



Türkiye Barolar Birliđi Başkanlıđı

Sayı: 41870694-730.99-11734

Ankara, 04 / 11 / 2016

Mr. Carlos BOTELHO MONIZ
President
Union des Avocats Européens
9A, Cité Mont-Rose
L-8445 Steinfort
LUXEMBOURG

Dear Mr. President,

The communique bearing the date of September 12, 2016, was sent to Union of the Turkish Bar Associations which is regarding "the reinstatement of the death penalty", which was completely abolished in 2004 in Turkey, and which is prepared by your distinguished institution, as well.

We agree with your just concerns about the irrecoverable death penalty and we have made several public statements with the justifications about our stance against the reinstatement of this penalty which could not be applicable retrospectively.

The Union of Turkish Bar Associations agrees with the notions and assessment that have been expressed in the paper which was signed by organized supreme institutions of the legal profession such as CCBE, UIA, FBE, AIJA, UAE, ELA, EDL, EYBA due to the "right to life" emphasis and respect that should be untouchable under the resolutions and interpretations of the European Court of Human Rights of which we have recognized the jurisdiction since 1990 with European Convention on Human Rights and its Protocol 6 and 13 to which Turkey is a party.

We hope and wish that the distinguished supreme institutions show sensitivity toward the opening "Judiciary and Fundamental Rights" chapter no 23 and "Justice, Freedom and Security" chapter no 24 which were frozen without an acceptable, valid legal rationale during the EU-Turkey Negotiations that involve significant issues such as the independence and impartiality of the judiciary to bring the EU standards forward regarding the legal problems that have been experienced in our country alongside their just concerns in the communique.

As the president of the Union of Turkish Bar Associations, I have briefly presented some sections of my statements about such significant issues to your attention in the attachment. Furthermore, we will hold a Bar Presidents Meeting on which we will assess the heavy damage of the state of emergency in Turkey and provide a communique about it on Saturday (November 5, 2016) which will be delivered individually.

I would like to emphasize the importance of the cooperation between our institutions once again.

Sincerely Yours,

Prof. Dr. Metin Feyziođlu, Esq.
President of the Union of Turkish Bar Associations

Attachment: Prof. Dr. Feyziođlu's statements



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THE SUMMARY OF SOME STATEMENTS OF PROF. DR. METİN FEYZİOĞLU, ESQ. THE PRESIDENT OF THE UNION OF TURKISH BAR ASSOCIATIONS REGARDING THE DEATH PENALTY AND THE STATE OF LAW, RULE OF LAW, PRESUMPTION OF INNOCENCE AND RIGHT TO FAIR TRIAL AND PARTICULARLY JULY 15TH COUP ATTEMPT AND ITS CONSEQUENCES:

(The opinions and assessments hereinbelow are delivered to the public by the President of the Union of Turkish Bar Associations (UTBA) by himself in person, through newspapers, television programs, radio and other printed press institutions and organizations.)

From the statement of the UTBA President on 15th July Coup Attempt:

"I would like to share my opinions about the bloody coup attempt and its consequences that have been experienced a short time ago in Turkey with supporting the Turkish Republic as a democratic, secular and social state of law.

We have warned the President, Speaker of the Parliament, and Minister of Justice in particular and all governmental bodies through meetings, television, radio and printed press as follows:

What our country requires most right now is for the government to separate the criminal persons from the innocent ones and it should respect the law in its actions and proceedings. The most effective power of the government against the terrorist organization that attempted the coup is its legitimacy deriving from acting lawfully as it is so against all terrorist organizations. Therefore, to have a permanent success at fighting terrorism, investigation and prosecutions should be conducted in accordance with the fair trial principles. The lawyers should not be prevented from using their defense rights, in particular, to be present while testimonies are being taken and to interview the suspects and those who prevent them should be prosecuted.

The fair trial principles, which would be ignored if the coup was a success, should fully be implemented on those who are accused of being a member of a terrorist organization which attempted the coup. This is an indispensable condition for the rule of law. Only so, such investigations can be clear of any doubts."

Rule of Law:

"The rule of law and justice is the common denominator for 78 million Turkish Republic citizens without any doubt.

Ensuring the rule of law and the establishment of a trustworthy legal structure are prerequisite for our national unity and solidarity.

We are impartial. We support the rule of law only.

As we have done before, we express that we will fight for the judicial independence and independent defense which are the fundamental conditions for the right to fair trial and for rule of law, principles, and values of our Republic, democratic, secular, social state and principle of separation of powers that assures them in the same assertive manner."

From the newspaper advertisement published by the UTBA after the terrorist attack on Ankara Merasim Sokak on February 19, 2016:

"Indispensable condition of maintaining the ties that make us a nation is to build trust in justice and the state of law. Regardless of any political opinion, sect, religion, ethnic origin and gender, every citizen of ours should be ensured that they take pride and confide in being the principal element of Turkish Nation. State officials should act in accordance with these principles. For that purpose, we should establish a judicial system where there is independence, impartiality



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and where fair trial can be conducted and legal profession is effective and equal in an immediate manner with cooperation."

From the announcement on the newspaper by the UTBA on June 21, 2016 titled "Supreme Court and Council of State Judges are dismissed by Law!

"We do want neither sect nor "partisan" structuring in judiciary we do not want the judiciary to take instructions and orders from the political power or any other organization. We want proper judges and prosecutors.

We want "merit system" in which those who deserve a position get the position.

We want an order where political power does no longer shape the judiciary and judiciary not to interfere the politics with arbitrary decisions. In short, we want the separation of powers.

We want a judiciary that is impartial and independent and that conducts a fair trial and can be held accountable.

The means to prevent formations within the judiciary and to clean them if there are any is not the legal regulation that is contrary to the Constitution, as known by everybody.

FOR THIS, WE HAVE TO CHANGE THE STRUCTURE OF THE SUPREME COUNCIL OF JUDGES AND PROSECUTORS.

We should put the merit principles into practice cooperatively. We must guarantee the independence and impartiality of the judges. We must create a judiciary that can conduct a fair trial and that can be held accountable.

Saying "It's done because I made it" is not the right way. A trial and error method, a puzzle law will only hurt this country, us, all of us.

From the press statement by the UTBA President on June 22, 2016:

"Our concern is the formation of a new supreme court that is completely affiliated with the political power with the claim of cleaning the communitarian structure. To eliminate such concern is to change the structure of the Supreme Council of Judges and Prosecutors and transform it into a trustworthy organization for all of our country.

We are highly concerned for our warnings to have turned out to be true through all these years. For the first time in this country, the judges of the Supreme Court and the Council of State are dismissed through law under the name of democracy. Such implementation is unprecedented. However, what we expect from the government, which took the road to settle the regime of 12 September, is not to apply fascist practices of 12 September. Unfortunately, this is not the case."

From the speech of the UTBA President at the round table meeting titled "Where is the judiciary headed to?" which was held by the UTBA on June 28, 2016:

"We want neither a sect nor a partisan formation within the judiciary. We shout out once again that dismissing the Supreme Court judges by law is not the way for cleaning the illegitimate formations in the judiciary and this is the start of a disaster.

Who will guarantee that those who are appointed in five days after the dismissal of the Supreme Court and Council of State judges by law would not be dismissed by a new law?

It is not comforting to dismiss the sect formation and replace it with a new one. We want proper judges and prosecutors. We want impartial and independent courts. We do not want courts that rule arbitrarily and interfere in

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the politics. We want courts that are capable of a fair trial and can be held accountable. This can only be carried out through restructuring the Supreme Court of Judges and Prosecutors."

From the press statement by the UTBA President on July 14, 2016:

"The indispensable element of democracy is the separation of powers. If the judicial power is not separated from the legislative and executive authorities, we could not mention about democracy, no matter how fancy the state is defined in the constitution.

Despite all our warnings, the Parliament has adopted the law to dismiss the members of the Supreme Court and the Council of State. The legislative power actually subordinates the judicial power with this law.

We say clearly and once again that the time has come for the members of the Constitution Court.

All of these are the beginning of the end of democracy. It is the de facto regime change. For this reason, such law is unconstitutional. The degree of illegality is "nullity".

It is not the way to fight against the sect formation that is said to have settled in the judiciary. We do not want "sect" formation or any partisan structure that we are concerned to be formed under the claim of cleaning the alleged sectarians. We want proper judges and prosecutors. We do not accept the subordination of the judiciary to the politics and also do not want the judiciary to interfere with the politics. We say that the judiciary cannot dismiss the legislative power, so legislative power cannot dismiss the judicial power.

If the legislative, executive and judicial power are combined through which the democratic regime will be ended, the rights and liberties of the citizens will be left to the arbitrary decision of the government".

During a visit to the Speaker of the Parliament on July 20, 2016:

"The most effective power of the government against the terrorist organization that attempted the coup is its legitimacy deriving from acting lawfully as it is so against all terrorist organizations. Therefore, to have a permanent success at fighting terrorism, investigation and prosecutions should be conducted in accordance with the fair trial principles. The lawyers should not be prevented from using their defense rights, in particular, to be present while testimonies are being taken and to interview the suspects and those who prevent them should be prosecuted.

The fair trial principles, which would be ignored if the coup was a success, should fully be implemented on those who are accused of being a member of a terrorist organization which attempted the coup. This is an indispensable condition for the rule of law.

Only so, such investigations can be clear of any doubts and all of our people will believe that all proceedings and convictions are not conspiracies unlike those happened in the previous period."

An entry by Metin Feyzioğlu on Facebook on July 22, 2016:

"After the coup was prevented, Turkey is at a crossroads.

Either Turkey will take a lesson from the past and rebuild the destroyed institutions and the extremely worn democracy or it will fill the vacancies by basing on affiliation rather than merits by repeating the mistakes that were done by the political power and even clean out the staff for this purpose.

If it would follow the first path, then there is a bright future. If the latter solution is taken, considering the conditions of Turkey, I am afraid that there will not be a state and people to rule at the end of this road.



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I hope that precautions are taken proportionately considering that the state of emergency is a temporary government form. For all of us. Because we're all in the same boat. "

An entry by Metin Feyzioğlu on Facebook on July 25, 2016:

"After the failed coup attempt, it is of high interest of our state, nation, and citizens to carry out the legal proceedings in accordance with the law. The practices that may be detrimental to a fair trial could be a problem for Turkey before the international public of which the putschist terrorist organization could take advantage. Moreover, it is only possible to separate the guilty from the innocent through effective use of the right to defense. We should act reasonably even though the crime is mind bending, the degree of violence is so high and infiltration of the terror organization is so deep and we have experienced a great danger. We should think more and act reasonably and calmly than ever before.

Our colleagues have a great responsibility for building a democracy that works with all institutions and rules and the state of law. We have a sheer confidence in our colleagues to carry out their responsibilities in the most effective manner."

From the statement titled "The Investigations and Arrests under the State of Emergency Should Not Lead to a Witch Hunt" by the UTBA president on July 28, 2016:

"As the Union of Turkish Bar Associations, we have been fighting for the rule of law for years along with our bars and bar presidents that make up our Union.

We have always warned our state officials and public against the FETÖ bloody terrorist organization that uses judiciary as a means to open ways and that infiltrates every level of the state and fought against this terrorist organization as the Union of Turkish Bar Associations.

From the early hours of July 15th, the night of the coup attempt, we provide full support to our government's fight against this treacherous terrorist organization and sorting out all elements of such terrorist organization.

As a part of this support; we insistently express that right to fair trial and not to be tarnished of the people should be respected in the investigations that started after the coup attempt, otherwise such investigations would qualify as "witch hunt" and the guilty and the innocent could be mistaken and FETÖ would make the most of it.

However, in this process, we follow with deep concern that there are rumors about our bars and smear campaigns are started about them "by taking advantages of the situation" and judiciary becomes a tool for local political competition and a payoff time has started for the past small animosities.

We follow the investigations which have been brought against our bar presidents and managers with a deep concern, one of them has been arrested and two of them have been taken into custody until now.

We should not forget how the statements of the secret witnesses have served in the plot cases in the past and how the irregularities have twisted the facts in the investigations and cases. This recent history is close enough not to be repeated again! In fact, history repeats itself for those who do not take lessons from her.

We hope that our chief prosecutors and judges could see that they should not allow judiciary to be used as an instrument for rumors and smears and as the mechanism for revenge and not only the arrested persons and their families but also the basis of the investigations are harmed by the arrest without escape and tampering with the evidence and it is not possible to separate the innocent from the guilty by restricting the right to defense and this will distort the judgment and will serve as an instrument for wrong objectives."

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An entry by Metin Feyzioğlu on Facebook on July 29, 2016:

"NOT TO MAKE MISTAKES OF WHICH THE TERRORIST ORGANIZATION CAN TAKE ADVANTAGE"

We should respect the right to fair trial of the people in the investigations that have been started after the coup attempt. The right of a person not to be unjustly tarnished is also very important. Everybody knows when one experiences it. It is important to feel empathy and show respect and know without experiencing it.

The dismissal by the state of emergency decree laws and investigations should be based on concrete evidence. No, this is not a luxury demand. First of all, I am talking about a danger that can happen to everybody and makes the life of his family miserable when it happens. Secondly, we can only prevent the terrorist organization to be legitimized in the international arena this way. If the government puts everybody in the same basket, then the terrorist organization would benefit from it. If there is any one supporting the idea of "throwing the baby out with the bathwater", then they should know that the terrorist organization wants that the most.

I know it is easy for people who act without thinking to act emotionally. What I say is, everybody can blame anyone and associate them with something. However, if the government dismisses a person from public service or takes him into custody, it should act with concrete evidence, not with words.

I get information from every province and region. I will tell you what I have seen; the local hearsay mechanism has started to spin. The smear campaigns are started by the opportunists "by making the use of the conditions". People are thinking to take the revenge for small hostilities.

I think that the speech of our Minister of Justice in the Parliament sounded positive. It was basically; "We never believed in each other, we never listened to each other, let's come together and try to understand each other."

For years, we have always warned, and unfortunately, it is always turned out right. Let's listen to each other this time; knowing that we are all in the same ship and if we could not do it, we will be gone forever, together."

From the meeting with representatives of the Ministry of Justice on July 29, 2016:

It is of high interest of our state, nation and citizens to carry out the investigations that have been brought against after the bloody coup attempt in accordance with the laws, and the terrorist organization will benefit the most from the possible illegalities in the middle and long term. For this reason, legal proceedings should be conducted in a way not to be detrimental to the legitimacy of the state in accordance with the right to fair trial and there should be no area left for the terrorist organization to make use of in the international arena."

From the statement given to the newspaper Hürriyet on August 16, 2016:

"No lawyer should be threatened due to the person he/she defends, because lawyers are the guarantee of the fair trial. If we violate it, FETÖ will benefit from it. Their aim is for the international law to mark our legal proceedings as doubtful. We must thwart the operation by acting wisely without rising to the bait."

The visit to the Presidency office on August 16, 2016:

"What FETÖ wants most is that taking the innocent mistaken for the guilty and by this way, the real FETÖ members become victims in the medium term and take credit in the international arena. The only way to prevent this is through acting in accordance with the law in proceedings by our government as You, Mr. Prime Minister and Mr. Minister of Justice have frequently expressed. For that purpose, the right to fair trial, defense, and assistance of a lawyer, presumption of innocence, not to be unjustly tarnished, and legal remedies should be respected for the interest of our



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citizens and high interest of the Turkish Republic. The violation of these rights primarily serves for the bloody terrorist organization FETÖ and separatist terror organization which acts in cooperation with it. If we, the lawyers, can do their duty of defense properly, then the innocent cannot be mistaken for the guilty."

OPINIONS OF THE PRESIDENT OF THE UNION OF TURKISH BAR ASSOCIATIONS PROF. DR. METIN FEYZİOĞLU, ESQ. ABOUT THE DEATH PENALTY:

From the personal Facebook account of Metin Feyzioğlu on July 27, 2016:

It is not right to reinstate the death penalty. Because:

a) It is an unfair penalty for it is impossible to compensate if there is an error.

If there was death penalty during Ergenekon and Balyoz cases, the gallant soldiers of our national army would already be executed.

b) It is not possible to apply the death penalty to the killers of 15 July.

c) For there is an impression that death penalty would be applicable retrospectively, it is impossible to extradite the FETÖ members abroad, particularly the ringleader. Because there is an international legal obligation of most countries such as not making extradition to the countries where the death penalty is applicable.

From the Interview given to the newspaper Posta on August 6, 2016:

- What is your opinion about the death penalty?

- **Metin Feyzioğlu:** Today, we do not have the death penalty in our laws. If it is enacted, it is not possible to apply on the putschists retrospectively. The death penalty is prohibited in our Constitution, as well. We are a party to the protocol of the European Convention on Human Rights that abolishes the death penalty. The death penalty is an irrecoverable punishment. If it was available during Balyoz and Ergenekon cases, then many patriots would probably be executed.

From his reviews on Al-Monitor on August 12, 2016:

<http://www.al-monitor.com/pulse/tr/originals/2016/08/turkey-akp-death-penalty-passions.html#ixzz4NbqKHgIB>

The President of the Union of Turkish Bar Associations, Prof. Dr. Metin Feyzioğlu, Esq. states that the reinstatement of the death penalty would mean to sever the relations both with EU and European Council and adds that: "It is not enough to place an article in the Constitution for the death penalty. Article 90 paragraph 5 rules that international law prevails over the national law on human rights. It is necessary to change this article and revoke the signature in protocol 13 of European Convention on Human Rights; however, it is not possible. Even if you do these changes, you cannot apply retrospectively. If you say, "No, I can", you would violate a basic rule of 2000 years. This is the absolute break from the world and Europe.

I think that that this discourse is aiming to keep the people alive rather than to break away from Europe. But I approach the subject in principle. You cannot write "this person will be executed", you can only write "the person who does ..." and then carry out concrete proceedings. Therefore, all politicians should tell this fact with the example of "plot proceedings". The goal is not to incite emotional environment but to tell the fact calmly. Moreover, this debate is blocking the extradition of the putschists who fled to other countries. This is a wrong policy."

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From the TV program named "Hakan Çelik ile Hafta Sonu"- CNNTÜRK August 20, 2016:

-Can the persons who attempted to the coup on July 15 be executed?

- **Metin Feyzioğlu:** Such law could not be applied retrospectively. It is prospective. You cannot enact a law to execute the putschists of July 15th by applying retrospectively. It is not possible in the law that we know. The law that we do not know is not the law of the modern world but the law of the primitive tribes. We are not primitive tribes. Turkey has turned its face to civilization for 300 years.

From the interview of the newspaper Yeni Şafak on August 21, 2016:

IF DEATH PENALTY IS ENACTED, THEN THEY WILL NOT EXTRADITE GULEN

- The death penalty is a matter in the context of Turkey- EU relations. What do you think about this?

- **Metin Feyzioğlu:** Europe has abolished the death penalty and we also did so because we are together with Europe. If we bring back the death penalty, we need to leave the Council of Europe. Moreover, our EU candidacy would completely be ended. We should aim to join EU as a state policy. In addition, if the death penalty is reintroduced today, it cannot be applied to those who attempted the coup on July 15. Keeping this discussion at the top of the agenda makes it hard to extradite the FETÖ members and Gülen in particular. To begin with, FETÖ members that take refuge in Europe will not be extradited to Turkey as long as these death penalty discussions continue.

From the interview of the newspaper Sözcü on September 2, 2016:

-What do you think about the death penalty?

- **Metin Feyzioğlu:** If there was a death penalty in Turkey, most of the victims of Balyoz, Ergenekon, Casusluk (Spying) cases, who are embraced by the government when how to instigate Turkey today is the question today, would be executed!

If you remember that time, the proceedings would be done so fast and then gallows would be established and the most of the commanders, who took up their service pistols and stood up against the terrorists disguised as soldiers would be executed. Remember that.

There is no going back after the execution. This is the first thing.

Secondly, I find this discussion useless and it is not about July 15. It is not constitutional to apply death penalty or other aggravated punishments retrospectively. It is not possible in accordance with the international conventions to which we are a party. If you say that you would revoke all of them, then the law applied is not one that I know.

Then Turkey will not be a state of law.

Third, despite all, when we talk about the death penalty in Turkey, our extradition requests from abroad are blocked.

From an interview with the German ZDF Channel, September 2016:

-There are some rumors that death penalty would be reinstated. What do you think about this?

- If the death penalty was in force in 2010, then we could not have generals and admirals that could prevent the coup. Indeed, they would be executed after the Ergenekon and Balyoz cases.

- Do you approve of the death penalty?

- Of course not. Because the death penalty is an irreversible and irrecoverable punishment. In 2010, those who arrested and judged journalists, lawyers, prosecutors, scientists, and army members were eager to execute them.

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However, the death penalty was not in effect. This is our chance. Ranking officers in the army who are fighting against the coup have been tortured and prosecuted by the sect members who infiltrated into the legal system.