

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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31 December 2016

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Dear President Erdogan and Ministers Davutoglu, Yıldırım, Bozdağ, and Soylu:
Re: Dr. İftar Gözaydın

TURKEY VIOLATES INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

We write on behalf of Lawyers' Rights Watch Canada ("LRWC"). LRWC is a committee of lawyers and others that promotes human rights and the rule of law 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 very recently learned that Dr. İřtar Gözaydın was taken into custody on 20 December 2016. Dr. Gözaydın is particularly known for her positions against capital punishment and mob violence in Turkey. She is a professor of law and politics and founder of the human rights NGO the Helsinki Citizens Assembly. She was also the Head of the Department of Sociology at Gediz University, Izmir Province, until she was relieved of her this position when the University was closed down under the State of Emergency on 21 July 2016.

LRWC is writing to express grave concern that the detention of Dr. Gözaydın 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 from state and non-state actors.

According to the information received, Dr. İřtar Gözaydın was formally arrested on suspicion of "being a member of an armed terror organisation" on the basis of alleged testimonies from a secret witness and an intelligence report, and was brought on the same day to İstanbul by plane and detained at the police remand centre until 28 December, when she was returned to Izmir. LRWC understands that she has since been detained at řakran prison, Izmir Province. We understand that Dr. İřtar Gözaydın was denied proper access to her lawyer during the first days of her detention, and that when her lawyer was able to meet her on the second day of her detention, he was not able to access the investigation file. Furthermore, to date her husband has been refused permission to visit her while in detention.

While the investigation into Dr. İřtar Gözaydın is ostensibly based on allegations that she is connected to terrorist organizations, it is clear that her detention is a form of retaliation for her human rights advocacy. LRWC urges the Turkish authorities to immediately and unconditionally release Dr. Gözaydın. It is beyond question that the detention of Dr. İřtar Gözaydın is arbitrary and constitutes harassment.

Until she is released, LRWC calls upon the Turkish authorities to ensure her physical and psychological well-being. We also urge you to ensure that any proceedings against her are carried out in full compliance with her right to a fair trial, as protected under international law.

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

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. □ 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).

To uphold its international obligation to guarantee enjoyment of rights protected by the ICCPR to all people within its territory, Turkey must ensure Dr. İřtar Gözaydın’s right to legal representation. Article 14(3) (d) of the ICCPR guarantees the right of every person, "to...defend himself in person or through legal assistance of his own choosing." It is a widely accepted principle of international law that states must adopt and maintain effective measures to ensure the safety and independence of lawyers and guarantee their freedom to engage in advocacy without reprisals or interference from any sector including state agents.

The United Nations Basic Principles on the Role of Lawyers (Basic Principles) identify the specific state duties necessary to ensuring the right to legal representation.² Compliance with the Basic Principles is a fundamental pre-condition to fulfillment 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.

LRWC emphasizes the following international legal principles included in the Basic Principles:

1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

The arrest of Dr. Gözaydın is in direct contravention of these Basic Principles.

Turkey’s Constitution includes provisions that must be used to interpret its domestic law, specifically:

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 Atatürk, 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

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.

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]

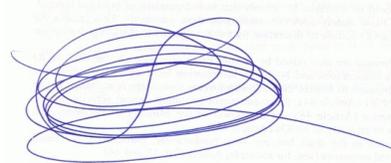
LRWC understands that Turkey is facing some difficult challenges, including a recent coup attempt. These challenges cannot, and should not, justify the suspension or derogation of internationally protected human rights. In fact, the Basic Principles outlined above were designed specifically to protect the citizens of every country, including Turkey, from arbitrary and unfair treatment by their own government in times of turmoil. The UN Human Rights Council has confirmed that states have a duty to pursue the “complementary and mutually reinforcing objectives” of effective counter-terrorism measures and the protection of human rights.³To suspend or ignore the right of an accused person to timely and confidential access to and a proper defense by a lawyer of his or her choice is to render those Basic Principles meaningless and to be in violation of Turkey’s international legal obligations.

LRWC respectfully calls on the Government of Turkey to consider the above noted international law obligations and ensure that these lawyers are not deprived of their liberty or ability to practice law. We call on Turkey to ensure **the immediate unconditional release of Dr. İřtar Gözaydın.**

All of which is respectfully submitted,



Brian M. Samuels, Barrister and Solicitor



Gail Davidson, LRWC Executive Director

³ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 32, Human Rights, Terrorism and Counter-terrorism*, July 2008, No 32, available at: <http://www.refworld.org/docid/48733ebc2.html>.