

Lawyers' Rights Watch Canada

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

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22 March 2023

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 held Special Consultative Status with the United Nations (UN) Economic and Social Council (ECOSOC) since 2005.

This letter is a follow-up with respect to our letter of 8 March 2023, Re: Dr. Vahit Bicak.

On 10 March 2023, Dr. Bicak was convicted of insulting the memory of a dead person (Art. 130) and her family members (Art. 125) in the 35th Heavy Criminal Court.¹ He was sentenced to 17 ½ months imprisonment on these charges.

Circumstances of this Case

The conviction and sentencing of 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

¹ file number 2022/58

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 presented evidence that his client acted as he did as a result of having been abused by his study supervisor.

A defence lawyer, in defending an accused, is professionally obligated to present reasonable defences, which include, for example, self defence and mitigating circumstances. To prevent Dr. Bicak from presenting evidence of this nature, the Court would be depriving the accused of his right to a fair trial.

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.

Türkiye’s International Obligations Concerning 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 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.

In Türkiye, it has become common for lawyers defending high-profile defendants, journalists, and human rights activists, 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. That is apparently what has happened in this case.

LRWC is gravely concerned about the situation of lawyers and human rights defenders in Türkiye. We have written to you in the past with respect to various Turkish lawyers, judges, and other human rights defenders who have either been arbitrarily detained, arrested, charged, and/or imprisoned as a result of conducting their legitimate work as lawyers in violation of UN *Basic Principles* as well as the *International Covenant on Civil and Political Rights* (ICCPR).² 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 Dalkiran, Idil Eser, Gnal Kurřun, Aysel Tuęluk, Murat Arslan, Eren Keskin, Adnan Oktar and others.

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), 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.

Furthermore, Türkiye's constitution, specifically Article 36, guarantees that "Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures." By charging and convicting defence lawyers as a result of their having presented evidence of self defence or mitigating

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>.

circumstances, Türkiye is removing the right to a fair trial in circumstances where the evidence required to prove a defence would cast a deceased person in a bad light.

Conclusion

In these circumstances, we request that Türkiye vacate the conviction against Dr. Bicak immediately and unconditionally, release him from custody, and cease its campaign of harassment against him.

All of which is respectfully submitted:



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