



Europe, 31th August 2020

The members of the Platform for an Independent Judiciary have closely watched the developments within the Turkish judiciary over the past years, not only since the 2016 coup attempt, as undue pressure on judges has been constantly rising.<sup>1</sup> After 15<sup>th</sup> July 2016 thousands of Turkish judges and prosecutors were imprisoned, dismissed and their assets were confiscated.

The members of the Platform for an Independent Judiciary have repeatedly and openly warned against the brutal assaults against and ill-treatment of imprisoned Turkish judges and prosecutors, i.e. gross violations of basic human rights.

Recently the Platform for an Independent Judiciary has again openly stressed that imprisoned Turkish judges and prosecutors still face precarious situations and ill-treatments and particularly mentioned:

- judge **Mehmet Tosun**, who was detained under severe conditions despite his suffering from an autoimmune illness and reportedly had been mistreated in jail so that his state of health further deteriorated, finally leading to his death on 6<sup>th</sup> March 2017 aged only 29 years;
- judge **Sultani Temel** who has been jailed since 16<sup>th</sup> January 2017 (with exception for the period of 5 October 2017 to 6 June 2018) - partly with her five-year old daughter - and suffers from a major depression without having access to adequate medical treatment;
- judge **Hüsamettin Ugur**, who has been isolated in a one-person cell since July 2016 and reportedly has been beaten by four guards, who subsequently forged a medical report suggesting that that it was judge Hüsamettin Ugur who would have attacked the guards so that he could not file a criminal complaint against the guards.

This August the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (further: CPT) of the Council of Europe has published two reports on Turkey, namely on their periodic visit of 2017<sup>2</sup> and the ad hoc visit of 2019<sup>3</sup> to Turkey. In both

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<sup>1</sup> See in detail the summary given in the letter of the Platform for an Independent Judiciary (European Association of Judges, European Association of Administrative Judges, Judges4Judges and Medel) of 4<sup>th</sup> August 2016, inter alia on: [http://www.aej.org/media/files/2016-08-09-75-Platform%20Letter%20Council%20Europe%20-%201-8-2016-4SG\(Final\).pdf](http://www.aej.org/media/files/2016-08-09-75-Platform%20Letter%20Council%20Europe%20-%201-8-2016-4SG(Final).pdf)

<sup>2</sup> See Council of Europe, CPT/Inf (2020)22, Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 23 May 2017, <https://rm.coe.int/16809f209e>

<sup>3</sup> See Council of Europe, CPT/Inf (2020)24, Report to the Turkish Government on the visit to Turkey carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 17 May 2019, <https://rm.coe.int/16809f20a1>

reports the CPT gives detailed examples of torture and ill-treatment and criticises the lack of a reliable system of medical controls.

It is noteworthy that the Turkish Government has still not yet requested the publication of the report of the CPT about their ad hoc visit to Turkey from 28<sup>th</sup> August to 6<sup>th</sup> September 2016, so immediately after the mass arrests took place. Under Article 11 of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the report relating to a visit remains confidential until the authorities of the state concerned request its publication.

However, in the 2017 CPT report it is made clear that the (unpublished) findings of the August/September 2016 visit showed a high number of allegations of physical ill-treatment by law enforcement officials from detained persons who had been detained on suspicion of terrorism-related offences, in particular in connection with the military coup attempt of 15 July 2016.<sup>4</sup>

Therefore these published reports of **the CPT, the expert organ of the Council of Europe, on their visits in 2017 and 2019 give sufficient reason** to believe that the **warnings of the Platform for an Independent Judiciary in Turkey against the ill-treatment of the judges (and prosecutors) deprived of their liberty which have been repeatedly voiced since 2016 were correct.**

These recent CPT-reports also give weight to the warnings of the Platform for an Independent Judiciary in Turkey that **torture or ill-treatment has been used to get (false) confessions or information. No criminal trial based on such pieces of evidence can be seen as a fair trial.**

Furthermore, the recently published CPT-reports give sufficient reason to believe that the **present situation for imprisoned Turkish judges and prosecutors is still precarious.**

The European Court of Human Rights (ECHR) has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if it is to be successful in carrying out its duties. Given the prominent place that the judiciary occupies among State organs in a democratic society and the growing importance attached to the separation of powers and to the necessity of safeguarding the independence of the judiciary, the ECHR is particularly attentive to the protection of members of the judiciary when reviewing the manner in which a detention order was implemented from the standpoint of the provisions of the Convention (see the Case of Alparslan Altan v. Turkey, 16 April 2019 (12778/17) § 102 and the Case of Başv. Turkey, 3 March 2020 (66448/17) §§ 144 and 158.

Therefore, the Platform for an Independent Judiciary in Turkey

**appeals to the Turkish authorities:**

- to stop and remedy the arbitrary arrest, detention and wrongful prosecution of judges and prosecutors;
- to reinstate unduly/unfairly dismissed judges and prosecutors and return their confiscated assets;

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<sup>4</sup> See note 2, par. 13.

- to guarantee that the European Prison Rules (CM Rec(2006)2 ) are obeyed in all detention centres and to hold accountable those who have violated them
- to prevent, investigate and punish the use of torture and ill-treatment (including prolonged solitary confinement for years) by State officials

**and urges the European Commission and the Council of Europe**

- to convince the Turkish authorities to fulfil the above-mentioned requirements, which are based on common European values;
- to carefully follow the developments regarding the Turkish justice system.

The Platform for an Independent Judiciary in Turkey gathers four European Associations of Judges and Prosecutors:

Association of European Administrative Judges (AEAJ),

European Association of Judges (EAJ),

Judges for Judges and

Magistrats Européens pour la Démocratie et les Libertés (MEDEL).