



**The President**

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Paris, March 6th, 2014

Rec. Independence of the Judiciary in Turkey

Your Excellency,

I have the honour to address you on behalf of the European Association of Judges (EAJ), regional group of the International Association of Judges (IAJ).

The Turkish association of judges and prosecutors (YARSAV) is a member of EAJ and IAJ.

The European Association of Judges expresses its regrets concerning the recent adoption by the Turkish parliament of a law which is clearly not in compliance with international standards of an independent and impartial judiciary.

To support the Turkish judges and prosecutors, EAJ decided to write a report about the situation in Turkey to international and European authorities. You will find it attached.

This report was sent to:

- Mr Baudelaire NDONG ELLA, President of the United Nations Human Rights Council,
- Mrs Gabriela KNAUL, Special Rapporteur on the Independence of Judges and Lawyers
- Mr Didier BURKHALTER, OSCE Chairperson-in-Office
- Mr Herman VAN ROMPUY, president of the European Council
- Mr Jose Manuel BARROSO, President of the European Commission
- Mrs Catherine ASHTON, High Representative of the Union for Foreign Affairs & Security Policy
- Mrs Viviane REDING, Vice-president of the European Commission - Justice, Fundamental Rights and Citizenship
- Mr Stefan FULE, Member of the European commission - Enlargement and European Neighbourhood Policy
- Mrs Rias OOMEN-RUIJTEN, Rapporteur for Turkey
- Mr Martin SCHULTZ, president of the European parliament
- Mr Thorbjorn JAGLAND, general secretary of the Council of Europe
- Mr Jean Claude MIGNON, president of the parliamentary assembly of the Council of Europe

- Mr Nils MUIZNIEKS, Commissioner for Human Rights of the Council of Europe
- Mr Bart VAN LIEROP, president of the consultative council of European Judges
- Mr Antonio MURA, president of the consultative council of European Prosecutors
- Mr Gianni BUQUICCHIO, president of the Venice Commission

EAJ urges that changes to legislation recently adopted should be made in order to restore an independent Turkish judiciary, one of the basis of a democratic system.

Respectfully

Christophe REGNARD  
President

A handwritten signature in blue ink, appearing to read 'Christophe Regnard', enclosed within a large, loopy, hand-drawn oval shape.



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Paris, 05/03/2014

Rec: Recent amendments of laws regarding the judiciary

Your Excellency,

The European Association of Judges -EAJ- is deeply concerned about recent developments in Turkey which endanger the independence of the judiciary and the securing of impartiality in the administration of justice and prosecution and which are incompatible with the proper separation of powers. The presidential committee of EAJ and the EAJ "working party regarding problems in member States" therefore call upon you to take appropriate measures vis-à-vis the Turkish authorities and to remind them of their responsibilities according to international law and according to universal acknowledged standards.

We have been informed about alarming activities especially in the following areas:

- Attempts have been made to increase the opportunities for the exercise of political influence on members of the judiciary, thus impairing judicial independence, by reformation of the High Council of Judges and Prosecutors.

According to a new law passed by the Turkish Parliament on 15 February 2014:

The Minister of Justice, in his function as the President of the High Council of Judges and Prosecutor (HCJP), will appoint the Head of the Inspection Board, the Deputy Head of the Inspection Board and the Deputy Secretary General.<sup>1</sup>

Furthermore the Minister of Justice will be empowered to initiate disciplinary action against Council Members, as well as initiate criminal investigations against Council Members.<sup>2</sup>

The Minister of Justice as the President of the HCJP will decide on the allocation of council members to the chambers. The mandate of the chambers will be changed also.<sup>3</sup> Furthermore the agenda of the meetings of the HCJP will be prepared by the Minister of Justice.<sup>4</sup>

The Head of the Inspection Board will be answerable to the Minister of Justice.<sup>5</sup>

The administrative personnel will be appointed by the Minister of Justice.<sup>6</sup>

In general one can state that the reshaping of the HCJP aims at conferring extensive competences on the Ministry and removing existing competences of the Council and its chambers.

These changes to the law are in stark contrast to the requirements set out in various international agreements, declarations and resolutions, as well as to the findings – regarding Turkey directly – by the Special Rapporteur on the independence of judges and lawyers of the Human Rights Council of the UN, by the Commissioner for Human Rights of the Council of Europe, by the Venice Commission and by the European Commission, all of which have expressed their wish to strengthen the independence and impartiality of the judiciary as well as maintaining proper separation of powers by means of a reduction in the influence on the judicial branch of the executive branch in general and the Minister of Justice in particular.<sup>7</sup> Instead of developing a better separation of powers and of strengthening the independence of the judiciary from the executive branch – as the various international standards require<sup>8</sup> – the proposals seek to enhance the powers

<sup>1</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 11

<sup>2</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 36 and 38

<sup>3</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 8

<sup>4</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 29

<sup>5</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 14

<sup>6</sup> cf. Law on High Council of Judges and Prosecutors no:6087 article 13

<sup>7</sup> cf. the Report of the Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, to the Human Rights Council of the UN [A/HRC/20/19/Add.3], esp. par. 32 ff.; cf. the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe [CommDH (2012)2], p. 3, p.23 par. 103 ff. and p. 31 par. 158; cf. Venice Commission Opinion on the Draft Law on Judges and Prosecutors of Turkey [CDL-AD(2011)004], par. 7, 84; cf. European Commission, Commission Staff working Document, Turkey 2013 Progress Report [SWD(2013) 417 final], p. 12, 44

<sup>8</sup> cf. Recommendation No. R (94) 12 of the Committee of Ministers to member states on independence, efficiency and role of judges, Commentary on the principles, par. 15: “The independence of judges is first and foremost linked to the maintenance of the separation of powers. The organs of the executive and the legislature have a duty to ensure that judges are independent. Some of the measures taken by this organs may directly or indirectly interfere with or modify the exercise of judicial power. Consequently, the organs of the executive and legislative branches must refrain from adopting any measure which could undermine the independence of judges.” [cf. Stephan Gass/Regina Kiener/Thomas Stadelmann, Standards on Judicial Independence, p. 208];

cf. Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, par. 26 f. [cf. Gass/Kiener/Stadelmann, p. 219]: “Councils for the judiciary are independent bodies, established by law or under the constitution, that seek to safeguard the independence of the

of the latter.

- Attempts have also been made to control indirectly the functioning of the judiciary by interfering in the work of the police and thus with the prosecutions to be brought before the courts<sup>9</sup>:

It has been brought to our knowledge that more than 8000 police officials in various provinces have been removed from their posts and new prosecutors have been appointed to an ongoing a major investigation into claims of corruption and bribery.<sup>10</sup>

We understand that the removal from duty of a number of police directors, police chiefs, and ordinary police officers was due to their not having informed their superiors about the ongoing corruption investigation proceedings. However, under the legislation in force providing such information would actually be unlawful due to the confidentiality of the investigation pursuant to statutory requirements (cf. art. 157 and 164 of the Code on Criminal Procedure). In an overnight change to police procedure for judicial investigations, the Turkish government issued a decree requiring police officers to inform their superiors before launching any investigation, or executing search warrants, detention orders etc.<sup>11</sup> Even though the Council of State swiftly cancelled the government's executive order requiring police and prosecutors to notify their superiors of all

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judiciary and of individual judges and thereby to promote the efficient functioning of the judicial system (par. 26). Not less than half the members of such councils should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary (par. 27).”;

cf. European Charter on the statute for judges, par. 1.3 [cf. Gass/Kiener/Stadelmann, p. 224]: “In respect of every decision affecting the selection, recruitment, appointment, career progress or termination of office of a judge, the statute envisages the intervention of an authority independent of the executive and legislative powers ...”;

cf. Opinion no. 10 (2007) of the Consultative Council of European Judges (CCJE), par.33 [cf. Gass/Kiener/Stadelmann, p. 283]: “It is necessary to ensure that the Chair of the Council for the Judiciary is held by an impartial person who is not close to political parties. Therefore, in parliamentary systems where the President / Head of State only has formal powers, there is no objection to appointing the Head of the State as the chair of the Council for the Judiciary, whereas in other systems the chair should be elected by the Council itself and should be a judge.”;

cf. Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia, par. 7 [cf. Gass/Kiener/Stadelmann, p. 444]: “Composition of Judicial Councils ... Neither the State President nor the Minister of Justice should preside over the Council. The president of the Judicial Council should be elected by majority vote from among its members ...”;

cf. IAJ First Study Commission Conclusion 2003 [Gass/Kiener/Stadelmann, p. 395]: “A High Council of Justice may be a means of strengthening the independence of the judiciary and the judges in carrying out their judicial functions. Therefore it is important that a High Council or analogous body enjoys a strong degree of independence or autonomy from other governmental powers. Where a High Council of Justice or analogous body is not structured in such a way that promotes and protects the independence of the judiciary there is always a danger that it may undermine that independence.”;

cf. also The (Montreal) Universal Declaration on the Independence of Justice, par. 2.4 and par. 2.40 ff. [cf. Gass/Kiener/Stadelmann, p. 45, 48 f.]; The Syracuse Draft Principles on the Independence of the Judiciary, Art. 2 al. 2 [cf. Gass/Kiener/Stadelmann, p. 35]; Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”), par. 5 h and 32 ff. [cf. Gass/Kiener/Stadelmann, p. 85, 87 f.]; Mt. Scopus Approved Revised International Standards of Judicial Independence, par. 2.9, 2.12, 2.13 [Gass/Kiener/Stadelmann, p. 431]

<sup>9</sup> cf. European Commission [SWD(2013) 417 final], p. 45

<sup>10</sup> cf. <http://todayszaman.com/news-339267-purges-continue-with-over-70-reassignments.html> - <http://www.hurriyetdailynews.com/more-judges-and-prosecutors-reshuffled-in-fresh-purge.aspx?pageID=238&nID=62356&NewsCatID=341> - <http://www.todayszaman.com/news-339715-turkey-to-bid-farewell-to-rule-of-law-if-president-approves-hsyk-law.html>

<sup>11</sup> cf. <http://www.hurriyetdailynews.com/investigation-secrecy-lifted-as-turkish-government-slams-police-for-hiding-corruption-operation-.aspx?pageID=238&nID=59953&NewsCatID=341>

investigations, it nonetheless constitutes a serious attack on the independence of the prosecuting authorities.<sup>12</sup>, Moreover, such attempts are ongoing: the government is preparing for extensive restructuring of the judicial system in a bid to escape from a major investigation into corruption. We are aware that, in addition, there are plans to amend the Criminal Code in order to pave the way for government to obtain information about judicial investigations beforehand.<sup>13</sup> Such plans are jeopardizing to a considerable degree the due separation of powers and the independence of the judicial branch.

- Last, but not least, the independent and impartial administration of justice is threatened by attacks on the judiciary made in public and in the media by members of the executive in general and the Prime Minister and the Minister of Justice in particular:

The Prime Minister has described separation of powers as an obstacle for the development of Turkey.<sup>14</sup>

The Prime Minister has given instructions to the judiciary in open public speeches<sup>15</sup>, intimidating judges and prosecutors.<sup>16</sup>

On December 17, corruption investigations had been initiated in the course of which the sons of three ministers, a mayor, several businessmen, officials from different state branches and civilians were detained. Investigations indicated that four ministers and general manager of a state bank (Halkbank) were involved in these criminal acts. The Minister of Interior and his son were also among the suspects. Charges were: bribery, suspicious money transactions, malpractice by public officials, rigging state tenders, accepting and facilitating bribes for major urbanization projects, obtaining construction permits for protected areas in exchange for money, helping foreigners to obtain Turkish citizenship through falsified documents, involvement in export fraud, forgery of documents, gold smuggling, illegal dealings with the Iranian government to circumvent international sanctions.<sup>17</sup> After the operation had been made public, the Prime Minister called it a "dirty operation" being conducted against the Justice and Development Party government which aims to topple his government. According to him the corruption probe is a "dirty operation" with international links which seeks to undermine "Turkey's growing economic clout". He defended his ministers, claiming the corruption probe to be a smear campaign against "honest people." He added that the probe is "planned operation" to tarnish the government. At public rallies, the Prime Minister has claimed that a gang within the state is attacking his government in the name of corruption and he vowed to "clean out" those behind the corruption investigation from the state. He even dubbed

<sup>12</sup> cf. in this context United States Department of State, Bureau of Democracy, Human Rights and Labor, Turkey 2012 Human Rights Report, sec. 4, addressing the missing progress in limiting the immunity of members of parliament and senior public officials in corruption-related cases

<sup>13</sup> cf. <http://www.todayszaman.com/news-338650-judicial-police-to-be-replaced-by-ak-police.html>

<sup>14</sup> cf. <http://www.hurriyetdailynews.com/separation-of-powers-an-obstacle-says-erdogan.aspx?pageID=238&nid=37052>

<sup>15</sup> cf. <http://www.hurriyetdailynews.com/turkish-pm-refuses-to-tone-down-rhetoric-despite-negotiations-on-gezi.aspx?pageID=238&nID=48788&NewsCatID=338>

<sup>16</sup> cf. <http://www.hurriyetdailynews.com/turkish-govt-vows-to-take-action-against-judges-and-prosecutors-board.aspx?PageID=238&NID=60356&NewsCatID=338> - <http://www.todayszaman.com/news-335072-erdogan-says-would-prosecute-top-judicial-body-if-he-had-authority.html>

<sup>17</sup> cf. <http://www.todayszaman.com/news-334477-corruption-carried-ak-party-to-power-may-spell-partys-end.html> - <http://todayszaman.com/news-339267-purges-continue-with-over-70-reassignments.html>

the investigation a "Judicial Coup" against his rule. According to him, this is carefully-planned psychological warfare against his rule. He has attacked the prosecutors conducting the investigation, accusing them of exceeding their authority and being part of a plot against his government.<sup>18</sup> The Prime Minister said, "Some circles organized inside the judiciary are working to take the sovereignty from the people and give it to the judiciary and acted irresponsibly and militantly as if they were doing a judiciary coup,"<sup>19</sup> The Minister of Justice for his part expressed criticism of the corruption investigation also saying that "This investigation is aiming to fight our party, not corruption. These dirty games, operations and tricks are being carried out to break the party's bonds of love with the people and affect the local and presidential elections". He announced that he had filed a complaint against the police officers and prosecutors in charge of the graft investigation for having violated the confidentiality of the investigation. He is said to have placed heavy pressure on İstanbul Chief Public Prosecutor to terminate the corruption investigation.<sup>20</sup>

This attitude is in stark contrast to the behaviour recommended by international standards regarding the separation of powers and the safeguarding of judicial independence as well as to the recommendations of the UN HRC Special Rapporteur on the independence of judges and lawyers. The Special Rapporteur of the HRC stresses that it is the duty of all governmental and other institutions to respect and observe the independence of the judicial actors, so as to avoid any kind of political, institutional or social control or influence (l.c. par. 34).

This demand is in line with many other international standards, such as:

The Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities states in par. 18: "If commenting on judges' decision, the executive and legislative powers should avoid criticism that would undermine the independence of or public confidence in the judiciary. They should also avoid actions which may call into question their willingness to abide by judges' decisions, other than stating their intention to appeal."<sup>21</sup>

The (Montreal) Declaration on the Independence of Justice (cf. par. 2.7 d) states: "The Executive shall refrain from any act or omission which preempts the judicial resolution of a dispute or frustrates the proper execution of a court decision."<sup>22</sup>

The Mt. Scopus Approved Revised International Standards of Judicial Independence state (par. 2.23): "The Ministers of the government shall not exercise any form of pressure on judges, whether overt or covert, and shall not make statements which adversely affect the independence of individual judges, or of the Judiciary as a whole."<sup>23</sup>

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<sup>18</sup> cf. [http://www.todayszaman.com/newsDetail\\_getNewsById.action?newsId=334345](http://www.todayszaman.com/newsDetail_getNewsById.action?newsId=334345)

<sup>19</sup> <http://www.hurriyetdailynews.com/turkish-pm-erdogan-labels-graft-probe-an-assassination-attempt.aspx?pageID=238&nID=60437&NewsCatID=338>

<sup>20</sup> cf. <http://www.hurriyetdailynews.com/more-judges-and-prosecutors-reshuffled-in-fresh-purge.aspx?pageID=238&nID=62356&NewsCatID=341> - <http://www.hurriyetdailynews.com/turkeys-main-opposition-chp-asks-ministers-implicated-in-graft-probe-to-step-down.aspx?pageID=238&nID=59888&NewsCatID=338> - <http://www.dw.de/turkish-government-sacks-350-ankara-police-officers-after-graft-probe/a-17345134> - <http://www.todayszaman.com/news-334584-17-more-high-ranking-police-fired-amid-major-corruption-probe.html>

<sup>21</sup> cf. Gass/Kiener/Stadelmann, p. 218

<sup>22</sup> cf. Gass/Kiener/Stadelmann, p. 45]; idem verbatim: Draft Universal declaration on the Independence of Justice ("Singhvi Declaration"), par. 5 0 (cf. Gass/Kiener/Stadelmann, p. 85)

<sup>23</sup> cf. Gass/Kiener/Stadelmann, p. 432

The Presidency Committee of the EAJ considers it necessary to bring the foregoing to your attention and to invite you to take up the matter with the appropriate authorities as a matter of urgency.

Respectfully

Christophe REGNARD  
President

A handwritten signature in blue ink, appearing to read 'Christophe Regnard', enclosed within a large, loopy blue oval scribble.

**International Association of Judges**  
Unione Internazionale dei Magistrati  
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