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23.09.2009, Ankara

TURKEY IS GOING AWAY FROM THE PRINCIPLE OF THE RULE OF LAW RATHER THAN GETTING CLOSER TO IT

The Criminal General Council of the Supreme Court (Yargıtay Ceza Genel Kurulu) has decided there is no need to sentence the security member (a specialist sergeant) that fired into the crowd and consequently caused death of a civilian. According to the Criminal General Council of the Supreme Court, the action of the security member was justifiable within the scope of the law. In fact, it is not the first time that the the Criminal General Council of the Supreme Court makes such a decision and unfortunately it seems that it will not be the last one. For example; the 1st Criminal Chamber of the Supreme Court has approved the decision of acquittal about the special teams that killed a 12 years old boy Ugur Kaymaz, the 9th Criminal Chamber of the Supreme Court has sent the file of Semdinli Case to the Military Court, the Criminal General Council of the Supreme Court's decisions that state children, who throw stone to security forces shall be tried on charge of being member of an illegal organization. These decisions were made in 2009 and are contrary to the law. These decisions show that the Turkish Judiciary is far away from the the principle of the rule of law.

Furthermore, Turkey has become a country which has been sentenced by the European Court of Human Rights at the most.

The last decision of the of Criminal General Council of the Supreme Court is like an invitation for new extra-judicial killings. The right to life is the most fundamental right that must be protected under any conditions and circumstances. The Articles 15 and 17 of the Turkish Constitution, which has been amended with reform packages within the EU accession process, ensure the right to life. In addition to that the Article 90 of the Constitution states “International agreements duly put into effect bear the force of law. No appeal to the Constitutional Court shall be made with regard to these agreements, on the grounds that they are unconstitutional. In the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements shall prevail.”¹. The Article 90 states that international conventions should be applied strictly. However the Criminal General Council of the Supreme Court breaches the Constitutions with its ideological attitude. The Government and the Parliamentary watch this situation. None of the judges can be superior than the fundamental rights and freedoms. Due to its ideological attitude the Judiciary prevents Turkey to become a country in which the principle of the rule of law is domain. The Judiciary is trying to defend the State's “sacred!” interests rather than citizens' rights and freedoms. This serious conduct cannot be justified with the law and even the conscience. The high judiciary is the most important and effective protector of the fundamental rights and freedoms

¹ http://www.anayasa.gov.tr/images/loaded/pdf_dosyalari/THE_CONSTITUTION_OF_THE_REPUBLIC_OF_TURKEY.pdf

Human Rights Association (IHD) is a non-governmental and voluntary organization. It has been founded in 1986 and has approximately 10.000 members. IHD is the oldest and biggest human rights organization in Turkey. The philosophy of IHD is carrying out activities on “human rights and freedoms” without any exception and discrimination. To get more information about IHD, please contact us.

in democratic countries. The recent decisions of the Supreme Court are serious examples to show that Turkey has gone away from the object of the democratization. The Government must take necessary precautions immediately to start a judiciary reform in the country. The Government must establish a judiciary structure that is suitable to the principle of the rule of law.

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