



Europe, 3<sup>rd</sup> January 2022

Mrs. Ursula Von der Leyen, President of the European Commission

Ms. Vera Jourova, Vice President of the European Commission for Values and Transparency

Mr. Didier Reynders, European Commissioner for Justice

Mr. Josep Borrell Fontelles, High Representative of the European Union

Mr. Olivér Várhelyi, European Commissioner for Neighbourhood and Enlargement

Ms. Marija Pejčinović Burić, Secretary General of the Council of Europe

Ms. Dunja Mijatović, Commissioner for Human Rights (CoE)

Honorable Madame, Honorable Sir,

By the judgement of the Turkish Court of Cassation of 3<sup>rd</sup> November 2021, the conviction under charges of being a member of an armed terrorist organization (FETÖ/PDY) of Mr. Murat Arslan, Turkish judge and president of the independent Turkish Association of Judges and Prosecutors (YARSAV), to 10 years imprisonment was upheld.

Mr. Murat Arslan was dismissed as a judge in July 2016 in the aftermath of the 2016 attempted coup d'état, was arrested in October 2016 and since then he has been in (pre-trial) detention. Not only 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 the Turkish judiciary from the Turkish political leaders.

For his contributions to defend human rights Murat Arslan was awarded the Václav Havel Human Rights prize of 2017 by the Parliamentary Assembly of the Council of Europe.

In the politically-motivated criminal proceedings – that were monitored by our associations - Murat Arslan was accused of being an active member of terrorist organization FETÖ/PDY and of having supported this organization. In the course of this criminal trial, the main effort 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.



We underline that the UN Special Rapporteur for the independence of judges and lawyers Diego Garcia-Sayán stated after the conviction by the first instance court in Ankara on 18 January 2019 that Murat Arslan has been convicted in violation of due process and judicial guarantees.<sup>1</sup>

All in all, the criminal proceedings against Mr. Murat Arslan did not amount to a fair trial in the sense of Art. 6 ECHR, lacking already the criteria to have independent courts deciding on the allegations as well as that it was a willful judgement in disrespect of equality of arms principles.

This judgement was upheld in appeal on 18 October 2019 and -as mentioned above - by judgement of 3<sup>rd</sup> November 2021 the Turkish Court of Cassation has confirmed this judgement.

Unfortunately, the miscarriage of justice in the case of Murat Arslan does not stand on its own, but we have proof of similar stereotyped judgements in many other cases concerning former judges. Therefore, also hundreds of cases are pending (and many more are expected) against Turkey at the European Court of Human Rights which concern their detentions and criminal convictions (see also regarding to the violation of Article 5 of the Convention ECHR CASE OF TURAN AND OTHERS v. TURKEY of 23 November 2021 (par. 98))

The European Commission states in its EU Turkey 2021 Report that the serious backsliding observed regarding the functioning of the judiciary since 2016 continued and that concerns remained, in particular over the systemic lack of independence of the judiciary and undue pressure on judges and prosecutors.

We undersigned are aware that there is one legal remedy still available to Murat Arslan, a petition to the Constitutional Court, but knowing how this Court acted in similar cases so far, it probably would be naïve to expect anything in the line of protecting principles of fair trial and human rights in this particular case.

Having regard to the importance of the judiciary in a democratic State governed by the rule of law, and to the fact that protection of this kind is granted to judges and prosecutors not for their own personal benefit but in order to safeguard the independent exercise of their functions it seems fair to say that Turkey has reached the stage in which fair trial rights of judges and prosecutors concerning their detentions and criminal convictions handed down in the aftermath of the 2016 attempted coup d'état are no longer protected through domestic remedies.

For that reason, we realize that it is our duty to again ask for your attention and to demand your action to persuade Turkey, early member of the Council of Europe since 1950, to restore the rule of law and to end its witch-hunt against judges in the aftermath of the 2016 attempted coup d'état and create a political and legal environment that allows the judiciary to perform its duties independently and impartially, respecting European standards;

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<sup>1</sup> <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24140&LangID=E>



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 good of economic or strategic interests:

and finally, we urge 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.

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President of the *European Association of Judges (EAJ)*

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