

Prof. Dr. Zühtü Arslan

President of the Constitutional Court of Türkiye

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Honourable Prof. Arslan,

We are reaching out to convey our observations regarding the adherence of Turkish authorities to the judgments of the European Court of Human Rights (ECHR).

As stressed in the decision of the Committee of Ministers of the Council of Europe all national authorities including the judiciary have, under Article 46 of the Convention, a shared responsibility in making sure that the Court's judgments are complied with.¹ We believe that the Turkish Constitutional Court (TCC) should set an example in that regard. It is unfortunate however that TCC, in the case of *Yıldırım Turan* ([GK], B. No: 2017/10536) ignored the Court's judgments, namely Hakan Bas and Alparslan Altan.

It is also concerning that now lower Turkish courts appear to defy the judgments of both the ECHR and TCC. For instance, we are appalled by the recent judgments of the Court of Cassation which defied judgments of the ECHR. The ECHR's recent Yüksel Yalçınkaya judgment shows that the Turkish judiciary's interpretation of state security laws is highly problematic. In its Yalçınkaya judgment, the Grand Chamber of the ECHR held that the interpretation of Article 314 of the Penal Code by Turkish courts violated the principle of no punishment without law as well as his right to a fair trial and his freedom of assembly. The Grand Chamber also held that the problems it found were isolated but pointed out a rather systemic problem which also concerned some 8,000 pending applications as well as 100,000 new applications which are likely to be filed in accordance with its same judgment.

We fully acknowledge and empathize with the challenges Türkiye faced following the 2016 coup attempt and the subsequent state of emergency. However, as it has been five years since the state of emergency was lifted, a return to normative judicial processes seems both desirable and essential. We genuinely believe the TCC has the potential to spearhead positive change, ameliorating the human rights situation in Türkiye and addressing the aforementioned systemic issues. After all, the judgments made today will form the legacy of tomorrow. In doing so, we are confident you can create a legacy that resonates with pride, justice, and fairness.

Sincerely yours

The Norwegian Helsinki Committee

On behalf of all co-signatories

¹ https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680ac9e79

Co-signatories:

1. The Norwegian Helsinki Committee
2. International Bar Association's Human Rights Institute
3. The Italian Federation for Human Rights
4. The Arrested Lawyers Initiative

5. Dr Anna Oehmichen, lawyer
6. Professor Antonio Stango, President of the Italian Federation for Human Rights
7. Artur Wierzbicki, lawyer, President of the Human Rights Commission of the Fédération des Barreaux d'Europe
8. Chris Jones, Director of State Watch
9. Dominique Attias, lawyer, former President of the Federation des Barreaux d'Europe, former vice President of the Paris Bar
10. Ed Bates, Associate Professor in Law
11. Dr Emre Turkut, Postdoctoral Researcher and Legal Expert
12. Frank Cranmer, Fellow, St Chads' College, Durham and Hon. Research Fellow, Cardiff University Centre for Law & Religion
13. Gill Boehringer, Honorary Senior Research Fellow, Legal Academic, Macquarie University Law School
14. Professor Gonzalo Boye, professor of law, lawyer
15. Gunnar M. Ekeløve-Slydal, Deputy Secretary General of the Norwegian Helsinki Committee
16. Javier Cremades, lawyer, President World Jurist Association
17. Leighann Spencer, Academic (Criminologist)
18. Michael Polak, Barrister, Director of Justice Abroad
19. Natacha Bracq, Legal Advisor
20. Professor Sara Chandler KC (Hon), Solicitor, the Secretary to the Fédération des Barreaux d'Europe Human Rights Commission
21. Sarah Teich, lawyer, Co-founder, Human Rights Action Group
22. Professor Stuart Russell, a retired judge, lawyer, and co-chair of the Monitoring Committee on Attacks on Lawyers, International Association of People's Lawyers

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