



## INFORMATIVE REPORT

### **The arrest and detention of the Turkish Judges Mustafa Basar and Metin Özcelik**

#### I.) Background information and former activities of EAJ:

##### General political Situation:

The leading party of Turkey AKP was chaired by the then prime-minister Recep Tayyip Erdogan. He was elected President of Turkey and strongly fosters the idea to change Turkey into a presidential democracy, in which – like in France - the decisive power is exercised by the president of the state. This needs a change of the constitution, which only can be done by a qualified majority in the parliament. There are general elections on June 7<sup>th</sup>.

##### The High Council of Judges and Prosecutors:

The most important issues of the carrier of judges (and prosecutors) are in the jurisdiction of the High Council for Judges and Prosecutors (HCJP), which is composed of 22 judges and prosecutors elected by their peers and the minister of justice and the secretary of state of the ministry of justice as members ex officio. The recruitment, promotion, evaluation, disciplinary measures, dismissal, training, inspection and approval to investigation against judges are exercised by the three commissions of the HCJP. The plenary is chaired by the minister. This function was improved after a referendum and an amendment of the Constitution in 2010. At a roundtable about the experience with the 2010 reform, which took place in 2011, the representative of IAJ warned about the possibility of the HCJP to transfer judges to other courts without their consensus. The responsible stakeholders claimed that this was necessary in a country with different developed regions like Turkey and that the HCJP would follow pre-established rules when transferring judges.

In 2012/13 the law on HCJP was amended. It reduced the jurisdiction of the HCJP shifting some tasks to the minister of justice and increased also the influence of the minister of justice in the HCJP itself.

In 2014 the election of new members of the HCJP took place. EAJ established a commission to observe these elections. The election process was strongly influenced by the government, which established a list of candidates and promised an increase of remuneration of judges, if their candidates would win the election. The overwhelming majority of the new members are persons, who had been on the said list of candidates.

Judicial activities regarding investigation against members of the government and the family of the president:

In December prosecutors started investigations against members of the government and members of the family of Recep Tayyip Erdogan, regarding corruption affairs and involvement into an illegal weapon transport to Syria. The government reacted by transferring the involved police officers and prosecutors to other places in the country or dismissing them, as far as prosecutors and judges were concerned by decisions of the HCJP. The criminal offence of “insulting the president of the state” in the amended Criminal Code was widely used against journalists and representatives of media enterprises, who differed in their view from the president and the leading political party.

A new type of Criminal Courts in charge among others of such offences was established. Objections against the decisions of such a court are considered by a court of the same type and level. There is

no possibility to involve a higher instance court. Among other jurisdiction such courts also decide on detention, arrest, release and seizure of property etc.

## II. The facts:

### The arrest of the judges Metin Özcelik and Mustafa Baser:

The judges Mustafa Baser (Istanbul 32<sup>nd</sup> Court of First Instance) and Metin Özcelik (Istanbul 29th Court of First Instance) were competent to decide about the remedies resp. motions of lawyers, who claimed for the release of police officers and journalists, who had been held in pre-trial detention since months. These persons had been accused that they illegally had investigated in connection with the affairs mentioned above or have reported incorrectly about these affairs, which both was seen as terroristic activities of members of a terroristic group.

The lawyers had argued that the suspects have been detained well after the four days custody time prescribed by law had lapsed, which due to ECHR decision Zeynep Avcı versus Turkey would not make such a detention lawful. They also stated that detention needs “strong suspicion” that a crime has been committed. Upon the perusal of the content of the file no facts or evidence have been identified which would arouse even a “requisite level of suspicion”. The additional pre-requisite that regarding the risk of absconding the personality of the suspect has to be taken into consideration and that (see also decision of ECHR Neumeister versus Austria) such condition for the suspects who were police officers and journalists was certainly not fulfilled. The also pointed out that alternatives to detention had not been considered (judicial control order etc.), and that no arguments exist why public security rectifies a prolongation of the detention, during which the prosecution had put forward no facts or evidence.

The judges followed these arguments and issued an order to release the detained persons. Such an order needs the signature of the prosecutor on duty to be enforced by the prison authorities. The prosecutor on duty refused to sign the decision of the judge. He referred to an order of the deputy chief prosecutor.

Meanwhile someone had informed a newspaper, which negatively reported on the envisaged released, the former minister of justice gave a negative comment on the decision and the president of the state in a press conference blamed the HCJP that it had not interfered.

The head of the competent commission of the HCJP apologized for the delay. The HCJP suspended the two judges, an inferior court beyond its jurisdiction declared the order of the judges to release the detained persons as void, a prosecutor started an investigation against the judges, who are blamed to belong to the same terroristic group as the persons, who they wanted to free with their illegal order, and judge Baser and judge Özcelik were arrested.

### Basis of this information:

Several delegates of member association at EAJ got messages by mail form different persons. Most of them anonymous, claiming that otherwise they and their families would be endangered to be put under pressure, some signed with the name of the respective judge. Furthermore EAJ was informed through direct contacts (the names of the contacts can't be disclosed here) . We also got detailed information from a defence lawyer of a journalist concerned.

## III. The reaction of EAJ.

At its meeting in Gdansk EAJ adopted a resolution which claims for the immediate release of the two judges.