Judicial Reform is Essential to Shorten Long Detention Periods!

As the Checks and Balances Network, we think that one of the foundation stones of the rule of law is for the judiciary to perform its duty of protecting democracy, personal rights and freedoms and the constitutional order independently for a working separation of powers and an effective system of checks and balances. The independent judiciary strengthens the citizens’ feeling of trust in the State and ensures social peace and solidarity.

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The decision of the Turkish Constitutional Court, considering the individual application made to it in relation to long detention periods, that this is a breach of human rights has also revealed a problem in the Turkish judicial system. Long detention orders that violate the presumption of innocence also lead citizens to perceive long periods of detention during trial as a penalty in itself.

Long periods of detention are a consequence of the failure to implement judicial reform.

Long periods of detention, which are closely related to our fundamental rights and freedoms, are not a “cause” but one of the effects of the failure to implement judicial reform and the failure of the judicial system to operate in an effective manner. Long detention periods in Turkey are a situation created by several problems ranging from inconclusive hearings to arbitrary decisions, from waiting periods at the High Court of Appeals to the lack of an effective mechanism of trial.

One of the criteria for mechanisms of constitutional checks and balances is for human rights and freedoms to be guaranteed in accordance with international norms and agreements. Article 90 of the Turkish Constitution provides that international agreements duly put into effect have the force of law. The same article clearly states that in disputes which may arise where different provisions concerning the same matter are made in domestic laws and in international agreements on fundamental rights and freedoms duly put into effect, the provisions of the international agreements shall prevail.

Turkey is party to the European Convention on Human Rights (ECHR), which came into effect in 1953, and accepted the binding jurisdiction of the European Court of Human Rights (ECrHR) in January 1990.

Providing in its Article 1 with the heading “Obligation to respect human rights” that “the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”, the ECHR refers to the importance of the guarantees laid down in Article 5 “Right to liberty and security” in order to ensure personal security in a democratic society and regulates the responsibility of the authorities by requiring independent judicial review to reduce the risk of arbitrary arrest and detention and to prevent victimization.

Despite the provision of the Turkish Constitution that international agreements have the force of law, violations of rights concerning long periods of detention occur quite frequently in Turkey. Among the judgements rendered by the ECrHR in 2012 against Turkey for violations of human rights, the largest category is “lengthy trial” (38 violations) followed by violations of Article 5 including long periods of detention during trial, for which the Court sentenced Turkey 37 times in 2012.

When we look at legislation, the Turkish Constitution includes provisions to prevent lengthy detention. Article 19 states: “Persons about whose guilt there are strong indications may be detained only by order of the judge in order to prevent their escape or evidence being destroyed or altered or in other circumstances making detention necessary and specified in the law.”

Law no. 6352, known as the third judicial package, has amended the fourth paragraph of Article 100 of the Code of Criminal Procedure numbered 5271 and introduced the provision that “no detention order may be issued in offences punishable only by a judicial fine or by a prison sentence with an upper limit of two years”. The second paragraph of Article 101 emphasizes that such order must be grounded on concrete reasons and based on the principle of “proportionality”. The first paragraph of
Article 109 has been amended to read as follows: “In a criminal investigation, if the reasons for detention specified in Article 100 exist, a decision may be issued to place the suspect under judicial surveillance instead of detention.” The changes introduced by the third judicial package to shorten detention periods and to prevent grievances, even though not sufficient, represent an encouraging development.

**In the light of these points, we the Checks and Balances Network propose the following:**

- The judicial system should be reformed in view of the international conventions to which Turkey is party and of international standards.

- For the public to be able to assess judges the codes of conduct and ethics should be reviewed and the disciplinary provisions made objective.

- The “principle of legal proportionality” should be adopted.

- It should be ensured that the judge’s order of detention is effectively reviewed at the stages of objection and appeal.

One of the foundation stones to ensure the trust of citizens in the State in which they live is a system where our fundamental rights and freedoms are guaranteed. **In a State governed by the rule of law where the judiciary is independent, we can only guarantee our fundamental rights and freedoms through a strong mechanism of checks and balances.**

**As the Checks and Balances Network, we think that in a Turkey where judicial independence and fundamental rights and freedoms are secured taking the principles of the “rule of law” and “separation of powers” as a basis, citizens will have a greater feeling of confidence in the State, and social peace and solidarity will prevail.** You may access our activities as the Checks and Balances Network in this framework through the following link.

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