

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

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Re: Release Selçuk Kozağaçlı and 11 other lawyers from arbitrary detention

Dear President Erdogan and Minister of Justice Gül,

We write on behalf of Lawyers Rights Watch Canada (LRWC), a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law through advocacy, education, and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nation.

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 and Turkey's own Constitution. Communications to the Government of Turkey have been made by LRWC regarding the cases of: Şebnem Korur Fincancı, Ramazan Demir, Erin Keskin, Mustafa Aydın, 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 the UN Human Rights Council and Special Procedures regarding widespread persecution of lawyers, journalists and other human rights defenders through wrongful prosecutions and convictions, arbitrary detention and other grave rights violations.

We now write to the arrest and detention of Selçuk Kozağaçlı and eleven (11) other lawyers, some of whom are members of Progressive Lawyer's Association (ÇHD) and

some of whom work at People's Law Office (HHB). These other lawyers include: Aycan Çelik, Aytaç Ünsal, Behiç Aşçı and Ahmet Mandacı.

Background

Selçuk Kozağaçlı is a lawyer, human rights defender and member of the People's Law Office. He is well known for working on the "Soma Mine" disaster, the worst mine disaster in Turkey's history, in which 301 miners were killed. He is also the chair of the Progressive Lawyers' Association (ÇHD), an association which focuses on the right to life and advocates for the prevention of all types of attacks on fundamental rights and human dignity. The ÇHD was shut down on 22 November 2016 by Statutory Decree No. 677 issued under the State of Emergency.

Following is a brief chronology of the events, as they have been provided to us, which are the subject matter of this letter:

- In September 2017, following an investigation of 20 lawyers registered as members of the Ankara, Istanbul, Izmir and Diyarbakir bar associations, 17 lawyers were arrested. These lawyers include: Ebru Timtik, Didem Baydar Ünsal, Ahmet Mandacı, Aycan Çiçek, Ayşegül Çağatay, Aytaç Ünsal, Behiç Aşçı, Ezgi Çakır, Günay Dağ, Naciye Demir, Süleyman Gökten, Şükriye Erden, Yağmur Erener Evin, Yaprak Türkmen and Zehra Özdemir;
- In September 2018, those 17 lawyers were tried in court;
- all 17 lawyers were acquitted;
- eight hours after that court decision, the same court issued an arrest warrant for 12 of the lawyers, six of whom were arrested;
- following intervention by the Ministry of Justice, the court reversed the acquittals;
- the Chief Justice and the members of the court that had acquitted the 17 lawyers were then summarily removed from office and replaced by a Chief Justice and other members of the court selected by the government;
- shortly after being re-arrested, these 12 lawyers were tried again in December 2018, by the newly appointed members of the court. During the hearing, some of the defendants and their attorneys were prevented from attending the hearing and witnesses were heard in the absence of the defendants and their attorneys;
- the court file refers to digital evidence, but that digital evidence was not placed before the court or revealed to the defendants;
- the defendants were not given the right to defend themselves or to speak before the court;
- the chair of the Izmir bar was physically assaulted by the police, in the presence of the court;
- one of the 12 lawyers, Selçuk Kozağaçlı has been imprisoned in solitary confinement in a single-person cell for more than a year.

Denial of Right to Fair and Public Trial before Independent Tribunal

The detention and conviction of these lawyers is unlawful as resulting from;

- a. unlawful interference by the Minister of Justice with the acquittals; and,

- b. denial of access to an independent, impartial and competent judge/tribunal to determine charges and rights; and,
- c. imposition of conviction and sentence by a court lacking requisite independence to determine criminal changes; and,
- d. denial of fair trial rights to notice, make full answer and defense, be present and legal representation.

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,¹

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.²

The *Universal Declaration of Human Rights* (UDHR), the *International Covenant on Civil and Political Rights* (ICCPR) and the *European Convention on Human Rights* (ECHR) all contain protections for defendants in criminal proceedings. It is a basic and fundamental human right that all criminal trials be conducted in a fair and public manner, before an independent tribunal.

For example, the UDHR states, in Article 10:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

As a further example, the ECHR, in Article 6 states,

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

The ICCPR provides in Article 14,

¹ <https://www.ibanet.org/ibahri.aspx>

² 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.

In the determination of any criminal charges against him, or of his rights and obligation in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law....

Turkey ratified the ICCPR on September 23, 2003, is a signatory to the ECHR and is legally bound to respect and to enforce the rights contained in those treaties. The UDHR was adopted by the United Nations General Assembly in 1948. Turkey, as a member of the UN, has accepted its terms.

The Constitution of the Republic of Turkey, at Article 9, states:

Judicial power shall be exercised by independent and impartial courts on behalf of the Turkish Nation. [Emphasis added]

The Constitution of the Republic of Turkey, according to Article 11, provides that “The provisions of the Constitution are fundamental legal rules binding upon legislative, executive and judicial organs, and administrative authorities and other institutions and individuals.”

Judicial independence requires that judges be empowered and allowed to make decisions and carry out their judicial duties without interference, intimidation, threats or coercion from the state. Furthermore, it is a direct violation of the Constitution, the UDHR, ICCPR, and ECHR for Turkey to take any steps to influence or overturn by any process other than appeal, the independent decisions of its courts. The intervention of the Minister of Justice, and the sacking and replacement of the Chief Justice and other members of the court, causing the court to reverse its decision, is a flagrant violation of the ECHR, ICCPR, UDHR and the Constitution.

These lawyers were duly acquitted by the Turkish court, only to have the court reverse itself after the appointment of judges sympathetic to the position of the government. Their acquittals should be reinstated immediately. The reversal by the court should be considered a nullity, given that it is in violation of Turkey’s Constitution.

Unlawful Conviction and Arbitrary Detention

LRWC views the conviction and sentencing of these lawyers as illegitimate and a violation of the internationally protected rights of the defendants and of Turkey’s international human rights obligations on the following additional bases:

1. The failure to allow the defendants to speak in court and to defend themselves is a violation of fundamental human rights of the defendants, including the rights to liberty and security of the person, equal protection under the law, fair and public trial before an independent tribunal, and protection against arbitrary arrest and detention. The manner in which these defendants were detained and tried cannot provide legal justification for conviction or deprivation of liberty;
2. the entire legal process as described above violates the exercise of rights protected by the UDHR, the ICCPR and the ECHR;

3. the assault against the chair of the Izmir bar violates rights to security of the person;
4. the imprisonment of Selçuk Kozağaçlı in solitary confinement in a single-person cell for more than a year violates the internationally recognized right prohibiting torture and cruel, inhuman and degrading treatment.

False Charges

Selçuk Kozağaçlı was falsely charged with membership of an armed terrorist organisation, namely the Revolutionary People's Liberation Party (DHKP-C). The indictment claims that the People's Law Office is a sub-structure of the DHKP-C. The indictment further claims that the People's Law Office was established based on instructions from the senior executive board of the DHKP-C, known as the Central Committee.

However, it is clear that he has been detained because of his work as a human rights defender.

The Basic Principles on the Role of Lawyers³ states at clause 18, that "Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

Lawyers should not be charged or convicted based on the fact that they defend clients charged or convicted of criminal or terrorist acts or disliked by the government. Lawyers should not face persecution or prosecution for providing legal representation.

Conclusion

The convictions and sentencing of these lawyers are part of an on-going campaign of widespread and systematic persecution 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.

Remedies Requested

LRWC calls on the Government of Turkey to:

- a. immediately and unconditionally release these lawyers and vacate their convictions;
- b. guarantee in all circumstances the physical and psychological well-being of these lawyers;

³ 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

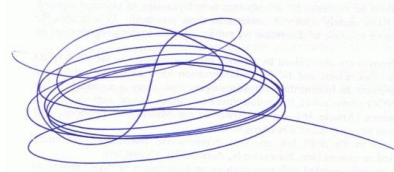
- c. end all forms of harassment, including at the judicial level, against these lawyers, others signatories to the Declaration and against all human rights defenders in Turkey;
- d. comply with all the provisions of the UDHR, ICCPR and ECHR;
- e. cease the widespread systematic campaign to target lawyers 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:



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