against YARSAV.

-It demonstrates the will to continue the conducts and behaviours contrary to the independence of judiciary. This preclusive course of conducts and behaviours are preventing the effective usage of the right of association in the judiciary.

-The Constitutional Draft putted forward in 2007 was presented to Turkey as a bill of freedoms. But it showed its autocratic characteristics by its hidden clauses against the association of judges and prosecutors.

- YARSAV is seen today unfortunately by the political power as an hinder in judicial and political field although it has the only aim to modernize the conditions of the judiciary by considering the rights of individuals and human rights.

-YARSAV is facing acts and processes which judges and prosecutors did not faced during the military coup in 12th September 1980.

- YARSAV which aims to function regarding its objects is to be wanted to be put through constant administrative oppression into a struggle of subsistence and non-existence, and its effective activity is hindered in this way.

-On 29.11.2007 the draft law which foresaw in one of its provisional articles the closure of YARSAV was put again on the agenda of the Parliament.

-It was accepted by the majority votes of governing party after it was discussed in the Commission of the Turkish Parliament namely the Commission for the Harmonization to the European Union, although the European Union General Secretariat of Turkey , which has the duty to follow up the harmonization with the EU was opposed to the draft.

-After this phase this draft will be discussed in the Constitution and Justice Commissions of the Turkish Parliament too. Following this phases the draft will be taken in the agenda of the Turkish Parliament and if it will be accepted as a law. YARSAV will be the first legal entity which is closed by law since 1981, the year after the military coup.

-Till today this did not happen. But the government has declared in its National Program as regards the harmonization to EU membership that it has the aim to bring this law in the last quarter of 2008 into force.

-YARSAV has accustomed itself to live and act in this kind of repressive conditions.

-It is trying to block this kind of non democratical attitudes towards civil society and non governmental organizations, trough enhancing of the public awareness in this field, by using its right to resort to courts against this kind of infringements.

-Furthermore no conveniences are shown to the representatives of YARSAV for a promptly and efficient functioning against the Article 6 of the Labour Relations (Public Service) Convention, (ILO No. 151) by the units where they work.

-YARSAV came into being in order that the judges and prosecutors can make use of their association rights. YARSAV is determinate to continue it's efforts and fight for the solving of the problems of judiciary.

-YARSAV is not a ceremonial association.

-It knows the importance of a truly independent judiciary for the progress and well being of nations.

-During it respects the independence of the judiciary and the seriousness of the professions of its members, it shows its own seriousness in this field by its acts.

-Because it is an association of jurists it acts juridical.

-It has filed until this time more than 30 suits against unconstructive conditions of the judiciary which hedge the independence and effectiveness of an independent judiciary.

-Some examples for the subjects of this filed suits are like that:

- The request for annulment of a regulation which gave the Ministry of Justice by selecting of the candidate judges and prosecutors a competence against the law
- The request for annulment of an administrative act which foresaw the appointing of 500 candidate judges and prosecutors by the Ministry of Justice
- The request for annulment of an administrative act of the Governorship of Ankara which foresaw the closure of YARSAV
- The request for annulment of some sentences in the articles 4 and 6 of the Regulation on Associations
- The request for annulment of some changes made in the regulation as regards the candidanship to the profession of judges and prosecutors
- The request for annulment of a mandat o the Ministry of Justice which foresaw the control of the decisions of prosecutors by chief prosecutors via a judicial network called UYAP
- The annulment of the articles of the "Statute of the Investigation Board of Ministry of Justice" that foresaw against the law and constitution improper intervention to the judicial procedures
- The annulment of the regulation which foresaw an unfair distribution of old computers among judges working in different judicial levels
- The annulment of some unobjective standards foreseen in a announcement of the Ministry of Justice as regards the candidanship to the profession of judges and prosecutors
- 3 requests to the high courts and academy of justice for opening of all judicial decisions within computer networks to the public and the judiciary
- The request for the annulment of some unobjective articles of the regulation on the Academy of Justice which has the duty of education of candidate judges and prosecutors
- The request for annulment of the decisions of some courts which foresaw unjust countrywide telephon tapping which was against human rights

This kind of suits or requests filed by YARSAV in the courts has annoyed of course the authorities which were working in the field of judiciary until today without any restriction, discretionary.

But we hope that they are learning together with YARSAV the sharing of life with non governmental organizations. They conduct theyre acts in the field of judiciary now much more carefully. They pay more attention not to infringe the rules which envisage the independence of judiciary.

The web site of the Union can be found in the following address: www.yarsav.org.tr

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