

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

January 12, 2019

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@tccb.gov.tr

Re: Release of Şebnem Korur Fincancı from arbitrary detention

Dear President Erdogan and Minister of Justice Gül,

We write on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers 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.

LRWC has written in the past with respect to various Turkish lawyers who have been detained, arrested, charged, and/or imprisoned in violation of Turkey's international human rights law obligations. Communications to the Government of Turkey have been made by LRWC regarding the cases of: Ramazan Demir, Erin Keskin, Mustafa Aydin, Can Tombul, Taner Kilic and 21 members of the Istanbul Bar Association. LRWC has also made oral and written statements to the UN Human Rights Council and submissions to UN treaty bodies and Special Procedures regarding the wrongful prosecution and conviction, arbitrary detention and other rights violations against lawyers, journalists and human rights defenders in Turkey.

In this instance, we are writing with respect to Şebnem Korur Fincancı, President of the Human Rights Foundation of Turkey. Ms. Fincancı is a prominent and well-respected academic and human rights defender. We are advised that on December 19, 2018, the Istanbul 37th Heavy Penal Court convicted and sentenced Ms. Fincancı to two and half years in prison for the "crime" of having signed a declaration prepared by Academics for

Peace entitled “We will not be a party to this crime” (Declaration). The Declaration called on the Government of Turkey to end state violence against citizens. We are also advised that evidence against her in this case included various interviews and reports relating to her human rights work with respect to human rights violations in Turkey.

Background

The Declaration which was the subject of the conviction and sentencing of Ms. Fincancı was published on January 10, 2016, and was signed by over 1,400 academics. Following publication of the Declaration, many of the signatories have been charged and sentenced. As of December 27, 2018, 444 academics who signed this Declaration have been tried, 69 of whom were sentenced to imprisonment for terms ranging between 1.25 and 2.5 years. However, all but 8 of the sentences are suspended. It appears that Ms. Fincancı has been singled out for the harshest sentence because of her human rights work.

The charge on which Ms. Fincancı was convicted is "propagandizing for a terrorist organization" under Article No. 7/2 of the Anti-Terror Law No. 3713. In a legal system conducted in accordance with international human rights laws and principles, signing such a declaration would not constitute a valid criminal offence.

Unlawful Conviction and Arbitrary Detention

LRWC views the conviction and sentencing as illegitimate and a violation of both Ms Fincancı’s internationally protected rights and of Turkey’s international human rights obligations on the following bases:

1. the charge of ‘propagandizing for a terrorist organization’ does not comply with the principle of legality and therefore cannot provide legal justification for conviction or deprivation of liberty;
2. the charge violates the exercise of rights protected by the *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *European Convention on Human Rights* (ECHR);
3. Ms Fincancı was denied trial by an independent, impartial, competent judge in accordance with the ICCPR, UDHR and ECHR.

Failure to comply with mandatory Principle of Legality

The mandatory requirement for legality in criminal law is contained in the UDHR, Article 7, the ICCPR, Article 11, the ECHR, Article 7 and the *Charter of Fundamental Rights of the European Union*, Article 49.

The UN Working Group on Arbitrary Detention has characterized legality as “a cardinal principle of international human rights law”¹ and of “modern criminal law”² that is “required by the rule of law”³ and a fundamental guarantee of due process in criminal proceedings.⁴

¹ WGAD, Opinion No. 61/2016, at para. 49 (A/HRC/WGAD/2016/61).

² WGAD, Opinion No. 27/2011, at para. 38 (A/HRC/WGAD/2011/27).

³ WGAD, Opinion No. 32/2016, at para. 62 (A/HRC/WGAD/2016/32).

⁴ WGAD, Opinion No. 10/2018, at para. 50 (A/HRC/WGAD/2018/10). [Waleed Abulkhair]

The charge of ‘propagandizing for a terrorist organization’ offends required principles of certainty and non-retroactivity. The charge is so overly broad as to prevent foreknowledge. It creates a standardless sweep that allows automatic and arbitrary conviction for any act, utterance or declaration that is determined—after the fact—to constitute the impugned propaganda. As what constitutes propagandizing can only be determined subjectively, after the fact, the charge also violates the non-derogable prohibition for conviction on the basis of ex post facto offences.

Unlawful violation of rights protected by the UDHR, ICCPR and ECHR

In addition, the UN Human Rights Committee in General Comment No. 34, (para. 38) has determined that public officials and institutions are a legitimate target of both criticism and opposition and that the ICCPR protects the right to criticize and oppose and imposes on Turkey and other State Parties a duty to ensure and not prohibit the peaceful exercise of these rights. The charge and the factual foundation upon which it rests constitute an unlawful restriction and criminalization of rights to free expression and to participate in public affairs guaranteed by the ICCPR, Articles 19 and 25, the UDHR, Articles 19 and 21, the ECHR Article 10. The use of this charge to convict and imprison signatories to the Declaration is a grave violation by Turkey of the provisions of the ICCPR and the ECHR.

Denial of right to trial by an independent judge

In addition, the conviction and detention of Ms Fincanci is also arbitrary because she was denied her right to an independent, impartial and competent judge to determine the charge and her rights.

As noted in the recent joint report of the Law Society of England and Wales, the Bar Human Rights Committee and the International Bar Association Human Rights Institute,

Turkey has undertaken several reforms of its judicial system, notably since 2010, permanently curtailing the independence of the judiciary, and providing increased control of the government over the judiciary.

...and

the [2017] constitutional amendments enshrined and strengthened the President’s powers over the judiciary, thus raising concerns over the independence of the judiciary, the independence of the prosecution services, and the rule of law.⁵

Conclusion

The convictions and sentencings of Mr. Fincanci and other academics for signing the Declaration are part of an on-going campaign of widespread and systematic persecution

⁵ Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches Concerning the Independence of Legal Profession in Turkey 18 September 2018 by the Law Society of England and Wales, the Bar Human Rights Committee and the International Bar Association Human Rights Institute at paras. 23, 33.

of lawyers and other human rights defenders in Turkey. The goal of such persecution appears to be to prevent voices of dissent and opposition from being heard and critics from having legal representation. Since July 2016, Turkey has prosecuted thousands of people including over 1,500 lawyers, on charges that fail to comply with the principle of legality and are based on evidence incapable of supporting allegations of criminality. Convictions on such charges before courts lacking independence from the Executive have then been followed by harsh sentences that, in addition to lacking legal justification, do not satisfy the principle of necessity. For example of lawyers prosecuted since

Such charges include: spreading propaganda for an armed terrorist organization (Law on Fight against Terrorism, Article 7(2)); denigrating the Republic of Turkey, institutions and organs of the State (Criminal Code (CC), Article 301); insulting the President (CC, Article 299); membership in an armed terrorist organization (CC Article 314(2)); and membership in an armed organization with the purpose of committing the offences listed parts four and five of this chapter (CC, Article 314 (2)).

Remedies Requested

LRWC calls on the Government of Turkey to:

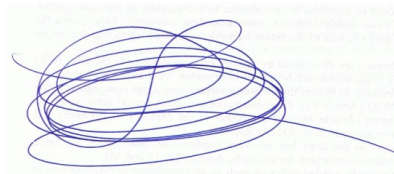
- a. Guarantee in all circumstances the physical and psychological well-being of Ms. Fincancı ;
- b. end all forms of harassment, including at the judicial level, against Ms. Fincancı, others signatories to the Declaration and against all human rights defenders in Turkey;
- c. Immediately and unconditionally release Ms. Fincancı and vacate her conviction;
- d. Comply with all the provisions of the UDHR, ICCPR and ECHR. ;
- e. cease the widespread systematic campaign to target lawyers and other human rights defenders in Turkey with wrongful prosecutions on the basis of illegitimate charges in order to subject them to arbitrary imprisonment.

Thank you for your prompt attention to this important matter.

All of which is respectfully submitted:



Brian M. Samuels, Q.C., 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
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

Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression
Mr. David Kaye
freedex@ohchr.org

Working Group on Arbitrary Detention

Mr. José Guevara
Ms. Leigh Toomey
Ms. Elina Steinerte
Mr. Sètondji Adjovi
Mr. Seong-Phil Hong
wgad@ohchr.org

