

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

June 26, 2018

Mr. Abdulhamit Gül
Minister of Justice
06659 Kizilay
Ankara, Turkey
Tel: +90 (0312) 417 77 70
Fax: +90 (0312) 419 33 70
Email: info@adelet.gov.tr

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

Re: International law obligations to release Mustafa Aydin for medical treatment

Dear President Erdogan and Minister of Justice Gül,

We are writing on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers and other human rights defenders who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

We wrote to you on 17 April 2018 regarding Turkish lawyer Mustafa Aydin, who is in fact dying in prison. We understand that his situation is now extremely urgent and critical. Our letter of 17 April 2018 can be found at: <https://www.lrwc.org/turkey-immediately-release-and-ensure-adequate-medical-treatment-for-mustafa-aydin-letter/>

LRWC is gravely concerned for the health of Turkish lawyer Mustafa Aydin. Mr. Aydin has been detained since 16 August 2016, and has been charged under Article 314/2 of the Turkish Penal Code. It is our understanding that Mr. Aydin is suffering from prostate cancer and a hernia, and requires immediate expert medical treatment and ongoing care to address his medical conditions and extend his life. LRWC urges the Government of Turkey to immediately release Mr. Aydin so that he can obtain the medical treatment he urgently requires.

Background

Mr. Aydin is a lawyer and a member of the Istanbul Bar Association. He was taken into custody by Turkish police on 16 August 2016, and held for 13 days before being officially arrested 29 August 2016 by the Istanbul Peace Criminal Judgeship. The indictment against Mr. Aydin was submitted 10 November 2017 and he is scheduled to appear before the Istanbul 34 Assize Court 27 June 2018 (in two days).

Mr. Aydin is being charged, under Article 314 (2) of the Turkish Penal Code, with membership in an armed terrorist organization, an offence carrying a penalty of up to 22.5 years in prison. It is believed Mr. Aydin was detained, arrested and charged solely on the basis of allegations of association with the Gulen Movement, designated by the Government of Turkey as an armed

terrorist organization. The Penal Code does not define what constitutes an armed terrorist organization or the criteria for what constitutes membership and, absent these definitions, Article 314(2) can be, and has been, arbitrarily used to criminalize a wide range of legal activities including the exercise of internationally protected rights to expression and association and the right of lawyers to represent and advise clients and to publicly express opinions about legal issues.

International Law Obligations to Release Mustafa Aydin for Medical Treatment

This provision of the Turkish Penal Code has been widely abused by the Government of Turkey to detain arrest and arbitrarily convict lawyers acting for clients or causes unpopular with the authorities or otherwise seen as government critics. The overly broad wording of the Penal Code prevents foreknowledge of what is prohibited and allows arbitrary interpretations of the law that put all lawyers and other human rights defenders at risk of wrongful prosecution, conviction and loss of liberty. The arbitrary detention of lawyers and others viewed as critical of the Government of Turkey since July 2016 has been systematic and widespread. Between July 2016 and the end of February at least 1525 lawyers in Turkey had been prosecuted, 578 arrested and kept in pre-trial detention and 99 sentenced.¹

Our previous letter (17 April 2018) details how and why the continuing detention of Mr. Aydin and failure to allow him to receive proper medical treatment is a violation of his internationally protected rights. We will not repeat those details herein, but ask that you refer to that earlier correspondence.

Medical Situation

Mr. Aydin has been diagnosed with prostate cancer and a hernia and as a result, he can barely walk and requires urgent surgery and chemotherapy. His prognosis is terminal if he does not receive medical treatment in a timely fashion. Mr. Aydin has not received sufficient medical care while in detention, and his treatment has been delayed due to the overcrowding of Turkish prisons.

Mr. Aydin is also the father of a ten-year-old child with Downs syndrome. His son is highly dependent on the emotional support of his father.

International Law Obligations

Turkey has a duty under international law to provide Mustafa Aydin with the health care necessary to ensure his life and wellbeing. The state must provide prisoners with the most appropriate medical treatment in accordance with current professional medical standards so as to ensure life and well being and to prevent imposition of further punishment or suffering not ordered by the courts.

Our previous letter (17 April 2018) details how and why these duties arise, including:

- under the *International Covenant on Civil and Political Rights* (“ICCPR”), which Turkey ratified in 2003;

¹ The Arrested Lawyers Initiative, as of 28 February 2018. See <https://arrestedlawyers.org/>.

- the positions taken by the United Nations (UN) Human Rights Committee's (HR Committee); and
- the European Court of Human Rights ("ECtHR")

We will not repeat those details herein, but ask that you refer to that earlier correspondence.

Turkey has a legal obligation to provide timely and sufficient medical care to Mr. Aydin while he is in detention. Failure to provide treatment is a violation of Mr. Aydin's right to life. LRWC urges you to take all necessary actions to ensure the immediate release of Mustafa Aydin so he can seek urgent medical attention.

In addition to Turkey's obligations at law, we appeal to your sense of humanity, and ask that Mr. Aydin be released immediately on humanitarian grounds.

LRWC strongly urges you to ensure:

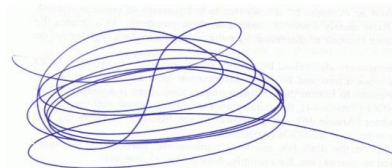
- a. the immediate release Mr. Aydin for medical care and treatment;
- b. withdrawal of all charges based on the exercise by Mr. Aydin of his professional duties as a lawyer and/or rights to freedom of expression and association; postponement of the trial, which is scheduled to begin on 27 June 2018;
- c. immediate and full disclosure to counsel for Mr. Aydin of all purported evidence against him; and,
- d. that Mr. Aydin remains released pending trial.

Thank you for your prompt attention to this important matter.

All of which is respectfully submitted:



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



Gail Davidson, LRWC Executive Director

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

Mustafa Aydin – Immediate release for medical care and treatment

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

Special Rapporteur on the rights to freedom of peaceful assembly and of association
Ms. Annalisa Ciampi
freeassembly@ohchr.org

Special Rapporteur on the situation of human rights defenders
Mr. Michel Forst
defenders@ohchr.org

Special Rapporteur on the independence of the judges and lawyers
Mr. Diego Garcia-Sayan
SRindependenceJL@ohchr.org