



**INTERNATIONAL ASSOCIATION OF JUDGES
UNION INTERNATIONALE DES MAGISTRATS
UNIÓN INTERNACIONAL DE MAGISTRADOS
INTERNATIONALE VEREINIGUNG DER RICHTER
UNIONE INTERNAZIONALE DEI MAGISTRATI**

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ECHR AND JUDICIAL INDEPENDENCE IN TURKEY

The Presidency Committee of the International Association of Judges (the IAJ) believes that it must make this statement concerning the acceptance by Dr Robert Spano, President of the European Court of Human Rights, of an Honorary Degree from the University of Istanbul. The acceptance of that degree has been strongly criticized by, amongst others, journalist and academic Mehmet Altan, who was dismissed from his position at Istanbul University, and by others. It comes after the current regime adopted measures after what was described as an attempted coup. The measures taken after that event included the arrest of many Judges, journalists and academics and the total proscription of the Turkish Association of Judges (YARSAV) which was then, and we consider still to be, a member of the IAJ committed to the Rule of Law and the Independence of the Judiciary.

We do not question the commitment of President Spano to the Rule of Law or to the Independence of the Judiciary. We wish to make clear, however, that his acceptance of the degree should not be interpreted as an endorsement of the actions taken by the current Government of Turkey.

The acceptance speech in which he accepted the honorary degree reminded those in control at the University and in Turkey of the importance of the principles and values defended by the European Court of Human Rights. In an important passage President Spano said:

“In sum, by conferring this honorary distinction you must demonstrate your attachment to the values defended by the Strasbourg Court.”

The clear, and pointed, message by this summary of President Spano’s first point should not be misunderstood. Accepting awards and benefits carry a risk that others may see the acceptance as an endorsement of values and practices that are inconsistent with the rights that the ECHR promotes. The clear message from the passage we have quoted, however, is that there is a duty upon those in Turkey to show attachment to the values which that court exists to defend. It is a duty which must be

demonstrated by the people, institutions and country awarding degrees of the kind conferred upon President Spano.

President Spano went on to explain that he took the opportunity of receiving the award to discuss publicly the importance of university teaching in the field of human rights and in particular to the teaching of the European convention on human rights. There has in the past been a strong link between the European Court of Justice and Turkish Judges committed to the Rule of Law and the Independence of the Judiciary. The court was first established on 28 April 1959 and a Turkish Judge, Judge Kemal Fikret Arik, was one of the first group of Judges of the court elected by the Consultative Assembly. It is a matter of great regret to us that the Turkish Judiciary today exists under a cloud resulting from the actions taken in response to what was said to be a coup. The President of YARSAV, Judge Murat Arslan, was amongst those arrested after the events said to have been an attempted coup. He was, however, subsequently awarded the Václav Havel Human Rights Prize by the Council of Europe but remains imprisoned with a 10-year sentence after a trial which has been heavily criticised in failing to meet the standards of an independent and fair trial.

Taking the lead from President Spano, we take this opportunity to call upon the authorities in Turkey to demonstrate its attachment to the Rule of Law and to the Independence of the Judiciary. The present government in Turkey has been called upon by others to re-establish trust in its judiciary. The U.N. Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, on 14 September 2020 has called upon the government in Turkey urgently to do so and to repair the Rule of Law. The French *Ecole Nationale de la Magistrature* has dedicated one of its activities to YARSAV. The Rule of Law is not the imposition of rules but a system of government based upon principles independent of arbitrary power. Fundamental to the Rule of Law is that they be interpreted and applied by an Independent Judiciary without interference, personal fear or advantage and do so openly for all to see. Adherence to such a system requires that it be demonstrated and visible to all. There continues to be within Turkey a lack of demonstrable adherence to the Rule of Law and to the Independence of the Judiciary. The time to demonstrate commitment to those principles is now.

The Hon G T Pagone QC

On behalf of the Presidency Committee

President, International Association of Judges