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13 March 2017

Dear Mr President,

Dismissal of 227 Judges and Prosecutors / Detention of Judge Aydin Sefa Akay

The Law Society is a professional body representing more than 166,000 solicitors in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights throughout the world.

The Bar Council represents barristers in England and Wales. It promotes: (i) the Bar's high quality specialist advocacy and advisory services, (ii) fair access to justice for all, (iii) the highest standards of ethics, equality and diversity across the profession, and (iv) the development of business opportunities for barristers at home and abroad.

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we seek to influence the creation of a fairer and more just society.

The Faculty of Advocates is the professional body for Advocates in Scotland. It has around 460 practising members and a body of non-practising members. It is a regulatory and representative body which acts in the public interest. The Faculty's is proud to play its part in seeking to protect and to uphold the rule of law, and fundamental rights – for those in Scotland and beyond.

The Law Society of Northern Ireland is a professional body established by Royal Charter and invested with statutory functions to regulate responsibly and in the public interest the solicitor's profession in Northern Ireland and to represent solicitors' interests. The Society represents over 2,800 solicitors working in approximately 520 firms and practitioners working in the public sector and in business.

The Bar Council is the representative body of the Bar of Northern Ireland. Members of the Bar specialise in the provision of expert independent legal advice and courtroom advocacy. Access to training, experience, continual professional development, research technology and modern facilities within the Bar Library enhance the expertise of individual barristers and ensure the highest quality of service to clients and the court.

The Law Society of Ireland is the professional body for its 10,826 solicitor members. Our mission is: (i) to serve, represent and support our members and the public, (ii) to ensure fair and effective regulation of solicitors in the interests of the profession and the public, (iii) to provide excellent legal education and training, (iv) to raise

awareness within members of the public of how the profession can help to vindicate their rights, and (v) to participate fully in public life so that issues of fairness and justice are to the fore in public discourse.

The Bar of Ireland is the representative body for the barristers' profession in Ireland and is governed by the Constitution of The Bar of Ireland. Its role is: (i) to consider, report upon and make representations as it considers necessary in all matters affecting the profession, (ii) to play a key role in the conduct and arrangement of the business of the profession, (iii) to control and regulate the professional conduct of the members of the Bar, and (iv) to secure and protect the interests of the profession.

We are very concerned that, on 20 February 2017, 227 judges and prosecutors were dismissed by the High Council of Judges and Prosecutors (HSYK) as part of investigations into the failed coup that took place in July 2016. The Law Society of England & Wales previously expressed its concern following the dismissal of 2,745 judges in the aftermath of the coup attempt in our letter of 22 July 2016, see attached. We understand that approximately 4,000 judges and prosecutors have been dismissed since July 2016.

Moreover, many lawyers have been arrested and detained under certain decree laws, issued after the failed coup, that allow for extended periods of pre-trial detention. We understand that, in some cases, lawyers have been held in detention incommunicado and that legal professional privilege has been violated, because lawyers have not been able to communicate with their clients in private.

We are also alarmed about the arrest of Judge Aydin Sefa Akay that took place on 21 September 2016. He has remained in detention since his arrest. Mr. Akay is a judge at the United Nations Mechanism for the Criminal Tribunals for Rwanda and former Yugoslavia. At the time of his arrest, he was due to hear an appeal in the case against Augustin Ndirabatware, a Rwandan politician who was sentenced in 2012 to 35 years in prison for genocide. We understand that the relevant offices of the United Nations have formally asserted the diplomatic immunity of Judge Akay and requested his immediate release and the cessation of all legal proceedings against him. As a result of his detention, the proceedings in the *Ngirabatware* case have come to a standstill. This means that international justice cannot take its course and the due process guarantees of the accused may be affected.

The most recent dismissal of 227 judges and prosecutors, as well as the continued detention of Judge Akay, are developments that represent a worrying erosion of the principle of the separation of powers. We are greatly concerned about the negative effects that this has on the independence of the judiciary and the rule of law in Turkey.

We are also concerned that the recent developments in Turkey following the coup attempt are having a detrimental impact on the administration of justice and that such administration will become increasingly difficult after the dismissal of so many judicial officers, as well as the arrest and detention of many lawyers. This directly affects access to justice for all Turkish citizens, who may have difficulty in finding legal representation.

As stated in the letter of the Law Society of England & Wales of 22 July 2016, we recall that institutions of the European Union and Council of Europe have previously expressed concern regarding the separation of powers in Turkey and the lack of independence of the HSYK. We refer to **Resolution 2121 (2016) of the Parliamentary Assembly of the Council of Europe, "The functioning of democratic institutions in Turkey"**, the **Venice Commission Declaration on Interference with Judicial Independence in Turkey**, and the **Turkey 2015 Report of the European Commission**.

We also draw your attention to the **Basic Principles on the Independence of the Judiciary**, endorsed by United Nations General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985, which state:

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

We also draw your attention to the **UN Basic Principles on the Role of Lawyers** (1990):

16. Governments shall ensure that lawyers

(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;

(b) are able to travel and to consult with their clients freely both within their own country and abroad; and,

(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

We support the continuation of the democratically elected parliament and are relieved that the coup attempt was unsuccessful. However, we respectfully urge the relevant authorities to respect the separation of powers and the rule of law in Turkey, and:

1) to reinstate the judges who were dismissed, pending investigations into their alleged involvement in the coup attempt;

2) to follow international standards regarding the suspension, re-assignment and removal of judges in any disciplinary or other proceedings brought;

3) to respect the independence of the judiciary and to ensure that other members of the legal profession, such as prosecutors and lawyers, can carry out their professional duties without hindrance and improper interference;

4) to adopt the recommendations made by the Parliamentary Assembly of the Council of Europe, the Venice Commission, and the European Commission regarding the rule of law and judicial independence in Turkey; and

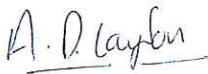
5) to cease all legal proceedings against Judge Akay and take all necessary measures to ensure his release from detention, so that he can resume his judicial functions in the *Ngirabatware* case, and any other domestic or international proceedings.

Yours sincerely,



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