

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 738 0338 – Fax: +1 604 736 1175
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

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President of Turkey
Recep Tayyip Erdogan
Cumhurbaskanligi
06100 Ankara, Turkey
Fax: +90 312 468 5026
Email: cumhurbaskanligi@tccb.gov.tr

Foreign Minister of Turkey
Ahmet Davutoglu,
Basbakanlik
06573 Ankara, Turkey
Fax: +90 312 417 0476
Email: receptayyip.erdogan@basbakanlik.gov.tr

Dear President Erdogan and Foreign Minister Davutoglu:

Re: Dr. Hidayet Karaca

Lawyers' Rights Watch Canada ("LRWC") is a volunteer-run committee of lawyers and other human rights defenders that promotes human rights, the rule of law and the integrity of legal systems internationally through education, legal research and advocacy for lawyers and other human rights defenders in danger because of their advocacy. LRWC has special consultative status with the Economic and Social Council of the United Nations. More information about the work of LRWC is available at <http://www.lrwc.org>.

LRWC objects to the continuing extra-legal persecution of Turkish broadcaster and journalist Dr. Hidayet Karaca, who was sentenced to 31 years of imprisonment, and now faces further prosecution. Hidayet Karaca, Ph.D., is an experienced Turkish broadcaster who also served for years as chairman of the board of directors of a number of media associations such as the Television Broadcasters Association and Television Audience Measurement (TIAK).

Although it is against the law to be tried twice for the same offense, we are advised that Dr. Karaca is standing trial in another case in an Ankara court on the same charges. Despite the ruling in İstanbul on charges of establishing and managing an armed terrorist organization, the trial at Ankara's 4th High Criminal Court is still continuing, and we understand that the prosecutor is seeking a life sentence. Dr. Hidayet has already been in prison for 4 years, on trumped up charges.

We also understand that two judges who had ordered his release were also arrested, and that the Board of Judges and Prosecutors (HSK) has threatened other judges with the same consequences for making similar decisions. Dr. Karaca's lawyers were arrested. The sentence demanded by a prosecutor for one of these lawyers, who was forced to testify against his client (Dr. Karaca) was reduced after the lawyer agreed to cooperate despite the fact that both such cooperation and the methods used by Turkish authorities to compel the cooperation are unlawful.

This widespread prosecution and persecution of lawyers and others for lawfully exposing or expressing criticism of the government, engaging in human rights advocacy or providing legal

services to clients or causes unpopular with government authorities, is of great concern to LRWC and other human rights defenders around the world.

The arrest and charges against members of the bar and judiciary for carrying out their required roles in Turkey's criminal justice system violates Turkey's international law duties to protect and ensure:

- a. the right of all persons criminally charged to be represented by a lawyer empowered to effectively protect rights and achieve justice; and
- b. the right and duty of lawyers to perform their professional functions without intimidation, harassment or improper interference; and
- c. the right of all persons to a fair trial before an independent, impartial and competent court.

International Law Obligations

Turkey has international law obligations to ensure the equal enjoyment by all people within its territory of the personal and advocacy rights articulated by the *Universal Declaration of Human Rights* (UDHR) and guaranteed by the *International Covenant on Civil and Political Rights* (ICCPR).¹

It is widely accepted that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and ensure their freedom to engage in advocacy without reprisals or interference from any sector including state agents.

Specific state duties necessary to ensuring the right to legal representation are identified by the United Nations *Basic Principles on the Role of Lawyers* (Basic Principles).² Compliance with the Basic Principles is a fundamental pre-condition to fulfilment of the requirement of every state to ensure effective access both to enforcement of rights and the legal representation required for the effective enforcement of rights and remediation of violations.

The Basic Principles require Turkey to protect advocacy rights through the following measures:

16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

¹ Turkey signed the ICCPR on 15 August 2000 and ratified the ICCPR on 23 September 2003 with one reservation concerning Article 27 on the right of minorities.¹ Turkey ratified the *Optional Protocol to the International Covenant on Civil and Political Rights* on 24 November 2006 and the *Second Optional Protocol to the International Covenant on Civil and Political Rights* on 2 March 2006. Both Optional Protocols entered into force on 24 February 2007. Turkey is also a signatory to the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD).

² Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

Clearly, the above actions taken against Dr. Karaca, his lawyers and judges are in direct contravention of these Basic Principles.

Provisions of the *Constitution of the Republic of Turkey* that must be used to interpret its domestic law include:

Part one, Articles 2 and 5:

ARTICLE 2. The Republic of Turkey is a democratic, secular and social State governed by the rule of law; bearing in mind the concepts of public peace, national solidarity and justice; respecting human rights; loyal to the nationalism of Ataturk, and based on the fundamental tenets set forth in the Preamble.

ARTICLE 5. The fundamental aims and duties of the State are; to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social State governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence. [Emphasis added]

It is universally accepted in all western democracies that it is a basic human right that citizens are free to express political opinions, even if those opinions are critical of the government or individuals within the government. Free speech is a sacred principle of all democratic societies. A brief survey will show that many government leaders are subject to severe criticism on a continuing basis. Failure to tolerate such criticism only highlights the weakness and insecurity of a government or its leader.

LRWC respectfully calls on you and other authorities to consider the above noted international law obligations and take all steps to secure the immediate unconditional release of Dr. Karaca, and any of his lawyers and judges in detention.

All of which is respectfully submitted:



Brian M. Samuels, Barrister and Solicitor
(British Columbia, Canada)

Copied to:

His Excellency Mr. Ali Naci Koru
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
Chemin du Petit-Saconnex 28B
1211 Geneva 19
Tel: +41 22 918 50 80
Email: turkey.unog@mfa.gov.tr

Selçuk Ünal
Ambassador of Turkey to Canada
197 Wurtemberg Street
Ottawa, Ontario K1N 8L9
Canada
Tel: +1 (613) 244 24 70
Email: embassy.ottawa@mfa.gov.tr

Chris Cooter
Ambassador of Canada to Turkey, Georgia, Azerbaijan and Turkmenistan
Consulate General of Canada
209 Buyukdere Caddesi
Tekfen Tower
Levent 4, Istanbul
34394 Turkey
Tel: 90-212-385-9700
Email: ISTBL-CS@international.gc.ca