

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations

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Mr. Recep Tayyip Erdoğan

President of the Republic of Türkiye

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Mr. Bekir Bozdağ

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Dear President Erdoğan and Minister of Justice Bozdağ,

Re: Türkiye: Lawyer Dr. Vahit Bicak

I am 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 advocates for the protection of lawyers and other human rights defenders in danger because of their advocacy.

LRWC has written to you in the past with respect to various Turkish lawyers, judges, and other human rights defenders who have either been detained, arrested, charged, and/or imprisoned. The individuals with respect to whom we have written to you include Ramazan Demir, Eren Keskin, Mustafa Aydın, Dr. Sebnem Fincancı, Can Tombul, Taner Kilic, Nurullah Albayrak, Dr. Hidayet Karaca, Ebru Timtik, Aytac Unsal, Dr. İřtar Gözaydın, Turan Canpolat, Özlem Dalkıran, Idil Eser, Günal Kurşun, Aysel Tuğluk, Murat Arslan, Eren Keskin, Adnan Oktar and others.

Dr. Bicak has become the target of a campaign of judicial harassment, most recently having been charged with insulting the memory of a dead person (Art. 130) and her family members (Art. 125) in the 35th Heavy Criminal Court.¹

Background of Dr. Bicak

Dr. Bicak graduated from Ankara University Faculty of Law, Türkiye, and received his PhD from the University of Nottingham Faculty of Law in Great Britain with a thesis titled “A comparative study of the problem of the admissibility of improperly obtained evidence.” Since Turkish law allows academics to practice law, he successfully defended clients in several notorious and high-profile murder, assault, organized crime, and white collar crime cases.

Dr. Bıçak is an internationally known lawyer, having given lectures at many prestigious universities around the world such including the City University of New York and the Fordham Law School in U.S.A., the Maribor University in Slovenia, the Westminster University in London UK, the Police College of Hungary in Budapest, the Police College of Czech Republic, in Prague and the University of Lyon III Faculty of Law in France. He has 12 books published in Turkish and English in the field of criminal law, evidence and human rights, as well as many articles. He has also designed and managed 11 international projects related to improving human rights in Türkiye. He is the former head of Human Right Commission of Türkiye.

Circumstances of this Case

The charges against Dr. Bicak arise from his acting as defence counsel in a murder case. That case involved a male law student who was convicted of having murdered a female research assistant at the office of the research assistant at Çankaya University Faculty of Law, a private institution, on the 2nd of January, 2019. In conducting that defence, Dr. Bicak demanded that the public prosecutor and the court provide telephone records between the accused and the victim. The request was denied, without reasons being provided, and the accused was sentenced to life in prison.

Dr. Bicak was publicly criticized for having taken on the defence of the defendant.

Consequences of Defending this Case

In addition to Dr. Bicak being subjected to public criticism for accepting the role of defence counsel in this case, he was dismissed from his public duty as an academic member in Turkish Police Academy without any due process. On 27.02.2020, with the endorsement of the Minister of Interior Affairs, Prof. Dr. Bıçak was expelled from duty without regard to due process envisaged in domestic legislation and international law. He was not granted his right to defend himself.

¹ file number 2022/58

Most seriously, as noted above, he is now facing criminal charges solely as a result of his acting as defence counsel.

The indictment is inconsistent with respect for human rights, with respect to fundamental freedoms and the rule of law. The next criminal proceeding in this matter is scheduled to take place on 10 March 2023. The court has restrained him from travelling abroad.

The Role of Lawyers

Dr. Bicak was charged for having fulfilled his constitutionally protected (and internationally protected) role and duty as a lawyer, which is to provide legal defence to anyone charged with a crime. It should make no difference whether the client is charged with murder or any other crime. It should make no difference whether the defendant is unpopular. All defendants are entitled to a legal defence and to be represented by counsel.

LRWC urges you to comply with Türkiye's obligations under international human rights laws, including the *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.

In Türkiye, it has become common for lawyers defending high-profile defendants, journalists, human rights activists, and those accused of being members of a terrorist organization to be charged with crimes themselves. Lawyers have been targeted, charged, convicted and sentenced for doing nothing more than fulfilling their duties as lawyers, which is to advocate on behalf of their clients.

Merely by fulfilling what is recognized as a lawyer's duty to provide a defence for accused persons, lawyers are charged in some cases with the same crimes as their clients. The criminalization of lawyers' professional obligations is contrary to the United Nations' (UN) *Basic Principles on the Role of Lawyers*, 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, with respect to which Türkiye is obligated to comply.

The Basic Principles specifically require all governments to ensure that lawyers are guaranteed the right to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.

The *International Covenant on Civil and Political Rights* (ICCPR),² which Türkiye ratified on 23 September 2003, guarantees every accused person the right to legal counsel. By charging lawyers with criminal offenses, in an attempt to intimidate criminal defence lawyers, Türkiye is creating a chill within the legal profession. As a consequence, Türkiye is effectively depriving criminal defendants of their right to counsel, which is a violation of the ICCPR.

Conclusion

In these circumstances, we request that Türkiye dismiss the indictment against Dr. Bicak immediately and unconditionally and cease its campaign of harassment against him.

All of which is respectfully submitted:



Brian Samuels, KC, LRWC Director

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² UN General Assembly, *International Covenant on Civil and Political Rights*, para 14(d), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>.

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