

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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October 30, 2017

H.E. Recep Tayyip Erdogan
President of the Republic of Turkey
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Re: LRWC seeks immediate release of Amnesty Chair Taner Kiliç

We write on behalf of Lawyers' Rights Watch Canada ("LRWC")* to voice our grave concern over the arrest and continued detention of Mr. Taner Kiliç. This is a matter of serious injustice. It is our mandate to speak out when there has been such injustice.

Taner Kiliç is the Chair of Amnesty International Turkey. We understand Mr. Kiliç was taken into custody on June 6, 2017 and has been held in custody for approximately four and a half months.

It is public record that Taner Kiliç was arrested by the Anti-Terror Branch of the Izmir police. We understand that he has been formally charged with membership in the "Fethullah Gülen Terrorist Organization".

Amnesty International is an internationally respected and recognized organization, devoted to protection of human rights around the world. Given the symbolic importance of the arrest and detention of the Chair of the Turkey chapter of this organization, Mr. Kiliç's case is a matter of international importance and concern.

Human rights organizations note that the arrest of Mr. Kiliç is but one of many human rights defenders, lawyers, journalists, academics and activists detained in Turkey. Since July 2016, authorities in Turkey have arrested approximately 50,000 people and fired or suspended 150,000 people.

The grounds for his arrest, as we understand, are a political pretext and would not be considered as legitimate grounds for a criminal prosecution in any country governed by the rule of law. The evidence includes the fact that his brother-in-law was an editor of the now closed Zaman newspaper, accused of being 'Gülenist'. In any country that considers itself governed by the rule of law, a person cannot be presumed guilty by association – Mr. Kiliç's brother-in-law's activities are in no way relevant to Mr. Kiliç's guilt or innocence.

We are advised that on 25 October 2017, an Istanbul court issued a decision to conditionally release eight human rights defenders while court proceedings regarding charges continue.

Released are: Ms İdil Eser, Director of Amnesty International/Turkey, Ms Özlem Dalkıran of the Citizens' Assembly, Mr. Günal Kurşun lawyer with the Human Rights Agenda Association, Mr. Veli Acu of the Human Rights Agenda Association, Ms Nalan Erkem lawyer with the Citizens Assembly and Ms İlknur Üstün of the Women's Coalition, and Mr. Ali Gharavi, Mr. Peter Steudtner, nationals of Germany and Sweden. The eight were arrested on 5 July 2017 and accused of membership in “an armed organization with the purpose of committing the offences listed parts four and five of [the Penal Code]”.

We urge you to ensure that Mr. Kiliç is released as well.

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, economics 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)¹, 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),² Turkey is legally obligated to ensure that individuals within its territory enjoy, without discrimination, rights to: the presumption of innocence, freedom from arbitrary arrest or detention, pre-trial release and to fair trial within a reasonable time and the right to obtain a remedy in relation to any violation of these rights. As

¹ 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>.

² 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>.

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 [ECHR], 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...³

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”⁴ and that “[p]re-trial detention should be an exception and as short as possible”⁵ and must be lawful, reasonable and necessary in all the circumstances, “for example, to prevent flight, interference with evidence or the recurrence of crime”.⁶ 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.⁷

LRWC urges the Government of Turkey to:

- a. immediately and unconditionally release Taner Kiliç;
- b. immediately and unconditionally withdraw all charges against Taner Kiliç;
- c. in the alternative, if charges are not dropped, to release Taner Kiliç unconditionally pending trial and to guarantee all of fair trial rights; ;
- d. put an end to all acts of harassment against Mr. Kiliç and all other human rights defenders in Turkey;
- e. guarantee in all circumstances the physical and psychological integrity of Taner Kiliç

³ *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

⁴ 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.

⁵ CCPR General Comment No. 8, supra note 31, at para. 3.

⁶ Communication No. 458/1991, *Albert Womah Mukong v. Cameroon*, at para. 9.8

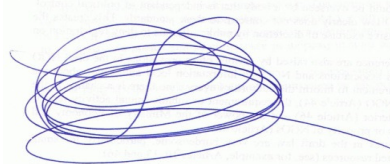
⁷ Communication No. 1178/2003, *Aleksander Smantser v. Belarus*, at para. 10.3

- f. ensure that all lawyers, journalists and other human rights defenders in Turkey can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- g. 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
(British Columbia, Canada)



Gail Davidson, LRWC Executive Director

***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-governmental organization with Special Consultative Status with the Economic and Social Council of the United Nations.*

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