

Launching conference

On “Strengthening the Criminal Justice System and the Capacity of Justice Professionals on the Prevention of Violations of the European Convention on Human Rights”

3 October 2019

Venue: Sheraton Hotel, Ankara

Key Note Address

Mr Christophe Poirel

Human Rights Director

Directorate General Human Rights and Rule of Law (DG I), Council of
Europe

Duration

- 15 minutes maximum

Audience

Approximately 350 participants from project partners and stakeholders: Minister of Justice (Mr Abdulhamit Gul); Deputies of Ministry of Justice, European Union Delegation to Turkey, Ministry of Justice/ General Directorate of Criminal Affairs, and other Departments within the Ministry of Justice Council of Judges and Prosecutors, Justice Academy, Presidency of the Republic of Turkey, Central Finance And Contracts Unit, Ministry of Interior/ Turkish National Police Force, Human Rights and Equality Institution, Ombudsperson, Information Technology and Communications Authority, high courts in Turkey (Court of Cassation, Council of State, Constitutional Court, appeal courts, prosecutors), First Instance Courts of Turkey (prosecutors, judges), Turkish Bar Association, lawyers, embassies, civil society representatives, academicians.

“Distinguished Minister,

Distinguished Ambassador of the European Union Delegation to Turkey,

Distinguished Head of the Central Finance and Contracts Unit,

Honorable representatives of high judicial bodies and institutions in
Turkey,

Ladies and gentlemen,

I am delighted and honoured to welcome you today on behalf of the Council of Europe to the launch of a new and very important project aimed at assisting Turkey in enhancing the protection of human rights in the criminal justice system.

I am very pleased to see that so many representatives of public institutions and other sectors of society have responded to our invitation.

I would like at the outset to express my gratitude to our Turkish partners, the Ministry of Justice and the Justice Academy, for their readiness and enthusiasm to take part in this project. Their role will be central in its implementation, and the presence today of Minister Gül and President Özdemir is a most appreciated sign of their commitment to ensuring its success.

I would also like to thank the European Union for its generous financial support making this project possible. Our strong partnership in this area and others demonstrate that our ambition to promote our shared values in the field of human rights is not a mere declaration of intention, but a reality.

The Council of Europe **welcomes and supports the efforts undertaken by Turkey to continue to reform its judiciary in line with European standards and best practices.** I would like to mention in particular the new Judicial Reform Strategy, which covers the area of fundamental rights and criminal justice. This important strategic document, together with the “Action Plan on the Prevention of Human Rights Violations”, constitute a solid basis for developing the human rights dimension of the criminal justice system in Turkey.

This is essential in an area where individual freedoms are often at stake. Some of the rights enshrined in the European Convention on Human Rights, to which Turkey is a Party, are central to the criminal justice system, namely the right to liberty and security (which covers issues relating to detention) and the right to a fair trial. Other important rights, such as the right to freedom of expression, are also to be mentioned as they can be curtailed when criminal law provisions are applied too widely.

On the other hand, when crimes such as domestic violence and excessive use of force by the security forces are not properly investigated and punished, this can also lead to violations of the victims' rights.

The effective protection of human rights in line with the Convention requires that concrete action is taken to achieve tangible improvements.

I would like to commend in this respect the announcement by Minister Gül during the opening of the judicial year of his wish to put in place safeguards to prevent arbitrariness in the area of pre-trial detention.¹ Our joint project comes at the right moment to help develop such important safeguards.

And I am confident that we can achieve significant results. The Council of Europe has a **long standing co-operation with the Turkish authorities and the judiciary** in the area of human rights and the rule of law. We have developed our cooperation through dedicated projects for more than a decade. Already from 2012 to 2014 we focused our joint efforts on criminal justice, leading to legislative changes and the training of 1200 judges and prosecutors on different topics related to human rights in

¹ Statement given by the Minister of Justice at the Opening of the judicial year in Turkey, on 6 September 2019

criminal proceedings. I am glad that we can now continue our work in this direction.

The new project that we are launching today offers the opportunity to address some outstanding issues regarding the criminal justice system which have been identified in judgments of the European Court of Human Rights, in particular regarding the right to liberty and the fairness of proceedings.

At the same time, and this is something that I would like to underline, the goal of the project is not only to remedy past problems but also to prevent further violations of the European Convention on Human Rights by enhancing the procedural safeguards applied in criminal proceedings and improving judicial reasoning.

I would also like to underline that the project is not about imposing the “right” criminal justice system. It is about strengthening human rights protection in the administration of justice, regardless of the type of criminal offence.

The requirements are well known. The criminal justice system has to:

- justify deprivation of liberty and prevent arbitrariness;
- consider and apply alternatives to detention;

- properly investigate and punish crimes in line with the right to a fair trial;
- provide clear, sufficient and relevant reasoning in all judicial decisions and judgments;
- protect and compensate victims.

Another important element is of course to follow the Constitutional Court and the European Court's case-law.

I would like to mention a few issues illustrating the importance of the requirements I just mentioned:

When we talk about the **rights of an accused person in criminal proceedings, we would agree that the right to legal assistance** at any stage of criminal proceedings is essential.

When we talk about **fair trial and equality of arms in criminal proceedings**, we would agree that every party has to have equal access to the file, can propose evidence and cross examine witnesses.

Finally, when we talk about balanced administration of justice in light of the jurisprudence of the European Court of Human Rights, we refer to the **adequate and relevant reasoning of domestic judgments**.

This is not an easy task.

Still, it is the **role of the judiciary to strike the right balance and to assess the proportionality of measures** and techniques used by the law enforcement authorities. This is a crucial guarantee against possible abuses and arbitrariness, in particular where the application and interpretation of anti-terrorism legislation is concerned.

Supporting criminal justice also means supporting effective prosecution and suppression of crimes. Combatting terrorism and crime, including cybercrime, in an effective manner is the duty of public authorities. At the same time, this should not take place to the detriment of fundamental human rights, including those of the persons accused of committing such crimes. The gravity of criminal offences cannot justify overstepping limits imposed by the respect for individual rights. I will mention, as an example, the safeguards that must accompany the use of some methods to intercept communications or conduct of searches, which can directly and seriously affect individual rights, including to private life and the right to a home.

Again, it is the role of the independent and impartial judge to control any arbitrary behaviour leading to abuses and human rights violation. This is a challenge that all countries are facing; still a balanced and human rights approach must prevail.

I am confident that this project will be most valuable for the Turkish authorities and the judiciary to make the criminal justice more effective, fair and transparent, based on human rights standards, through:

1. The assessment of the current legal framework and policies in the field and support for legislative changes;
2. The development of practical tools for the judiciary to better apply the standards of the European Court of Human Rights in their daily work;
3. The training of judges and prosecutors to better understand, interpret and find the right balance in applying those standards at national level and to deliver adequately reasoned decisions and judgments;
4. Support for specialised units in the institutions combating cybercrime and the financing of terrorism;
5. And, finally, dialogue between the various stakeholders for better awareness and mutual understanding.

To achieve those results, we know we can count on the support and cooperation of our Turkish partners. Their role is crucial and I am confident they will take full ownership of the project to claim the success story in the end.

The second key factor for success is to have an inclusive approach with our partners and other stakeholders, with the input in particular of bar associations and lawyers. Beyond these specialised circles, the voice of civil society is also needed to properly identify and address shortcomings in the field of criminal justice and to ensure that safeguards are applied in practice.

I am confident that, with the cooperation of all, this project will bear fruit for all, the Turkish institutions and the judiciary, the legal community and, above all, the people of Turkey.

I wish all of us much success!