

# 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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September 13, 2017

H.E. Recep Tayyip Erdogan  
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## **Re: Arrest and Detention of Lawyer Didem Unsal and 17 additional lawyers**

We write on behalf of Lawyers' Rights Watch Canada ("LRWC")\* to voice our grave concern over the arrest and detention of lawyer Didem Unsal and 17 additional lawyers. This is a matter of serious injustice to lawyers and to their clients. It is our mandate to speak out when there has been such injustice.

Didem Unsal and the 17 additional lawyers<sup>1</sup> are members of the Peoples Law Office and Umut Law Office. We understand that they were taken into custody as the result of a police raid on the morning of September 12, 2017.

These 18 lawyers who have been taken into custody have been representing hunger strike activists Nuriye Gulmen, a professor of literature, and Semih Ozakca, a primary school teacher, who were themselves arrested on May 23, 2017.

We are advised that Gulmen and Ozakca are scheduled to be on trial in Ankara on September 14. That hunger strike has lasted for more than six months.

The timing of the arrests, coming two days before these lawyers are scheduled to defend the hunger strikers in court, cannot be coincidental. It is clearly a thinly veiled attempt to deprive these hunger strikers of a proper defence. This is a high profile case, for which more than 2,000 lawyers had applied to defend these defendants, due to the symbolic importance of the case.

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<sup>1</sup> Aytac Unsal, Ahmet Mandaci, Yagmur Ereren, Barkın Timtik, Ebru Timtik, Şükriye Erden, Engin Gökoğlu, Ezgi Çakır, Süleyman Gökten, Ozgur Yılmaz, Oya Aslan, Ayşegül Çağatay, Behiç Aşçı, Aycan Çiçek, Günay Dağ, Zehra Özdemir, Özgür Yılmaz

**Release lawyers Didem Unsal, Aytac Unsal, Ahmet Mandaci, Yagmur Ereren, Barkın Timtik, Ebru Timtik, Şükriye Erden, Engin Gökoğlu, Ezgi Çakır, Süleyman Gökten, Ozgur Yılmaz, Oya Aslan, Ayşegül Çağatay, Behiç Aşçı, Aycan Çiçek, Günay Dağ, Zehra Özdemir, and, Özgür Yılmaz** 1

Human rights organizations note that the arrests of these additional lawyers are the latest in a series of human rights defenders, journalists, academics and activists detained in Turkey. The media has reported that since July 2016, authorities in Turkey have arrested approximately 50,000 people and fired or suspended 150,000 people.

LRWC urges Your Excellency to comply with Turkey's obligations under international human rights laws, including the United Nations' (UN) *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Article 18 states:

Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

Article 23 provides:

Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization.

Furthermore, as a party to the *International Covenant on Civil and Political Rights* (ICCPR)<sup>2</sup>, the *Optional Protocol to the International Covenant on Civil and Political Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the *European Convention on Human Rights* (ECHR),<sup>3</sup> Turkey is legally obligated to ensure that individuals within its territory enjoy, without discrimination, rights to: be presumed innocent, freedom from arbitrary arrest or

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<sup>2</sup> International Covenant on Civil and Political Rights, 16 Dec. 1966, U.N. Doc. A/6316, 999 U.N.T.S. 171, entered into force 23 March 1976, online at: <http://www2.ohchr.org/english/law/ccpr.htm>.

<sup>3</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222, entered into force 3 September 1953, online at: <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=005&CM=7&DF=24/07/2012&CL=ENG>.

detention, pre-trial release and 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 and release also apply.

Arrests and detentions by Turkish authorities must comply strictly with the requirements of the ICCPR and the ECHR. The European Court of Human Rights has held in relation to the lawfulness of arrest and detention, that “lawful” and “in accordance with a procedure prescribed by law” in Article 5(1) of the ECHR requires,

not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of Article 5 and not arbitrary... In addition, given the importance of personal liberty, it is essential that the applicable national law meet the standard of “lawfulness” set by the Convention, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail...<sup>4</sup>

Similarly, the UN Human Rights Committee has clarified that “remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances”<sup>5</sup> and that “[p]re-trial detention should be an exception and as short as possible”<sup>6</sup> and must be lawful, reasonable and necessary in all the circumstances, “for example, to prevent flight, interference with evidence or the recurrence of crime”.<sup>7</sup> The Human Rights Committee, affirmed that pre-trial detention should remain the exception and that bail should be granted,

except in situations where the likelihood exists that the accused would abscond or tamper with evidence, influence witnesses or flee from the jurisdiction of the State party”... The mere assumption by a State party that the author would interfere with the investigations or abscond if released on bail does not justify an exception to the rule in article 9, paragraph 3, of the Covenant.<sup>8</sup>

LRWC urges the Government of Turkey to:

- a. immediately and unconditionally withdraw all charges against Didem Unsal, Aytac Unsal, Ahmet Mandaci, Yagmur Eren, Barkın Timtik, Ebru Timtik, Şükriye Erden, Engin Gökoğlu, Ezgi Çakır, Süleyman Gökten, Ozgur Yılmaz,

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<sup>4</sup> *Steel and Others v. the United Kingdom* (App. No. 67/1997/851/1058), judgment of 23 September 1998, Reports 1998-VII, p. 2735, at para. 54

<sup>5</sup> This is from the LRWC paper of 13 July 2012, “Arrest and Detention of Lawyers in Turkey,” para. 19, which does not seem to have an accurate citation for this particular quote.

<sup>6</sup> CCPR General Comment No. 8, supra note 31, at para. 3.

<sup>7</sup> Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, at para. 9.8

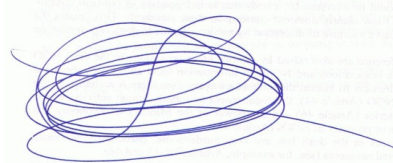
<sup>8</sup> Communication No. 1178/2003, *Aleksander Smantser v. Belarus*, at para. 10.3

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Oya Aslan, Ayşegül Çağatay, Behiç Aşçı, Aycan Çiçek, Günay Dağ, Zehra Özdemir, and, Özgür Yılmaz;

- b. immediately and unconditionally release these lawyers who are in pre-trial detention or remain in police custody;
- c. guarantee all of the procedural rights that should be accorded to these 18 lawyers in accordance with their right to a fair trial;
- d. ensure that these 18 lawyers are afforded regular access to their lawyers and family;
- e. put an end to all acts of harassment against these 18 lawyers and all other lawyers in Turkey;
- f. guarantee in all circumstances the physical and psychological integrity of these lawyers;
- g. ensure that all lawyers in Turkey can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments, including the ICCPR and the ECHR.

All of which is respectfully submitted:



Brian M. Samuels, Barrister and Solicitor    Gail Davidson, LRWC Executive Director  
(British Columbia, Canada)

*\*\*Lawyers' Rights Watch Canada ("LRWC") is a committee of Canadian lawyers who promote human rights and the rule of law by providing support internationally to human rights defenders in danger. LRWC promotes the implementation and enforcement of international standards designed to protect the independence and security of human rights defenders around the world. In its work, LRWC campaigns for lawyers whose rights, freedoms or independence are threatened as a result of their human rights advocacy; produces legal analyses of national and international laws and standards relevant to human rights abuses against lawyers and other human rights defenders; and works in cooperation with other human rights organizations. LRWC is a non-*

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