

# Lawyers' Rights Watch Canada

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

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08 November 2022

**Mr. Recep Tayyip Erdoğan**

President of the Republic of Türkiye

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**Mr. Abdulhamit Gül**

Minister of Justice

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Dear President Erdoğan and Minister of Justice Gül,

**Re: Türkiye: Fair Trial Rights**

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, and others.

On 11 July 2018, Adnan Oktar and 168 of his colleagues (the “Oktar Defendants”) were arrested by the police and kept in custody for eight days, following which many of them were placed under house arrest. Eighty of them remain in detention. These defendants have no criminal records.

## **Adnan Oktar**

Mr. Adnan Oktar is a Turkish citizen and a student of Islam, and is widely known as a preacher and author. He has written numerous books under the pen name Harun Yahya. The themes of Mr. Oktar's philosophy include tolerance of other religions and peoples, protection of the environment, and equal rights for women. Many people adhere to his philosophy. For convenience they are referred to collectively herein as "the movement". The government of Türkiye has alleged that the movement was a "criminal organization."

## **Previous Charges and Conviction**

On 19 July 2018, Adnan Oktar was remanded into custody pending trial together with 168 of his followers. An indictment was approved on 19 July 2019, and Adnan Oktar was ultimately sentenced to 1,075 years in prison.

The criminal trial against him was widely criticized. For example, an international trial observation report published by the Solicitor's International Human Rights Group (SIHRG) based in the United Kingdom, expressed concern that the trial was not "fair by international standards nor the standards set by Turkish law."<sup>1</sup> The introduction to the report describes the process as one that was "uninterested in defence evidence or arguments and was manifestly determined to convict the defendants, sentence them to lengthy terms of imprisonment and thus utterly crushed the movement."

According to the SIHRG report, defence lawyers were intimidated by the threat of being charged themselves with membership in the alleged criminal organisation. One defence lawyer was in fact so charged. The charging of defence lawyers with the same crimes as the clients they are defending is a troubling pattern that has been noted in other cases in Türkiye, particularly with respect to the other individuals that have been the subject of our prior letters to you as noted above. This practice violates the *UN Basic Principles on the Role of Lawyers*,<sup>2</sup> which provide that lawyers "shall not be identified with their clients or their clients' causes as a result of discharging their functions" (Principle 18).

On 15 March 2022, the verdict against Adnan Oktar was overturned by the Turkish Court of Appeal "due to incomplete prosecution and erroneous assessment."

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<sup>1</sup> Lionel Blackman, Solicitor-advocate, Director of the Solicitors International Human Rights Group, *Trial Observation Report: The Republic of Turkey v. Adnan OKTAR and 206 other Defendants*, September 2019 - January 2021, Solicitors International Human Rights Group, available at [https://drive.google.com/file/d/1kJ40vow\\_i-0tPo8ye\\_8M2d\\_YeD0vQ7xf/view](https://drive.google.com/file/d/1kJ40vow_i-0tPo8ye_8M2d_YeD0vQ7xf/view).

<sup>2</sup> United Nations, *Basic Principles on the Role of Lawyers*, 7 September 1990, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>.

## **The Current Trial**

The Oktar Defendants are currently being retried. However, the legal process has been carried out in a way that does not allow them to properly prepare and present their defence in violation of Türkiye's international law obligations. Examples include the following:

- a. The Oktar Defendants have not been given sufficient time to prepare their defence.
- b. The Oktar Defendants are not allowed to meet with their lawyers or with their families.
- c. The original procedure set by the court was to conduct hearings for the first two weeks of each month, and suspend the hearings for the final two weeks of each month. This practice continued until recently, however as of October 11, the court has decided that there will no longer be any recesses to allow the Oktar Defendants to properly prepare their defences.
- d. The hearings last until late in the evening, following which the Oktar Defendants are made to wait for hours before they are allowed to enter their prison wards. After arriving at the ward, and after showering and eating, they can only go to sleep at approximately 2 AM. They must awaken at 5 AM to come to the courtroom, which only allows for approximately three hours sleep per night.
- e. They are provided with food that is low in nutrition, and insufficient amounts of food and water.
- f. The lack of sleep, lack of water and nutrition and other conditions imposed on them, including deprivation of contact with their families, is resulting in adverse health effects. This mistreatment is in violation of the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (Mandela Rules).<sup>3</sup>

## **The Right to a Fair Trial**

Every defendant is entitled to a fair trial. This right is guaranteed by the Constitution of the Republic of Türkiye ("Türkiye's Constitution"), as well as by international laws and treaties ratified by Türkiye.

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<sup>3</sup> UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 8 January 2016, A/RES/70/175, available at: [https://www.unodc.org/pdf/criminal\\_justice/UN\\_Standard\\_Minimum\\_Rules\\_for\\_the\\_Treatment\\_of\\_Prisoners.pdf](https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf).

Türkiye's Constitution, at Article 36, states:

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.

This is the supreme law of Türkiye, and accordingly the court is required to respect it.

The *Universal Declaration of Human Rights* (UDHR) was adopted by the UN General Assembly in 1948. Türkiye, as a member of the UN, has accepted its terms. Those terms include Article 10, which states:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Türkiye ratified the *International Covenant on Civil and Political Rights* (ICCPR) 2003. All levels and branches of the government of Türkiye are obligated to respect, protect and fulfil the rights guaranteed by the ICCPR to all persons in Türkiye, including the right to a fair trial before an independent and impartial tribunal. ICCPR Article 14, states:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled [...]

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing...

Türkiye has also ratified the *European Convention on Human Rights* (ECHR). The ECHR, at Article 6, states as follows:

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

More specifically, Article 6(b) guarantees the right of all defendants to have adequate time and facilities to prepare their defence:

6(3)(b) Everyone charged with a criminal offence has the following minimum rights: to have adequate time and facilities for the preparation of his defence.

The process that is being imposed on the Oktar Defendants is in violation of Türkiye's Constitution, the UDHR, the ICCPR, and the EHCR. This is not the first time that the Republic of Türkiye has violated a defendant's right to a fair trial. There are numerous examples of the European Court of Human Rights (ECtHR) issuing rulings where it has been found that a Turkish court has violated the fair trial rights of the defendant.

### **Conclusion**

In these circumstances, we request that Türkiye suspend the proceedings against the Oktar Defendants immediately and unconditionally, provide the Oktar Defendants with sufficient time and access to their lawyers to prepare their defences, and provide all of the Oktar Defendants with adequate nutrition and time to sleep between hearings.

All of which is respectfully submitted:

[signed]

Brian Samuels, KC, LRWC Director

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