



Europe, 10th December 2018

70th anniversary of the Universal Declaration of Human Rights and its observation in Turkey

“Article 9.

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Honorable Madame, Honorable Sir

On the occasion of the Human Rights Day 2018, the *Platform for an Independent Judiciary in Turkey* strongly emphasizes that basic human rights standards are neglected and violated in Turkey, inter alia through the abolishment of an independent judiciary and in so far arbitrary detention of thousands of Turkish judges. This fact has been emphasized repeatedly¹, to be demonstrated here by the following example:

Fact is that Mr Murat Arslan is a Turkish judge and president of the Turkish Association of Judges and Prosecutors (YARSAV). He was arrested in October 2016 and is since then in (pre-trial) detention. He was awarded the Václav Havel Human Rights prize of 2017 by the Parliamentary Assembly of the Council of Europe.

Against Mr Murat Arslan a criminal trial has started on 2nd November 2017 - accusing him of being an active member of FETÖ/PDY and of having supported this terrorist organization (FETÖ).

In the course of this criminal trial, the main effort made by the public prosecutor was to demonstrate that FETÖ/PDY is a terrorist organization the aim of which is to infiltrate State institutions, including judiciary, and especially to show that the Independent Association of Turkish Judges and Prosecutors (YARSAV) - the president of which was Mr Murat Arslan - played a role in this infiltration.

The accusations brought against Mr Murat Arslan pretended that he was one of Fetullah Gülen’s followers, leading a double life and portraying him as a traitor and someone who could easily be bought.

Evidence on the concrete use of the communication system ByLock (similar to “whatsapp” or other communication apps) and its evidential value for the concrete accusations were neither carefully

¹ See, inter alia, statement of 17th July 2017, <https://www.aeaj.org/media/files/2017-07-20-63-TurkeyPlatform%20-%20Conclusions-1.pdf> ; statement of 22nd March 2018, inter alia <https://www.aeaj.org/media/files/2018-04-13-71-Statement-Varna-Final.pdf> ; statement of 2017, https://www.aeaj.org/media/files/2017-04-10-69-EN_%20Joint%20Statement%20Turkey%2005%2004%202017.pdf; <https://www.iaj-uim.org/solidarity-news-and-documents-about-yarsav/>



analyzed nor thoroughly investigated. A witness of the prosecution changed the testimony. Two more witnesses of the prosecution were heard by other courts without consultations of the defense and without giving notice of their identity. The trial is still not finished yet but due to have another hearing in January 2019.

Furthermore, a second set of criminal investigations have started against Mr Murat Arslan, alleging that he has committed defamation against the head of the Turkish State. These allegations are based on the content of a private (!) letter sent from the prison to his wife during his pre-trial detention.

Whereas YARSAV has been recognized as the only Independent Judicial Association of Turkish Judges and Prosecutors for many years by different European-wide and international judicial associations, Mr Murat Arslan as president of YARSAV has devoted his life to defend and speak for the need of safeguarding independence in Turkish judiciary and explicitly to stress that the Turkish judiciary has been brought under the control of the executive branch in 2014 – which brought him and YARSAV in opposition to the Turkish regime long before this coup d'état happened.

It goes without saying that when a judiciary is not fully independent or is being under pressure, an immense responsibility lies upon individual judges to defend the rule of law. The same in such a situation or under such a system that is in a political crisis of its democracy². These are clear international standards in this regard.

² The constantly increasing pressure on Turkish judiciary is commonly known and proven since many years, e.g.:

- the report of audit carried out by MEDEL in 2012, [https://www.medelnet.eu/images/Monetti Strecker Report on a visit in Turkey 20120704.pdf](https://www.medelnet.eu/images/Monetti_Strecker_Report_on_a_visit_in_Turkey_20120704.pdf),
- the Progress Report on Turkey, European Parliament Resolution, 10th June 2014, Commission Progress turkey (2014/2953/RSP),
- the Declaration of the Venice Commission of 20th June 2015 on Interference with Judicial Independence in Turkey,
- the 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,
- the 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
- the 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
- the resolution of the American Bar Association of August 2016, <http://www.aeaj.org/media/files/2016-10-07-65-16.9.12.ABA.Res.10A.Turkish.Judges.pdf>
- the memorandum on the human rights implications of the measures taken under the state of emergency in Turkey by the Commissioner for Human Rights, Council of Europe, of 7th October 2016, CommDH(2016)35
- the list of demands of 10th October 2016 to the Turkish authorities, issued by the platform of four major European Judges Associations, <http://www.aeaj.org/media/files/2016-10-12-71-List%20of%20demands.pdf>
- the suspension of the Turkish High Council for Judges and Prosecutors of observer status from the European Network of Councils for the Judiciary (ENCJ) on 8th December 2016



Not only Mr Murat Arslan as president of the independent judicial association YARSAV, but also many other Turkish judges have proven to stand for the full protection of fundamental rights within their duties as judges and have resisted the – since many years – constantly rising pressure on Turkish judiciary from the Turkish political leaders.

Not only Mr Murat Arslan as president of the independent judicial association YARSAV, but also many other Turkish judges have been dismissed and are still in pre-trial detention under conditions ignoring international standards .

On the Human Rights Day of 2018, the *Platform for an Independent Judiciary in Turkey* must again underline that basic standards of Universal Human Rights are simply ignored and definitely not recognized by the Turkish state. Arbitrary arrests and detentions as well as denial of a fair trial by independent and impartial courts are a constant fact.³

We call on your repeated promises to uphold certain universal values, certain standards of universally accepted human rights.

We appeal to your conviction not to ignore severe human rights violations regardless of a proclaimed well-being of economic or strategic interests.

The platform urges all governmental leaders and parliaments to support Turkey to re-install the rule of law and to follow its obligation to respect fundamental human rights.

Edith Zeller m.p.

President of the *Association of European Administrative Judges (AEAJ)*

José Igreja Matos m.p.

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President of *Judges for Judges*

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³ See the report of July 2017, inter alia: <https://www.aej.org/media/files/2017-07-20-74-Situation%20of%20Turkish%20Judiciary%20-%20Platform%20Report.pdf>