

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

www.lrwc.org – lrwc@portal.ca – Tel: +1 604 738 0338 – Fax: +1 604 736 1175
3220 West 13th Avenue, Vancouver, B.C. CANADA V6K 2V5

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President of Turkey
Recep Tayyip Erdogan
Cumhurbaşkanlığı
06100 Ankara, Turkey
Fax: +90 312 468 5026
Email: cumhurbaşkanligi@tccb.gov.tr

Mr. Abdulhamit Gül
Minister of Justice
06659 Kizilay
Ankara, Turkey
Tel: +90 (0312) 417 77 70
Fax: +90 (0312) 419 33 70
Email: info@adelet.gov.tr

Re: International law obligations to release Mustafa Aydin for medical treatment

Dear President Erdogan and Minister of Justice Gül;

We are writing on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

LRWC is gravely concerned for the health, liberty and safety of Turkish lawyer Mustafa Aydin. Mr. Aydin has been detained since 16 August 2016, and over a year later was charged under Article 314/2 of the Turkish Penal Code. It is our understanding that Mr. Aydin is suffering from prostate cancer and a hernia, and requires immediate expert medical treatment and ongoing care to address his medical conditions and extend his life. LRWC urges the Government of Turkey to immediately release Mr. Aydin so that he can obtain the medical treatment and care he urgently requires.

Background

Mr. Aydin is a lawyer and a member of the Istanbul Bar Association. He was taken into custody by Turkish police on 16 August 2016, and held for 13 days before being officially arrested 29 August 2016 by the Istanbul Peace Criminal Judgeship. The indictment against Mr. Aydin was submitted 10 November 2017 and he is scheduled to appear before the Istanbul 34 Assize Court 27 June 2018.

Mr. Aydin is being charged, under Article 314 (2) of the Turkish Penal Code, with membership in an armed terrorist organization, an offence carrying a penalty of up to 22.5 years in prison. It is believed Mr. Aydin was detained, arrested and charged solely on the basis of allegations of association with the Gulen Movement, designated by the Government of Turkey as an armed terrorist organization. The Penal Code does not define what constitutes an armed terrorist organization or the criteria for what constitutes membership and, absent these definitions, Article 314 (2) can be, and has been, arbitrarily used to criminalize a wide range of legal activities including the lawful exercise of internationally protected rights to expression and association.

This provision of the Turkish Penal Code has been actively abused by the Government of Turkey to detain, arrest and arbitrarily convict lawyers acting for clients or causes unpopular with the authorities or otherwise seen as government critics. The vague formulation and broad interpretation of the law by the Turkish government puts all lawyers and other human rights defenders at risk of arbitrary detention and wrongful prosecution and conviction. Targeting of lawyers and others has become common since July 2016. Between July 2016 and the end of February at least 1525 lawyers in Turkey had been prosecuted, 578 arrested and kept in pre-trial detention and 99 sentenced.¹

Mr. Aydin has not only been denied medical attention, he has also been denied the presumption of innocence, the right to pre-trial release and the right to be brought before a competent court to determine the legality of his detention. The UN Human Rights Committee and the European Court of Human Rights have determined on many occasions that an accused person is entitled to release prior to trial except where a competent court has determined a risk of flight, interference with evidence or recurrence *and* that detention is the only means of guarding against the established risk. Mr. Aydin has been denied the right to a judicial hearing to determine his right to pre-trial release. On that basis alone, his detention is arbitrary. Under the state of emergency laws in Turkey, decisions regarding pre-trial release are being made in the absence of the suspect and his or her lawyer.

The HR Committee emphasized the peremptory or otherwise non-derogable nature of the prohibitions on arbitrary detention, denial of habeas corpus, the presumption of innocence and judicial oversight, and the need to respect ensure under emergency measures,²

“based on the principles of legality and the rule of law,” including the right to habeas corpus: “... the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person for a criminal offence. The presumption of innocence must be respected. In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.”³

Medical Situation

Mr. Aydin has been diagnosed with prostate cancer and a hernia and as a result, he can barely walk and requires urgent surgery and chemotherapy. His prognosis is terminal if he does not receive medical treatment in a timely fashion, following by medical care. Mr. Aydin has not received adequate medical care while in detention, and his treatment has been delayed due to the overcrowding of Turkish prisons. The conditions have also made it difficult to ensure sanitary conditions for his prospective chemotherapy treatment following his surgery.

Mr. Aydin also is the father of a ten-year-old child with Downs syndrome. His son is highly dependent on the emotional support of his father.

International Law Obligations

Turkey has a duty under international law to provide Mustafa Aydin with the health care necessary to ensure his life and wellbeing. The state must provide prisoners with the most appropriate medical treatment in accordance with current professional medical standards so as to ensure life and well being and to prevent imposition of further punishment or suffering not ordered by the courts.

¹ The Arrested Lawyers Initiative, as of 28 February 2018. See <https://arrestedlawyers.org/>.

² UN Human Rights Committee (HR Committee), *General Comment 29, States of Emergency (article 4)*, paras. 11, 13(b), 13(c).
[http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/\\$FILE/G0144470.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/71eba4be3974b4f7c1256ae200517361/$FILE/G0144470.pdf)

³ *Ibid.* at para. 16.

These duties arise from a number of instruments including the *International Covenant on Civil and Political Rights* (“ICCPR”), which Turkey ratified in 2003. Article 6 of the ICCPR obliges states to ensure the inherent right to life of all persons. The HR Committee position⁴ is that adequate or appropriate and timely medical care must be provided to all detainees as part of state duties to ensure the enjoyment by all persons of the following rights:

- Article 6 on the right to life,
- Article 7 on the prohibition on torture or cruel, inhuman or degrading treatment and punishment, and
- Article 10 on the right to human treatment of prisoners.

The United Nations Human Rights Committee (HR Committee) has also stated that “the State party by arresting and detaining individuals takes the responsibility to care for their life.”⁵ Further, the State has a duty to be proactive in providing adequate medical care. The HR Committee has stated that it is “incumbent on States to ensure the right of life of detainees, and not incumbent on the latter to request protection.”⁶

The European Court of Human Rights (“ECtHR”) has defined the state duty to provide access to adequate medical treatment as part of the overarching obligation to protect the right to life of prisoners.

In *Salakhov and Islyamova v. Ukraine*⁷, the ECtHR ruled there was a violation of the right to life in a case where a prisoner was refused medical treatment and later died. Mr. Salakhov was HIV positive and his health in prison began to deteriorate. He suffered from a constant fever, weight loss and other symptoms. The authorities downplayed his complaints. He was handcuffed to his hospital bed throughout his hospitalization. He was released from prison and died two weeks later.

The ECtHR in that case held that the prohibition on torture and cruel, inhuman and degrading treatment imposes an obligation on the State to ensure that the health of a prisoner is adequately secured and that the detention centre and hospital violated his rights by failing to provide Mr. Salakhov with adequate medical care. The Court also found that handcuffing Mr. Salakhov during his hospitalization despite his critical state of health and the fact that he had never behaved violently, also constituted a violation of the prohibition on cruel, inhumane, and degrading treatment.

The ECtHR in the above referenced case found that the State had violated the prisoner’s right to life. The Court affirmed that a state’s positive obligation to protect the right to life is triggered when “the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.”

Turkey has a legal obligation to provide timely and sufficient medical care to Mr. Aydin while he is in detention. Failure to provide treatment is a violation of Mr. Aydin’s right to life. LRWC urges you to take

⁴ See the following cases: HR Committee ‘Concluding Observations: Georgia’ (2002) UN Doc A/57/40 vol I 53 para 78(7); *Pinto v. Trinidad and Tobago* (Communication No. 232/1987) Report of the Human Rights Committee vol 2 UN Doc A/45/40 p. 69 para 12.7; *Kelly v. Jamaica* (2 April 1991) UN Doc CCPR/C/41/D/253/1987 para 5.7; Human Rights Committee ‘Concluding Observations: Portugal’ (2003) UN Doc A/58/40 vol I 56 para 83(11); Human Rights Committee ‘Concluding Observations: Cambodia’ (1999) UN Doc A/54/40 vol I 57 para 306; Human Rights Committee ‘Concluding Observations: Congo’ (2000) UN Doc A/55/40 vol I 43 para 282; Human Rights Committee ‘Concluding Observations: Mongolia’ (2000) UN Doc A/55/40 vol I 49 para 332; Human Rights Committee ‘Concluding Observations: Syrian Arab Republic’ (2001) UN Doc A/56/40 vol I 70 para 81(13).

⁵ *Lantsova v. Russian Federation* (26 March 2002) UN Doc CCPR/C/74/763/1997 para 9.2.

⁶ *Lantsova v. Russian Federation* (note 129) para 9.2

⁷ *Salakhov and Islyamova v. Ukraine*, [2013] ECtHR, Application No. 28005/08, at

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{"itemid":\["001-117134"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-117134#{)

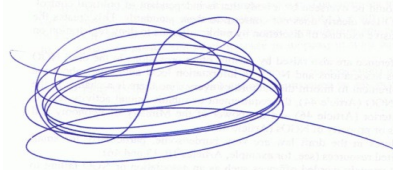
all necessary actions to ensure the immediate release of Mustafa Aydin so he can seek urgent medical treatment and care.

Thank you for your prompt attention to this important matter.

All of which is respectfully submitted:



Brian M. Samuels, Barrister and Solicitor
(British Columbia, Canada)



Gail Davidson, LRWC Executive Director

Copied to:

His Excellency Mr. Ali Naci Koru
Ambassador Extraordinary and Plenipotentiary
Permanent Representative
Chemin du Petit-Saconnex 28B, 1211 Geneva 19
Tel: +41 22 918 50 80
Email: turkey.unog@mfa.gov.tr

Selçuk Ünal
Ambassador of Turkey to Canada
197 Wurtemberg Street
Ottawa, Ontario K1N 8L9, Canada
Tel: +1 (613) 244 24 70
Email: embassy.ottawa@mfa.gov.tr

Chris Cooter
Ambassador of Canada to Turkey, Georgia, Azerbaijan and Turkmenistan
Consulate General of Canada
209 Buyukdere Caddesi
Tekfen Tower
Levent 4, Istanbul
34394 Turkey
Tel: 90-212-385-9700
Email: ISTBL-CS@international.gc.ca

Special Rapporteur on the rights to freedom of peaceful assembly and of association
Ms. Annalisa Ciampi
freeassembly@ohchr.org

Special Rapporteur on the situation of human rights defenders
Mr. Michel Forst
defenders@ohchr.org

Special Rapporteur on the independence of the judges and lawyers
Mr. Diego Garcia-Sayan
SRindependenceJL@ohchr.org