

BY EMAIL & BY POST & BY FAX

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Date: 04/05/2016

FOR THE ATTENTION OF:

- **Special Rapporteur on the Independence of Judges And Lawyers**
- **Special Rapporteur on the Situation of Human Rights Defenders**
- **Special Rapporteur on the Promotion and Protection of the Right to Freedom of Expression**
- **Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
- **Working Group on Arbitrary Detention**
- **Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism**

Dear Sir/Madam,

URGENT ACTION: Unlawful and arbitrary arrest and detention of two human rights lawyers in Turkey, Ms. Ayşe Acinikli and Mr. Ramazan Demir.

1. We are writing to express our grave concern regarding the unlawful and arbitrary arrest of two Turkish lawyers, namely, Ms. Ayşe Acinikli and Mr. Ramazan Demir, held in pre-trial detention since 6 April 2016. The arrest and detention of these lawyers is the latest of a series of actions unlawfully carried out by the Turkish State against lawyers and other human rights defenders for allegedly supporting the Kurdistan Workers' Party (PKK).

Background

2. Since 2009, the Government of Turkey has carried out a number of security operations against human rights defenders, including lawyers. Such operations have resulted in the trial of 46 lawyers and the detention of 34 others between 2009 and

2011.¹ Harassment against human rights lawyers in the form of arrests, detention orders and politically motivated prosecutions continued in the following years, with 16 lawyers arrested and 9 detained in 2013.

3. The situation has worsened due to the collapse of the ceasefire agreement between the PKK and the Turkish Government in July 2015. Turkey responded to the crisis with severe security measures, which have had a particularly strong impact on the civilian population. Turkish forces have also regularly launched operations inside close-knit Kurdish neighbourhoods in Turkey's south-eastern towns. Between 16 August 2015 and 18 March 2016 there were 63 officially confirmed, open-ended and round-the-clock curfews in at least 22 districts of seven cities in south-eastern Turkey. According to the data provided by the Documentation Centre of the Human Rights Foundation of Turkey, between 16 August 2015 (the date of first declared curfew) and 18 March 2016 at least 310 civilians lost their lives in areas where curfews were officially declared.²
4. During this crisis, a number of arrests have been carried out against lawyers and other human rights defenders, who have been falsely charged under Turkey's anti-terrorism law as part of national security operations.
5. These arbitrary arrests and detentions are part of a wider pattern of attacks which are serving to suppress opposition, prevent public debate, criminalize peaceful expression and replace the rule of law with the arbitrary use of power. In particular, such attacks have targeted human rights organisations and defenders who have criticised the human rights violations perpetrated by State authorities during anti-terrorism operations and have advocated for a peaceful resolution of the conflict between the Government of Turkey and the PKK.
6. The harassment and unlawful arrests and detention of lawyers and human rights activists appear to be intended to prevent them from continuing their representation of clients being investigated under terrorism charges and/or to punish them for such work.³

¹ Lawyers for Lawyers, *Turkey – Police Raid on and Arrest of 9 Lawyers*, 16 March 2016. Available at <http://www.advocatenvooradvocaten.nl/11446/turkey-police-raid-on-and-arrest-of-9-lawyers/> (last accessed on 19 April 2016).

² Human Rights Foundation of Turkey, *Fact Sheet on Declared Curfews Between August 16th 2015 and March 18th 2016 and Civilians Who Lost Their Lives*. Available at <http://en.tihv.org.tr/fact-sheet-on-declared-curfews-between-august-16th-2015-and-march-18th-2016-and-civilians-who-lost-their-lives/> (last accessed on 18 April 2016).

³ Lawyers for Lawyers, *Turkey – Lawyers Ramazan Demir and Ayse Acinikili Detained Again*, 7 April 2016. Available at <http://www.advocatenvooradvocaten.nl/11513/turkey-lawyers-ramazan-demir-and-ayse-acinikili-detained-again/> (last accessed on 19 April 2016).

Case studies

7. On 16 March 2016, nine lawyers were arrested and their houses raided by the police in Istanbul, ostensibly as part of a broader anti-terrorism operation directed against 89 people in several cities.⁴ The lawyers, most of whom are members of the Libertarian Lawyers Association (OHD),⁵ were charged with membership of an illegal organisation reportedly in relation to acts alleged to have taken place between 2011 and 2014. During their interrogation, the lawyers were questioned about media interviews, cases brought before the European Court of Human Rights (ECtHR) and private meetings with their clients.⁶ The Turkish authorities have not revealed the grounds behind the alleged offences that led to the arrest and detention of the lawyers. The case file remains confidential pursuant to article 153/2 of the Turkish Code of Criminal Procedure, no 5271.⁷
8. On 18 and 19 March 2016, nine lawyers were conditionally released by the Istanbul 1st Criminal Court of Peace. The Court concluded that evidence collected between 2011 and 2014 was not sufficiently reliable to justify pre-trial detention on suspicion of belonging to an illegal organization and that there was no risk of flight. The Court further concluded that, although there was some evidence supporting allegations that they had engaged in ‘propaganda of a terrorist organization’, pre-trial detention was not appropriate. The lawyers who were arrested were due to appear in court the following day as advocates for a further 46 lawyers who have been charged with terrorist offences arising out of their representation of Abdullah Öcalan, the leader of the PKK. This trial has been going on since October 2011 and the timing of their lawyers’ arrest is highly relevant and suspicious.
9. On 21 March 2016, the public prosecutor appealed the decision to the Istanbul 1st Criminal Court of Peace. The appeal was rejected. On the same day, without notice to the legal representatives of the lawyers, the prosecutor appealed for reversal of the pre-trial orders to the Istanbul 2nd Criminal Court of Peace. In the absence of, and without the lawyers having had any opportunity to make submissions against their further detention, the Istanbul 2nd Criminal Court of Peace summarily reversed the

⁴ World Organisation Against Torture, *Turkey: Judicial Harassment of Nine Lawyers of the Association of Lawyers for Freedom*, 23 March 2016. Available at <http://www.omct.org/human-rights-defenders/urgent-interventions/turkey/2016/03/d23683/> (last accessed on 19 April 2016).

⁵ Lawyers for Lawyers, *Turkey – Police Raid on and Arrest of 9 Lawyers*, 16 March 2016. Available at <http://www.advocatenvooradvocaten.nl/11446/turkey-police-raid-on-and-arrest-of-9-lawyers/> (last accessed on 19 April 2016).

⁶ World Organisation Against Torture, *Turkey: Judicial Harassment of Nine Lawyers of the Association of Lawyers for Freedom*, 23 March 2016. Available at <http://www.omct.org/human-rights-defenders/urgent-interventions/turkey/2016/03/d23683/> (last accessed on 19 April 2016).

⁷ FIDH, *Turkey: Judicial Harassment of Nine Lawyers, Members of the Association of Lawyers for Freedom*, 23 March 2016. Available at <https://www.fidh.org/en/issues/human-rights-defenders/turkey-judicial-harassment-of-nine-lawyers-members-of-the-association> (last accessed on 19 April 2016).

decision to release the lawyers. In a decision described as ‘cut and paste’ by the legal representatives of the lawyers, the Court indicated that the evidence on the charge of belonging to an illegal organization was sufficient to justify pre-trial detention and that risks of flight and interference with evidence had been established with respect to four lawyers, namely Hüseyin Boğatekin, Ayşe Acinikli, Ramazan Demir and Ayşe Gösterişlioğlu.⁸ The Court then issued an arrest warrant against these four lawyers on 22 March 2016. Mr. Hüseyin Bogatekin and Ms. Ayse Gösterişlioğlu were re-arrested and remanded in custody by the Istanbul 8th Criminal Court of Peace on the same day. Ms. Ayşe Gösterişlioğlu was released on 28 March 2016 and Mr. Hüseyin Boğatekin was released on 1 April 2016 upon appeal against the pre-trial detention orders⁹

10. On 6 April 2016, the two other lawyers, in relation to whom this Urgent Action is submitted, Ms. Ayşe Acinikli and Mr. Ramazan Demir, turned themselves in to the Istanbul Public prosecutor Office. The public prosecutor referred them to the Istanbul 3rd Criminal Court of Peace and requested that the lawyers be taken into custody. They were remanded in custody by the Istanbul 3rd Criminal Court of Peace on the same day. Since the investigation files have been classified as confidential, there is no precise information available concerning the specific charges or allegations against the two lawyers. However, it is thought that they likely relate to the provision of legal representation to persons prosecuted and/or convicted on terrorism charges.¹⁰ The prosecutor opened the case against the 12 lawyers and 38 other defendants. The first hearing will take place on June 22nd 2016 before Istanbul 14th Heavy Penal Court.

11. Mr. Ramazan Demir has been arrested and prosecuted on other occasions. He has been investigated and tried for “insulting an official at work”, after having represented Kurdish journalists and having argued that the prosecutor was not in a position to pass judgement on what did or did not constitute journalism, as he lacked knowledge about the profession.

⁸ Lawyers’ Rights Watch, *Turkey: Arbitrary Arrest and Detentions of Irfan Arasan, Ayse Acinikli, Huseyin Bogatekin, Serif Celik, adem Calisci, Tamer Dogan, Ayse Gosterislioglu, Mustafa Ruzgar and Ramazan Demir*, 24 March 2016. Available at <http://www.lrwc.org/turkey-arbitrary-arrests-and-detentions-of-irfan-arasan-ayse-acinikli-huseyin-bogatekin-sefik-celik-adem-calisci-tamer-dogan-ayse-gosterislioglu-mustafa-ruzgar-and-ramazan-demir-letter/> (last accessed on 19 April 2016).

⁹ IMC TV, *OHD Avukatlarından Huseyin Bogatekin Tahliye Edildi*, 1 April 2016. Available at <http://www.imctv.com.tr/ohd-avukatlarindan-huseyin-bogatekin-tahliye-edildi/> (last accessed on 18 April 2016).

¹⁰ BirGun, *Hedef Gösterilen Avukatlar Gözaltında*, 17 March 2016. Available at <http://www.birgun.net/haber-detay/hedef-gosterilen-avukatlar-gozaltinda-106503.html> (last accessed on 19 April 2016).

12. When the arrest warrants were issued against Mr. Ramazan Demir and Ms. Ayşe Acinikli, Mr. Ramazan Demir decided to hide and complete his work for his clients before turning himself in on 6 April 2016. Mr. Ramazan Demir, in an interview via personal messages on Twitter, stated that “*I had a deadline for applications at the European Court of Human Rights (ECtHR) connected to earlier cases I started concerning the violent situation in Cizre. As a lawyer I have my responsibilities to my clients, which is more important to me than an arrest warrant against me.*”¹¹

Right to liberty and security

13. Domestic law: The right to liberty and security, protecting an individual’s right not to be arbitrarily prosecuted and deprived of their liberty, is recognised under the Constitution of Turkey.¹² Article 19 of the Turkish Constitution protects everyone’s right to liberty and security: according to paragraph 3, *conditio sine qua non* for a lawful arrest is the presence of strong evidence of the commission of a crime. Article 90 of the Constitution of Turkey provides that international agreements, such as the International Covenant on Civil and Political Rights (ICCPR) and European Convention on Human Rights (ECHR), “duly put into effect carry the force of law.”

14. Moreover, under Article 100 of the Turkish Code of Criminal Procedure,¹³ an arrest can be carried out only if facts show the existence of a strong suspicion of a crime and one of the listed grounds for arrest is present. Such grounds are as follows: specific facts supporting the suspicion that the suspect or accused is going to flee, that s/he will attempt to destroy, hide or alter the evidence, or that s/he will attempt to put pressure on witnesses, victims or other individuals.

15. International law: The right to liberty and security is protected under most existing human rights law instruments, both at an international and at a regional level. Article 9 of the Universal Declaration of Human Rights (UDHR),¹⁴ Articles 9 and 14 of the

¹¹ Beacon, *Kurdish Lawyers in Turkey - It is reality that my life is in danger*, 6 April 2016. Available at <https://www.beaconreader.com/frederike-geerdink/kurdish-lawyers-in-turkey-its-a-reality-that-my-life-is-in-danger> (last accessed on 18 April 2016).

¹² *Constitution of Turkey*, available at http://www.hri.org/docs/turkey/part_ii_2.html (last accessed on 19 April 2016).

¹³ *Turkish Code of Criminal Procedure*, available at <http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi5kovg44vMAhUHbBokHSo0BwMQFggdMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F17788&usg=AFQjCNH0fibE4WxXgabmlwqOjukpyOXObA&sig2=gCxh2lWoP9XMjelh0cdrWQ&cad=rja> (last accessed on 19 April 2016).

¹⁴ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948. Available at <http://www.refworld.org/docid/3ae6b3712c.html> (last accessed on 19 April 2016).

ICCPR,¹⁵ and Article 5 of the ECHR¹⁶ guarantee everyone's right to liberty and security and prohibit any arbitrary violation of such rights.

16. Application to the facts of the case: The arrest and pre-trial detention of Ms. Ayşe Acinikli and Mr. Ramazan Demir are unlawful both under Turkey's domestic laws as well as in relation to the State's international human rights obligations. In particular, the arrest warrants issued by Istanbul's Prosecutor Office against the two lawyers are unlawful, as they seem to have been issued in order to harass Ms. Ayşe Acinikli and Mr. Ramazan Demir, who appear to be being prosecuted and punished merely for carrying out their professional obligations. Their arrests also constitute an unlawful interference of the rights of their clients to petition the European Court of Human Rights under the ECHR. It is a fundamental principle that lawyers should not be identified with their clients or their clients' causes¹⁷

17. Moreover, it is particularly worrying that the re-arrest of Ms. Ayşe Acinikli and Mr. Ramazan Demir came only days after President Erdogan's call for the definition of terrorism to be broadened. President Erdogan has stated that there is no difference "between a terrorist holding a gun or a bomb and those who use their position and pen to serve the aims", and that "titles as an MP, an academic, an author, a journalist do not change the fact that they are actually terrorists".¹⁸

18. The UN Special Rapporteur on the Independence of Judges and Lawyers, Gabriela Knaul, in the report on her 2011 visit to Turkey,¹⁹ stated that "the increase in the number of cases of arrest, detention and prosecution under terrorism-related charges of lawyers defending individuals accused of terrorism-related crimes is of particular concern".²⁰

19. After a recent nine day visit to Turkey in April 2016, Nils Muiznieks, the Council of Europe Commissioner for Human Rights has stated that "respect for human rights

¹⁵ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171. Available at <http://www.refworld.org/docid/3ae6b3aa0.html> (last accessed on 19 April 2016). Turkey ratified the ICCPR on 23 September 2003 with one reservation concerning Article 27 on the right of minorities and 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.

¹⁶ Council of Europe, *European Convention on Human Rights*, 4 November 1950, ETS5. Available at <http://www.refworld.org/docid/3ae6b3b04.html> (last accessed on 19 April 2016).

¹⁷ United Nations Basic Principles on the Role of Lawyers, principle 18. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (accessed on 28 April 2016).

¹⁸ Amnesty International - Human Rights in Turkey, *In Turkey, Freedom of Expression Early Casualty of "Anti-terror Campaign"*, 25 March 2016. Available at <http://humanrightsturkey.org/2016/03/25/in-turkey-freedom-of-expression-early-casualty-of-anti-terror-campaign/> (last accessed on 19 April 2016).

¹⁹ General Assembly, *UN Special Rapporteur on the Independence of Judges and Lawyers – Mission to Turkey*, A/HRC/20/19/Add.3, 4 May 2012.

²⁰ General Assembly, *UN Special Rapporteur on the Independence of Judges and Lawyers – Mission to Turkey*, A/HRC/20/19/Add.3, 4 May 2012; para 65.

has deteriorated at an alarming speed in recent months in the context of Turkey's fight against terrorism.”²¹ He went on to criticise recent “systematic rhetoric, smear campaigns and ongoing investigations” against human rights defenders and lawyers, indicating that “[i]n a context where there is a lot of misinformation, manipulation and conflicting opinions, in particular as to what happened during the curfews, a transparent judicial process which relies on human rights defenders is the main hope for establishing the truth and obtaining redress.”²²

20. As a party to the ECHR and ICCPR, Turkey is legally obligated to ensure that individuals under its jurisdiction enjoy their rights without discrimination. Turkey must ensure that all trials meet fundamental fair trial standards and that all defendants are afforded fundamental fair trial guarantees, including: the right to be presumed innocent until proved guilty; the right not to be arbitrarily arrested or detained; the right to pre-trial release and to be brought to trial within a reasonable time; and the right to obtain a remedy in relation to any violation of these rights. As Turkey is a member of the Council of Europe, the relevant recommendations of the Committee of Ministers on pre-trial detention shall also be taken into account. In particular, the commonplace and unjustified pre-trial detention of defendants, including lawyers, is breaches Turkey's obligations under both the ICCPR and ECHR.

Freedom of lawyers and rule of law

21. At an international level, the rights of lawyers, including their right to liberty and security, are protected by the 1990 United Nations Basic Principles on the Role of Lawyers,²³ which – paired with the Draft Universal Declaration on the Independence of Justice, paragraph 7 of UN Resolution No. 2004/33/19, Recommendation No. 21 of the Committee of Ministers to Member States on the freedom of exercise of profession of lawyer adopted by the European Council in 2000, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa – constitutes the most relevant international instrument clearly recognising the fundamental role of the legal profession in the administration of justice and maintenance of the rule of law.

22. The Basic Principles on the Role of Lawyers underscore that lawyers' enjoyment of the rights and freedoms recognised under the most relevant international human rights instruments, such as the ECHR, ICCPR, UDHR, the United Nations Convention

²¹ Council of Europe, Turkey: security trumping human rights, free expression under threat. Available at: <http://www.coe.int/en/web/commissioner/-/turkey-security-trumping-human-rights-free-expression-under-threat> (accessed 28 April 2016).

²² *Ibid.*

²³ UN Basic Principles on the Role of Lawyers, 1990, available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (last accessed on 13 April 2016).

against Torture, and other Cruel, Inhuman or Degrading Treatment and Punishment, must be guaranteed.

23. The above States are obliged to recognise and uphold the independence of lawyers. Principle 16 states that Governments are under an obligation to ensure that no restrictions, influences, inducements, pressures, threats or interference are to be imposed on lawyers while they are discharging their duties. They must be enabled to carry out their professional activities freely, diligently and fearlessly, without any inhibition or pressure. Lawyers shall enjoy the right to take full and active part in the political, social and cultural life of their country. According to Principle 23, lawyers are entitled to freedom of expression, opinion and association. Moreover, lawyers have the right to take part in public discussions of matters concerning the upholding of international human rights “without suffering professional restrictions”.²⁴ Furthermore, Article 9 of the United Nations Declaration on Human Rights Defenders states that “everyone has the right [...] to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”;²⁵ and Article 11 imposes an obligation on States to ensure everyone’s right “to the lawful exercise of his or her occupation or profession”.²⁶ Lastly, according to Principle 18 of the UN Basic Principles on the Role of Lawyers, “lawyers shall not be identified with their clients or their clients’ causes as a result of discharging their functions”.²⁷

24. Application of the law: The apprehension and detention of Ms. Ayşe Acinikli and Mr. Ramazan Demir constitute serious interferences with their rights and freedoms, as stipulated under the above-mentioned international instruments. By arresting these lawyers, Turkey not only prevents them from exercising their professional duties but also denies their clients the right to be represented by a lawyer of their choice. This in itself constitutes a violation under both Article 6.2 of the ECHR, Article 14 of the ICCPR, and Principle 1 of the UN Basic Principles on the Role of Lawyers, stating that “*all persons are entitled to call upon the assistance of a lawyer of their choice*”.

25. Mr. Ramazan Demir explained in a recent interview regarding his previous arrest in March 2016, that although he had not been questioned specifically about his clients, he was interrogated about the reporting of human rights violations suffered by

²⁴ UN Basic Principles on the Role of Lawyers, 1990, Principle 23. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (last accessed on 13 April 2016).

²⁵ UN General Assembly, Resolution No. A/RES/53/144, 8 March 1999, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last accessed on 13 April 2016).

²⁶ UN General Assembly, Resolution No. A/RES/53/144, 8 March 1999, available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx> (last accessed on 13 April 2016).

²⁷ UN Basic Principles on the Role of Lawyers, 1990, Principle 23. Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> (last accessed on 13 April 2016).

lawyers in Turkey to international bodies, as well as about his role in providing legal support to the Gezi Park protesters who were arrested following the 2013 clashes between the Turkish Police and the people who had gathered in Gezi Park to demonstrate against the authorities.²⁸ This line of questions indicates that Turkish State authorities are using arrests and detentions as tools to prosecute lawyers and other human rights defenders for working on cases alleging human rights violations perpetrated by the Turkish Government. Such conduct by the Turkish State constitutes a breach of Turkey's international obligations to ensure that lawyers are not being prevented from performing their professional functions.

Actions requested

26. We request the Special Rapporteurs to urge the Turkish authorities to withdraw all charges against Ms. Ayse Acinikili and Mr. Ramazan Demir and to call for their immediate release. We further request the Special Rapporteurs to call upon the Turkish authorities to prevent any further form of harassment, including judicial harassment, against Ms. Acinikili and Mr. Demir, as well as other lawyers and human rights defenders in Turkey, and allow them to perform their professional and lawful functions without intimidation or improper interference.
27. We request the Special Rapporteurs to intervene in these grave matters and raise the above issues, as a matter of priority, with the Turkish authorities.
28. We request the involvement of the Special Procedures in this matter to ensure that Turkey immediately stops using oppressive methods against individuals, particularly lawyers and other human rights defenders, who are critical of human rights violations perpetrated by Turkey against the civilian population in the south-east of Turkey. The Special Procedures should intervene to end the climate of fear of prosecution against human rights defenders in Turkey.
29. We request the Special Rapporteurs to call on the Government of Turkey to comply with the provisions of the ECHR, the ICCPR, the UN Basic Principles on the Role of Lawyers and the UN Declaration on Human Rights Defenders.
30. We also request Special Rapporteurs to urge the Turkish Government to drop any proposal to further amend Turkey's anti-terrorism laws to broaden the definition of terrorism, particularly insofar as it will allow the continuing criminalisation and prosecution of human rights defenders and lawyers, and to urge Turkey to fully

²⁸ Beacon, *Kurdish Lawyers in Turkey - It is reality that my life is in danger*, 6 April 2016. Available at <https://www.beaconreader.com/frederike-geerdink/kurdish-lawyers-in-turkey-its-a-reality-that-my-life-is-in-danger> (last accessed on 18 April 2016).

comply with its obligations under all the human rights treaties ratified by the Turkish Government, both at a European and international level.

31. We would be grateful if you would kindly notify us of what action you are minded to take on this matter and to inform us, in due course, of any response received from the Turkish State. We would also be grateful if you are able to acknowledge receipt of this letter.

Sincerely,



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