

VÁCLAV HAVEL HUMAN RIGHTS PRIZE 2016

NOMINATION FORM

Extended Deadline: 30 June 2016

Please read the regulations and instructions
before completing this form

Instructions

Nominations must be submitted on the **forms** which can be downloaded from the website:
http://website-pace.net/en_GB/web/apce/vaclav-havel-human-rights-prize.

Please fill in 1A if the nominee is an individual and 1B if the nominee is an institution or an organisation. All the other rubrics of the form should also be duly completed.

The nomination form (Word format) and the list of signatures of sponsors (PDF format), together with the supporting documents that you may wish to add, must be submitted in **English or French** and reach the Secretariat at the latest by **30 April 2016**.

They should be sent by e-mail, to the following address: hrprize.pace@coe.int.

We will confirm receipt of your submission.

1 A. Individual nominee:

Please indicate the name and contact details of the person nominated

Title: [Mr, Mrs, Ms, other...]	Mr.
Family name:	BAŞER
First name:	MUSTAFA
Date of birth:	01/06/1969
Nationality:	TURKEY
Country of current residence:	TURKEY
Address:	SINCAN 1 NOLU F TİPİ KAPALI CEZA İNFAZ KURUMU SİNCAN ANKARA/TURKEY
Telephone:	+905334964038 (At. Celal Sis has this telephone number because Mustafa Başer imprisoned)
Fax:	+902163707733
E-mail:	celalsis@celsehukuk.com
Website/social media (if appropriate):	

2. Sponsors:

Please indicate the name and contact details of at **least 5 persons / institutions / organisations** putting forward the nomination. In order to validate their nomination, the sponsors are asked to sign on the separate list of signatures of sponsors.

Name: MEDEL - Magistrats européens pour la démocratie et les libertés

Address: office:
Greifswalder Strasse 4 | Briefkasten 42,
10405 Berlin, Germany

seat:
12-14, rue Charles Fourier, 75013 Paris, France

Telephone: tel +4930 420 223 49

Fax: fax +4930 420 223 50

E-mail: office@medelnet.eu

Website/social media (if appropriate): www.medelnet.eu

Main field of activity: human rights; rule of law

Country/ies in which it operates: European countries

Year of establishment: 1985, Strasbourg (France)

Status (*including potential link with governmental or other authorities, academia, political parties, etc.*): NGO

Main sponsor:

Title: [Mr, Mrs, Ms, other...] Mr.

Family name: MICHELINI

First name: Gualtiero

Profession/occupation: Judge - Court of Appeal - Rome

Capacity in which you know the nominee: President of MEDEL

Nationality: Italian

Address: Via A. Varisco 3, Roma, Italy

Telephone: 06 398088705

Fax: N/A
E-mail: gualtiero.michelini@medelnet.eu
Website/social media (if appropriate): www.medelnet.eu

Other sponsor:

Title: [Mr, Mrs, Ms, other...] Mr.
Family name: GARZÓN REAL
First name: Baltasar
Profession/occupation: Lawyer
Capacity in which you know the nominee: I know the nominee as a judge
Nationality: Spanish
Address: Calle del codo, 5, Madrid, Spain
Telephone: 914332940
Fax: N/A
E-mail: mgarzon@fibgar.org
Website/social media (if appropriate): www.fibgar.org

Other sponsor:

Title: [Mr, Mrs, Ms, other...] Mrs
Family name: GABORIAU
First name: Simone
Profession/occupation: Présidente de chambre honoraire de la Cour d'appel de Paris France
Capacity in which you know the nominee: I know the nominee as a member of MEDEL
Nationality: Française
Address: 65 rue Millière 33000 Bordeaux, France
Telephone: 00 33 6 81 63 92 44
Fax: N/A
E-mail: simone.gaboriau@yahoo.fr
Website/social media (if appropriate):

Other sponsor:

Title: [Mr, Mrs, Ms, other...] Mr.

Family name: BÖTTCHER

First name: Hans-Ernst

Profession/occupation: President of the Lübeck Landgericht (retired)

Capacity in which you know the nominee: I know the nominee as a member of MEDEL

Nationality: German

Address: Glockengießerstraße 72, 23552 Lübeck, Germany

Telephone: +49 451 7070761

Fax: +49 451 2969818

E-mail: heboettcher@googlemail.com

Website/social media (if appropriate):

Other sponsor:

Title: [Mr, Mrs, Ms, other...] Mrs

Family name: BOLJEVIĆ

First name: Dragana

Profession/occupation: judge - Court of Appeal – Belgrade

Capacity in which you know the nominee: as General Secretary of MEDEL and president of Judges' Association of Serbia

Nationality: Serbian

Address: Braće Radovanović 16, Belgrade, Serbia

Telephone: +381 64 15 631 15

Fax: N/A

E-mail: boljevic.dragana@gmail.com

Website/social media (if appropriate):

3. Description of the nominee's actions and specific merits in the defence of human rights :

HISTORY: On December 17, 2013, a criminal-bribery, abusing of state power, rigging public tenders, and smuggling operation was launched by the Istanbul Police Department under the authority of Istanbul Public Prosecutor's Office. During this operation, 89 people including Kaan Çağlayan, Barış Güler, and Abdullah Oğuz Bayraktar, sons of the then-ministers Zafer Çağlayan (Minister of Economy), Muammer Güler (Minister of Interior), and Erdogan Bayraktar (Minister of Environment and Urban Planning) were arrested as well as Suleyman Aslan, general manager of state-owned Halkbank, Iranian businessmen Reza Serraf were arrested. In this operation, three ministers' sons, a state-bank's chair, an Iranian businessman, and many other people's houses were searched by the police. Million dollars of cash banknotes hidden in shoe-boxes, steel safe deposits and money counting machines were found and seized. 26 suspects including businessman Reza Zerrab (arrested now in the United States), Halkbank Chair Suleyman Aslan, and Barış Güler and Kaan Çağlayan, the sons of the ministers were detained. Also, a criminal-police report against Egemen Bağış, then-minister of EU Relations, and other three ministers was issued by the İstanbul Prosecution Department and submitted to the Turkish Parliament for further proceedings about the ministers. These four ministers resigned later on.

Only a day after the December 17 operation, a huge reaction came from the government and many posts at the Istanbul Police Department were replaced. On December 18, many directors of İstanbul Police Department including five directors who participated in the investigation were relieved. The other day, the Police Chief of İstanbul Province, Hüseyin Çapkın was divested by the Turkish government.

On December 25, 2013, Prosecutor Muammer Akkaş received an arrest list of 41 people as well as freezing and seizure of assets of some businessmen in another criminal investigation. This investigation, charging with conspiracy, rigging public tenders, fraud, and bribery, targeted 89 suspects including Bilal Erdoğan, son of the then-Prime Minister, Recep Tayyip Erdoğan. While an arrest warrant for Bilal Erdoğan was issued by the court, the newly-appointed police authorities rejected to perform it under the orders of the Ruling Party, AKP, and Prosecutor Muammer Akkaş was immediately relieved of the investigation.

Shortly after these operations, prosecutors who conducted and administrated the two investigations were dismissed and new prosecutors were assigned. These newly assigned prosecutors released the detainees first and then closed the files of two investigations through non-prosecution decisions. Then-Prime Minister Erdogan called these probe operations, known as "December 17&25 Corruption and Bribery Operations" by the public, as a coup attempt and claimed that the operation aimed at throwing out his government and targeted himself through his son. He accused the "Hizmet Movement", with whom they were allies for years, of being responsible for this operation. First, Erdogan Government purged thousands of police chiefs and police officers on the ground that they were affiliated with the Gülen Movement. Second, those judges who were closed to the government and financed and publicly supported by the government won the Turkish High Council of Judges and Prosecutors election on October 12, 2014. In this manner, the government started to dominate the judiciary completely.

Through a new amendment which was promulgated on June 28, 2014 (Act Number: 6545), structures and procedures of magistrate judgeships were changed. New magistrate judgeships, called as project courts by Mr. Erdogan were established through abolishing the principle of "natural judge". On July 22, 2014 and the following days, newly appointed magistrate judges, under the commands of the government, started to issue arrest warrants for the police members participated in December 17&25 operations and the Head of Samanyolu Media Outlet, Hidayet Karaca.

Claiming that the magistrate judges were performing under full-control of politics and the government, the attorneys of the detained polices and journalist Hidayet Karaca petitioned for recusation of the judges many times. However, these motions were dismissed. However, on January 19, 2015, Judge İslam Çiçek, one of these magistrate judges, decided that magistrate judges did not have the authority over these recusation petitions and he decided that the one-level higher court, First Instance Criminal Courts have the jurisdiction over magistrate judges' disability questions pursuant to the articles 26 and 28 of the Code of Criminal Procedure.

After such decision, the attorneys of detainees submitted a new motion to then-Judge Metin Özçelik's 29th First Instance Criminal Court, which assigned as on-duty court by the İstanbul Judicial Committee, which determines the order of the vacation courts. The attorneys asked for recusation of all ten magistrate judges and they also petitioned for release of their clients. Judge Özçelik, based on the article 24 of the Code of Criminal Procedure, granted for the recusation motions and dismissed all magistrate judges (Decision date: 24 April 2015, Decision Number: 2015/92 Differential motion). However, he decided that his court did not have the authority over the release motions and sent the motions to then-Judge Mustafa Başer's 32nd First Instance Criminal Court - assigned by the İstanbul Judicial Committee. Then, Judge Mustafa Başer released all 63 detainees on April 25, 2015. (Decision numbers: 2015/143-144-145-146-147-148-149). Both decisions were completely judicial ones and the judges relied upon the precedents and relevant law at national and international level (European Court of Human Rights).

However, the same day, İstanbul 10th Magistrate Judgeship declared the nullity of the two judges' decisions (Case Number 2015/846-847). In this regard, the magistrate judge dismissed the release motions as well while İstanbul Prosecution Office did not implement the release orders of Judge Mustafa Başer.

As soon as Judge Başer released the detainees on 25th April 2015, the High Council of Judges and Prosecutors sent two judicial inspectors to examine the release, even though it happened during a weekend. Such a situation has never occurred in Turkish judiciary before.

The same day on which HCJP gave the investigation permanence, the President Erdoğan said before he left the country for an overseas journey "I think the HCJP was even late" and on the very same day the President of the 2nd Chamber of the HCJP which was under the influence of the Executive told in a public statement "We are late, I apologize".

Prime Minister Ahmet Davutoğlu said in an election rally in Gümüşhane "A coup d'etat was attempted" by referring the judicial decisions of the Judges Mustafa Başer and Metin Özçelik and added "we will not allow this!".

The President of the 1st Chamber of the HCJP Metin Yandırmaz, in an interview with Sabah Daily told; "Of course it will have a response". The President of the HCJP and the Minister of the Justice Kenan İpek made a statement in the website of the Ministry of Justice "...the effort to create a chaos with the hands of courts without jurisdiction will definitely have a response within the scope of law!"

As a result of the statements disregarding the principles of the separation of powers and independence of the judiciary, the Chief Inspector Yunus Nadi Kolukisa concluded that Judges Mustafa Başer and Metin Özçelik were accomplices of the suspects who were released by these judges and requested their arrest and (consequently) seizure without any suspicion, let alone any concrete evidence.

Upon the request of the Chief Inspector, Bakırköy 2nd Heavy Penal Court, which was not the court on duty on that night and had not had jurisdiction for that case, gave an arrest decision for Judge Metin Özçelik on 30/4/2016 at the Case No: 2015/633 with the charge of "Attempting to Eliminate the Government of the Turkish Republic and Preventing Its Functioning and Forming An Armed Terror Organization" and also the same court ordered the seizure Judge Mustafa Başer.

The following day, i.e. 1 May 2015, Judge Mustafa Başer, of his own accord, came to the Courthouse and after his query, he was arrested by, once again, the same court, that is Bakırköy 2nd Heavy Penal Court which was not the court on duty on that day night and had not had jurisdiction for that case, in defiance of the Principle of the Natural Judge, on the Case No: 2015/634. For the first time, in the history of Turkish Republic, judges were arrested due to the judicial decisions they gave. This never happened even in the times of the military Coup d'Etats.

IN CONCLUSION:

After the investigations which were called "17/25 Bribery and Corruption Investigations" in which then-Prime Minister and now President Recep Tayyip Erdoğan (RTE) and his son and 4 ministers of the AKP Government were also included, the AKP Government and RTE called this investigations as "coup d'état against the government".

Within this scope, firstly Peace Criminal Courts were established as project courts and then the police officers who carried out 17/25 investigations were arrested. Judges Metin Özçelik and Mustafa Başer, as part of their job, gave judicial decisions in pursuant of the provisions of the related laws by giving reference of the relevant case law of the ECtHR upon the release requests (petitions) of the defence lawyers even though they were aware of the process in which the Country was going through and the pressure of the Executive over the HCJP.

Especially Judge Mustafa Başer protected the “right to liberty and security” which is the most right after “right to life” with the release decision he gave. The both Judge defended liberty opposite to the pressure of the Executive Branch. Even after their arrests, these two Judges reiterated many times that their decisions were in compliance with the law and they were not regretful for what they adjudicated.

4. Supporting documents:

Please insert links to supporting documents (maximum 5).

If the supporting documents are not available on the internet please attach them to the form (electronic version if possible).

5. Date: June 21, 2016