



Europe, 26 January 2023

President of the European Commission, Ursula von der Leyen,  
European Commissioner for Neighbourhood and Enlargement, Olivér Várhelyi  
European Commissioner for Justice, Didier Reynders  
President of the European Council, Charles Michel  
President of the European Parliament, Roberta Metsola  
Secretary General of the Council of Europe, Marija Pejčinović Burić

Your Excellencies,

The Platform for an Independent Judiciary in Turkey has closely monitored the developments within the Turkish judiciary over the past years - not only since the 2016 coup attempt - observing the constant increase of the undue pressure on judges<sup>1</sup>, and repeatedly warning against the gross violations of the human rights of the imprisoned Turkish judges and prosecutors<sup>2</sup>.

In September 2022, the European Court of Human Rights decided on the applications of former Turkish judges Mustafa Başer and Metin Özçelik, in the case concerning their pre-trial detention.<sup>3</sup>

Mustafa Başer and Metin Özçelik had been involved, as judges in the Criminal courts in Istanbul, in the decisions to release suspects - a journalist and sixty-two law-enforcement officers placed in pre-trial detention - allegedly connected to the organisation described by the Turkish authorities as the “Fetullahist Terrorist Organisation/Parallel State Structure”. In 2015 they were arrested and suspended from their duties; in 2017 they were both sentenced irrevocably to ten years’ imprisonment, after having been found guilty of membership of an armed terrorist organisation and abuse of power.

Already upon their arrest and suspension, several voices from European networks of judicial associations and the CCJE (Consultative Council Of European Judges) expressed serious concerns with respect to the fairness of the underlying proceedings, considering that these were actually motivated by the decisions they had issued as judges<sup>4</sup>. Their trial was also (partly, till the 2016 coup attempt) monitored by international observers on behalf of IAJ/EAJ and Judges for Judges.<sup>5</sup>

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

<sup>2</sup> <https://www.aejaj.org/media/files/2020-08-31-5-Turkey-Anti-Torture-Committee-Appeal%20Platform%2031.8.2020.pdf>, <https://www.aejaj.org/media/files/2019-10-19-82-Statement%20-JudgeTemel-2.pdf> and others

<sup>3</sup> Judgement of 13 September 2022, Case of Başer and Özcelik v. Türkiye, ECtHR, appl. no. 30694/15 and 30803/15, request for referral to the Grand Chamber pending: <https://hudoc.echr.coe.int/eng?i=001-219095> and the press release: <https://hudoc.echr.coe.int/eng?i=003-7429557-10171898>

<sup>4</sup> [https://www.ekou.ee/doc/2015-05-29\\_EAJ-report-Turkey.pdf](https://www.ekou.ee/doc/2015-05-29_EAJ-report-Turkey.pdf) and EAJ-resolution-on-Turkey-may-2015.pdf (iaj-uim.org) of 16 and 27 May 2015; <https://medelnet.eu/r-e-s-o-l-u-t-i-o-n-on-the-mprsonment-of-judges-and-prosecutors-in-turkey/> of 23 May 2015 and Bureau of the Consultative Council of European judges (coe.int) of 12 June 2015

<sup>5</sup> <https://www.rechtersvoorrechters.nl/1795-2/>

In the judgement of 13 September 2022, the European Court of Human Rights found that the pre-trial detention of Judges Başer and Özçelik was unjustified and unlawful: the Court stated that there has been a violation of Article 5 § 1 and 5 § 1 c) of the Convention on account of the unlawfulness of the applicants' initial pre-trial detention for lack of prior authorisation for initiating a criminal investigation and on account of the lack of reasonable suspicion, at the time of the applicants' initial pre-trial detention, that they had committed an offence.

Despite all this, and notwithstanding the fact that they served in prison the time required to benefit from conditional release, Mustafa Başer and Metin Özçelik are still in detention and have been denied conditional release<sup>6</sup>.

Furthermore, Mustafa Başer is in poor health and has been suffering from cancer since December 2019. The prison observation board decided on 20 September 2022 that he is not eligible for conditional release on the grounds that his remorse was not sincere, despite the absence of disciplinary penalties. Before the end of the appeal period the Ankara Court immediately confirmed the decision. The – timely – appeal of Mustafa Başer of 22 September 2022 was ignored.

The case of Mustafa Başer and Metin Özçelik is only one of the many examples of arbitrary justice and of unlawful detention in Turkey.

While advocating for an immediate reassessment of the decisions not to grant the conditional release to Mustafa Başer and Metin Özçelik. The Platform urges once again the European institutions to take the necessary steps to restore the rule of law and the independence of the judiciary in Turkey and to cease all ill-treatment of imprisoned judges, prosecutors and lawyers.

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President of Judges for Judges

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President of Magistrats Européens pour la Démocratie et les Libertés (MEDEL)

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<sup>6</sup> [Turkey forces political prisoners to the admission of guilt in order to benefit from parole \(arrestedlawyers.org\)](https://www.arrestedlawyers.org/)