



Europe, 14<sup>th</sup> October 2019

Honourable Sirs,

- 1.) The **mass dismissals** of Turkish judges and prosecutors had a **chilling effect** on the willingness of judges to act independently and impartially in proceedings involving the state and creates an **atmosphere of fear among remaining judges and prosecutors**<sup>1</sup>. This has been generally acknowledged and been confirmed by former prisoners, e.g. foreign journalists who had been detained based on allegations of supporting or being member of a terrorist organisation<sup>2</sup>.
  
- 2.) There are **large numbers of inexperienced new judges**, who have been appointed hastily; the selection of these new judges appears to have been done on the basis of **political affiliations**.<sup>3</sup> Not only the reports of ongoing trials<sup>4</sup> and the reports of formerly detained persons, but also the basic European standards on appointment procedures of judges as well as on the needs of appearance of independence show that there is a huge lack of corresponding standards; furthermore the **Turkish Council of Judges and Prosecutors is dependent**<sup>5</sup> and thus all in all there **does not exist**

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<sup>1</sup> E.g. third party intervention by the Council of Europe's Human Rights commissioner in the case Abdullah Zeydan and others v. Turkey, ECrHR, appl. No. 25453/17, Doc. CommDH(2017)33 of 2<sup>nd</sup> November 2017

<sup>2</sup> E.g. Austrian journalist Zirngast claims that both, detention as well as acquittal by courts were done arbitrarily, <https://kurier.at/chronik/wien/max-zirngast-nach-haft-in-tuerkei-wieder-in-wien-gelandet/400616948>

<sup>3</sup> See inter alia report of the Platform for an Independent Judiciary of July 2017, e.g. <https://www.aejaj.org/media/files/2017-07-20-74-Situation%20of%20Turkish%20Judiciary%20-%20Platform%20Report.pdf>

<sup>4</sup> See e.g. <http://www.rechtersvoorrechters.nl/april-19th-2018-monitoring-of-trial-against-mehmet-tank-in-the-10th-heavy-penal-court-gaziantep-turkey/>

<sup>5</sup> Judicial administration and appointment of new judges is generally effected by an independent judicial council. In Turkey the (former: High) Council of Judges and Prosecutors consists of 13 members, 6 of them are appointed by the President of the Republic and the Under-Secretary of the Ministry of Justice. The Minister of

**independence of Turkish judiciary** for the time being, the rule of law has not been re-installed since July 2016.

- 3.) In total, approximately 4,000 judges and prosecutors have been dismissed and **more than 2,300 judges / prosecutors were in prison (pre-trial detention)**. About 500 of them are **still in prison**. More than 600 judges and prosecutors - including some main representatives of YARSAV like Murat Arslan - have been sentenced between 6-12 years imprisonment and their lawsuits as well as many other ongoing lawsuits against judges/prosecutors are still pending.
- 4.) Concerning all these pending lawsuits reference must be made to points 1.) and 2.) above which shows the arbitrariness and wilfulness of the whole process.
- 5.) By way of example we want to turn the **spotlight on one of the individual judges** suffering from the developments in Turkey since the last years: **judge Sultani Temel**<sup>6</sup> has been arrested (followed by pre-trial detention) since 16 January 2017 (with exception for the period of 5 October 2017 to 6 June 2018), together with her **five-year-old daughter**. Whereas judge Temel suffers from a major depression without having access to adequate medical treatment, her daughter suffers equally, being in a bad physical and psychological shape. However due to the need of mother care it is necessary for the child to be with her mother. **Basic European standards of appropriate medical care for prisoners and care of infants in prison are not followed.**
- 6.) We fully **support the letter of the Internationale Rechtshilfefonds: Jurists for Jurists e.V. of 2 October 2019**<sup>7</sup> and urgently ask to undertake necessary measures to

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Justice acts as President of the Council. The remaining 7 members are appointed by the National Assembly, no member of the Council is appointed by judges.



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<sup>7</sup> Please see this letter of the Internationale Rechtshilfefonds: Jurists for Jurists in the appendix 2.

enhance prison conditions in order to meet requirements of international human rights standards;

7.) We furthermore want to draw attention on the present conditions of Turkish judiciary, namely suffering from a **lack of the rule of law**, suffering from a **lack of basic standards to be able to acknowledge any independent judiciary** hand in hand with the still **ongoing wilful trials** without proper guarantees of fair trial principles.

Edith Zeller m.p.

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José Igreja Matos m.p.

President of the European Association of Judges (EAJ)

Tamara Trotman m.p.

President of Judges for Judges

Filipe Marques m.p.

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

**Appendix**

**APPENDIX:**

**Internationaler Rechtshilfefonds: Jurists for Jurists e.V.**

c/o Ingrid Heinlein

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**30-9-2019**

**Republic of Turkey**

**Minister of Justice**

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**Honorable minister of Justice, Mr. Abdulhamit Gül,**

we are a German association of judges, prosecutors and lawyers providing legal assistance to our colleagues in other countries, promoting international understanding of justice and respect for the democratic rule of law, human rights and judicial independence.

We approach you because we are in deep sorrow about the state of health and the mental condition of judge Sultani Temel and her five-year-old daughter, who both are in prison in Erzurum for more than 25 months under inappropriate circumstances. Judge Temel was suspended after the military coup in July 2016 and dismissed in August 2016. On 16 January 2017 she was taken into police custody and on 27 January she was arrested. She was released on bail with the order of house arrest on October 5, 2017 and newly arrested on June 6, 2018. Meanwhile a first instance court sentenced her to 8 years and 9 months imprisonment because of alleged links to „FETÖ“. Her appeal is pending.

We are informed by her husband about some medical records showing that Judge Temel is suffering from „major depression“ due to the harmful conditions during the police custody and afterwards in prison. During the police custody, she was separated from her daughter and had to stay in a freezing cold cell without any blanket, had no access to a lawyer. After being kept in custody for 11 days in a cell, a „major depression“ was diagnosed. In prison she got many high dosage medications, but the prison doesn't have any psychological or psychiatrist specialist available.

Both mother and daughter urgently need a better health treatment. Judge Temel's husband informed us, that the child is in prison together with the mother because she needs mother-care. But due to the state of health of the mother, the health of the daughter is in a bad shape as well. Her physical and psychological development has been slow. She has sobbing attacks and cannot communicate with other people. There is no educational or training facility in prison. So, the social development of the daughter has been harmed. Art. 3 of the

European Charter for Human Rights and Art. 7 of the International Covenant of Civil and Political Rights forbid torture and inhuman or degrading treatment or punishment.

Therefore the States which ratified these human rights treaties – like Turkey did – are obliged to take care for appropriate medical care of prisoners. Accordingly the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment recommended that a doctor qualified in psychiatry should be attached to the health care service of each prison, and some of the nurses employed there should have had training in this field (CPT/Inf(93)12-part).

Art. 3 of the Convention on the Rights of the Child, which was ratified as well by Turkey, regulates that the best interests of the children shall be a primary consideration for legislation, public administration and the courts.

Following these principles, the Committee of Ministers of the Council of Europe recommended that in order to ensure the right of a child to the highest attainable standard of health, support and information shall be provided for imprisoned mothers. Arrangements and facilities for the care of infants who are in prison with the parent, including living and sleeping accommodation, shall ensure that the best interests and safety of infants are a primary consideration, as are their rights, including those regarding development, and play. It is necessary as well that they are able to freely access open air areas in the prison and can access the outside world with appropriate accompaniment and attend nursery schools (CM/Rec(2018)5).

Honorable minister of Justice, according to our knowledge there are at least 743 children below the age of 6 together with their mothers or fathers in Turkish prisons. All these children and parents have the right of a good health care and appropriate conditions in prison. In the case of Judge Sultani Temel and her daughter we regret very much that the first instance court did not consider the circumstances we have explained above, when it decided that judge Temel has to stay in prison although the verdict is not final.

So, we urgently ask you to undertake at least the necessary measures to enhance the prisons conditions for her and her daughter, especially to support them with a doctor qualified in psychiatry, and as well a good surrounding and educational facility for the small daughter.

Your's sincerely

Internationaler Rechtshilfefonds: Jurists for Jurists e.V.

Ingrid Heinlein