

# Independence, Impartiality and the ECHR: Court President Robert Spanó's recent controversial visit to Turkey

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Today the European Court of Human Rights (ECtHR) is seen as one of the most effective mechanisms in the protection of human rights in Europe. We may also say that judgments of the Court have positive effects beyond Europe. Judges are appointed to the Court for a period of nine years and carry out their judicial functions according to [key principles of independence and impartiality](#). Article 6 of the European Convention on Human Rights (ECHR) emphasise [the importance of the independence and impartial of judges in the Member States, which is a fundamental element of the rule of law, and vital to the effective functioning of the judicial system](#). Indeed, [Article 21](#) of the ECHR also clearly states that “During their term of office the judges [of the ECtHR] shall not engage in any activity which is incompatible with their independence, impartiality...”

This post will consider the significance of adherence to these principles in light of the recent visit of the President of the ECHR Róbert R. Spanó to Turkey..

### *President Spanó's Visit to Turkey*

President Spanó, accompanied by Turkish judge, Saadet Yüksel, visited Turkey 3-4 September 2020. As a matter of fact, Court Presidents are duty bound to visit member states that are party to the Convention. Therefore, there is nothing abnormal about the visit, but according to [Article 9 of the Court's Rules of Procedure](#), these visits are undertaken on behalf of the Court and as the President of the Court. Therefore the President of the Court is required to the independence and impartiality of the Court during such a visit.

However, President Spanó's visit to Turkey has been criticised by many individuals and organisations, raising questions as to whether the Court is making compromises regarding its independence and impartiality. Current and former MEPs, such as [Kati Piri](#) and [Rebecca Harms](#), national (Human Rights Association of Turkey) and international ([Article 19](#), [Human Rights Watch](#)) NGOs have criticised the visit. Former ECtHR judge [Rıza Türmen](#) has written an open letter to President Spanó, asking him certain questions. For instance, he asked whether President Spanó would ask Turkish officials why Court judgments regarding [Osman Kavala](#) and [Selahattin Demirtaş](#) have not been complied with, whether he would enquire regarding issues such as 76 journalists having been remanded in prison, the fact there are more than 17 thousand cases regarding charges of insulting the Turkish President, and that, according to 2019 statistics, the ECtHR has handed down 35 judgments on violations of the freedom of expression. He also asked about the disproportionate use of violence by the police at rallies and demonstrations and whether he would ask Turkish officials about what provisions might be introduced following the Oya Ataman judgment. [Mr Türmen](#) also suggested Mr Spanó would at least meet Presidents of the Bar Associations.

Nonetheless, President Spanó ignored these criticisms and questions and met the heads of Turkey's judicial institutions at an event at the [Justice Academy of Turkey](#). According to the official twitter account of the Court, he made a ‘comprehensive speech’ at this event, regarding [‘Independence of the Judiciary -The Cornerstone of the Rule of Law’](#). However, he made absolutely no mention in his speech of judgments to the detriment of Turkey or judgments that Turkey has not implemented. That is, he did not take a critical approach to Turkey. No mention was made in his speech of what was discussed during meetings he held with the Chairman of the Turkish Parliament, Mustafa Sentop and Turkish President Recep Tayyip Erdogan.

President Spanó also attended an event at [Istanbul University](#), where hundreds of academics have been sacked, where he received an honorary doctorate. It is particularly interesting that the leader of

the 1980 military coup, general Kenan Evren, also received an honorary doctorate from the same university.

Furthermore, the greatest reaction to this visit came after a photo was shared on Twitter by the Mardin Provincial Branch of the ruling Justice and Development Party (AKP). This [photo](#) was a short time later removed after reactions. This picture showed President Spanó and Turkish judge Saadet Yüksel in front of a school in Mardin, a province with a majority Kurdish population. Also, in the photo he was with AKP Mardin Provincial Chair, Esengül Aydın Sancar, and Mardin Governor, Mahmut Demirtaş. It is necessary at this juncture to point out that the Mardin Governor was appointed as a trustee by decree in place of Peoples' Democratic Party (HDP) candidate, Ahmet Türk, who won the election of 31 March 2019 with 56.24% of the vote as a municipal mayor.

### ***Court's image on independence and impartiality***

Reaction on social media mushroomed after the sharing of this photo, but President Spanó has yet to make any press release regarding this visit, despite this reaction. As a matter of fact, the Court judges constantly emphasise the importance of these important principles to the Member States while performing these duties expected from them. Consequently, these principles enabled the ECHR to be accepted as a respectable institution not only in Europe but worldwide. However, it should be noted that the judges are, of course, free to express their opinions while making their decisions on issues. But they have to calculate the consequences of every action and expression they make. In particular, when the President of the Court is admitted to be the face of the court, any action he takes may affect the Court's reputation positively or negatively. The President of the Court is also responsible for highlighting the importance of the Court's judgments in his meetings and to advise the member states on the implementation of these judgments. It is also obvious that the President informing the public regarding his meetings will strengthen the Court's reputation within the scope of the principle of transparency. However, the President's meetings with only representatives of the political power (without meeting with any human rights victims or NGO representatives) was criticised by many individuals and NGO's. As indicated above, the President did not once mention the human rights situation in Turkey in his meetings with representatives of political power. As a result, his meetings and comments have been subjected to a lot of criticism, and the independence and impartiality of the Court are also being questioned. Considering that Turkey is the country with the second most cases pending against it, and that since 1959 it has had the most judgments of violation of the Convention handed down against it, it is abundantly clear that to meet victims of human rights violations or NGOs would contribute to the Court's image of independence and impartiality.

### ***Conclusion***

Many individuals and bodies have made suggestions regarding his visit. As former judge, Mr Türmen, has said, instead of meeting representatives of the government behind closed doors it would be a significant democratic and transparent act for President Spanó to inform the media and public opinion. After all this reaction, it is now imperative for President Spanó to make a public statement. In the event that he, as the official representative of the Court, fails to do this, it is apparent that the reputation of the Court for independence and impartiality will suffer a major blow. Consequently, the damaging of the image of an institution that hands down judicial precedents grounded on independence and impartiality will naturally sow great doubt in the minds of victims of human rights violations.