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Access to Justice as a Key Element of the Rule of Law in Turkey

The notion of rule of law together with those of pluralistic democracy and human rights represents a universal and a fundamental principle and a common European value recognized in, *inter alia*, in the Statute of the Council of Europe and the case law of the European Court of Human Rights.

The European Union, the OSCE and their member states are also committed to the principles of the rule of law, democracy and human rights. Explicit reference to the rule of law can be found, *inter alia*, in EU/EC, UN treaties, the case law of the European Court of Justice as well as in the Copenhagen criteria of 1993 for accession to the European Union.

Following the failed coup in July 2016 in which around 250 people died, Turkish Government imposed a state of emergency allowing rule by decree and dismissed over 100,000 public officials due to alleged coup links with courts jailing nearly 60,000 people on terrorism charges. An April 2017 referendum approved a powerful executive presidency to replace the parliamentary system with weakened judicial and parliamentary checks. A crackdown on the judiciary, independent media and political oppositions especially the Kurdish political figures, civil societies and NGOs have led to the jailing of nearly 2500 judges and prosecutors, more than 150 journalists and prominent human rights defenders.

The worst of all is that all of the accused and victim face serious obstacles in terms of accessing to a fair justice and trial. Access to justice is one of the most essential elements of the rule of law. In the absence of access to justice, people are unable to have their voice heard, exercise their rights, challenge discrimination or hold decision-makers accountable.

It is *sine qua non* that delivery of justice should be impartial and non-discriminatory. In the Declaration of the High-Level Meeting on the Rule of Law adopted by the General Assembly of the UN, Member States highlighted the independence of the judicial system, together with its impartiality and integrity, as an essential prerequisite for upholding the

rule of law and ensuring that there is no discrimination in the administration of justice [para. 13].

In the same declaration member states of the UN emphasize the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning the legal rights, and in this regard taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid. [para. 14].

The following constraints are causing alarm on access to justice as a key element of the rule of law in Turkey:

- The right of equal access to justice cannot be used equally and properly by all including members of vulnerable groups in a manner prescribed by law in Turkey,
- On the basis of independent reports such as those of the Council of Europe and the EU as well as those of NGOs such as Human Rights Watch and Amnesty International, there are serious concerns about fair, transparent, effective, non-discriminatory and accountable justice services that promote access to justice including legal aid for all especially for those the members of Alevi and Kurdish society, the Gulenist movement and LGBT.
- The Turkish Government has not been responsive to demands and requests to access to justice for all. The representatives of both the executive and legislative branches in Turkey have continued to make comments on high profile ongoing judicial cases. The representatives of the executive have at times undermined the credibility of the judiciary by discrediting judges and prosecutors and accusing them of conspiracy and membership of an alleged 'parallel structure' under the influence of the Gülenist movement or lately also of an alleged terrorist organization.
- Further, the political parties, national and international institutions including NGOs, judicial and bar associations not only in Turkey but also in Europe have not exerted enough effort to raise the voice of the victims and accused who face serious obstacles accessing to fair justice and fair trial. Besides the victims and the accused could not raise their voices and concerns against these violations of human rights in Turkey under the current circumstances.
- Due to the amendments of the Law on the Judicial Council (February 2014) and the Constitutional amendments (in April 2017) and the changes in the structure and the composition of the Judicial Council, the judiciary has been taken under total control of the executive power. The Judicial Council which is supposed to safeguard the independence of the judiciary cannot fulfil that function any more.
- The Judicial Council is far from the founding philosophy laid down in the Constitution and foreseen for similar mechanisms in other international

instruments. The Judicial Council as the central pillar of the Turkish judicial architecture plays a crucial role in the promotion and transfers of, and disciplinary proceedings against judges and public prosecutors, including their removal from office. Its proper functioning is thus obviously important with regard to the independence, impartiality and effectiveness of the judiciary. It must not only be independent and impartial itself but also protect and promote the independence and impartiality of the judiciary as a whole.

- The independence and impartiality of the judiciary is an essential element for access to justice and thus the rule of law. The judiciary in Turkey are either frightened and terrified or operating under the control and influence of pro-government judges and prosecutors for the following reasons:
- After the election of the members of the Judicial Council (October 2014), the judges and prosecutors have remained under strong political pressure. A high number of judges and prosecutors have been reshuffled against their will and arbitrarily. In particular, the chief public prosecutors, presiding judges, heads and members of justice commissions were replaced with other judges and prosecutors who are member of the Platform of Judicial Unity' (YBP, pro-ruling party association).
- What is worse is that after the attempted coup in July 2016, the Judicial Council immediately suspended 3654 judges and prosecutors including five of its own members. According to the open resources, there are now 4521 judges and prosecutors dismissed from the profession; 2728 under arrest and detention; 1311 remanded on probation.
- The Judicial Council hence creates fear atmosphere and gives messages of loyalty to the government, causes worry, scares the judges and prosecutors, bully them in order to prevent criticism from within the judiciary and any type of investigation against the members of the government and its supporters.