
Le Président
The President

His Excellency Mr. Recep Tayyip Erdoğan
President of the Republic of Turkey
Cumhurbaşkanlığı Külliyesi
06689 Çankaya, Ankara
Turkey

Brussels, 23 October 2018

Re: Situation of lawyers in Turkey

Your Excellency,

I am writing to you on behalf of the Council of Bars and Law Societies of Europe (CCBE), which represents the Bars and law societies of 45 countries, and through them more than 1 million European lawyers. The CCBE places great emphasis on respect for human rights and the Rule of Law, and is particularly concerned with the situation of human rights defenders around the world.

The CCBE would like to express once again its concerns over the situation of lawyers in Turkey.

According to the information received, since 2016, 1546 lawyers have been under prosecution, 592 lawyers have been arrested and 181 lawyers have been sentenced to long imprisonment. It is also reported that some of the arrested lawyers were subjected to torture and ill-treatment.

All these lawyers are usually prosecuted, arrested and sentenced under terror-linked charges, such as belonging to an armed terrorist organisation or for propaganda of terrorism. We understand that, according to the Turkish Penal Code, these two offences entail a sentence of 7.5 to 22.5 years imprisonment.

The CCBE already sent you letters expressing concerns over some of these lawyers, with the latest of them being the letter of 7 May 2018 relating to the convictions of lawyers Akın Atalay, Mustafa Kemal Güngör and Bülent Utku on 25 April 2018 by the Istanbul 27th High Assize Court. Lawyer Akın Atalay, the Chair of the Cumhuriyet Foundation, was sentenced to seven years and three months. Lawyer Mustafa Kemal Güngör was sentenced to three years and nine months in prison. And lawyer Bülent Utku was sentenced to two years in prison.

Hence, as mentioned above, many other cases of prosecuted, arrested, detained and convicted lawyers have been reported and raise serious concerns. This is notably the case for twenty lawyers from the People's Law Office who faced charges under accusations of "membership of an armed terrorist organisation". Seventeen of them were kept in pre-trial detention between September and December 2017, among whom twelve were faced with a re-arrest order less than 24 hours after the Istanbul's 37th High Criminal Court ordered their release on 14 September 2018. It is reported that the decision from the Court to re-arrest them after their release did not provide sufficient information on the changes of grounds regarding the first Court's decision to release them. The next trial hearing is scheduled for 19 and 20 February 2019.

Among those twelve lawyers, six are now kept in prison custody, namely Engin Gökoğlu, Aycan Çelik, Aytaç Ünsal, Behiç Aşçı, Ahmet Mandacı, and Selçuk Kozaçağlı who is the president of the Progressive Lawyers' Association. This association had been working in the field of human rights protection since 1974 and was suspended on 11 November 2016. This decision was taken by the Turkish Ministry of the Interior under Article 11 of the State of Emergency Law which allows the suspension of organisations on grounds of general security and public order.

It is also reported that since the declaration of the state of emergency, 34 different lawyers' societies or associations have been shut down and their assets confiscated, thus jeopardising the freedom of association of lawyers.

Unfortunately, this is only one illustration of the current harassment and persecution that lawyers are now facing in Turkey. Other cases have been and are still being reported, such as the recent case of lawyer Ömer Kavili who was arrested on the charge of insulting public officers. His arrest is linked with an argument he had with judges of the Istanbul 28th High Criminal Court on a procedural issue, and where he was thrown out of the hearing room having been mishandled by the gendarme guards.

In addition to this, it was brought to our attention that many unlawful restrictions on admission to the internship of lawyer and to the profession of lawyer have occurred since 2016. This is notably the case for Mehmet Polat, whose application was denied for the reason that he could be convicted and was therefore in violation of the right to be presumed innocent, enshrined in both the Turkish Constitution and the European Convention on Human Rights.

More recently, concerns have been raised regarding the new Presidential Decree No. 5, the *Presidential Decree as to the State Inspection Institution (Devlet Denetleme Kurumu – DDK)*. Indeed, according to Article 1 of the decree, the Turkish Presidency has the authority to inspect organisations, such as Bar associations and professional organisations. Furthermore, according to Article 6, senior inspectors of the State Supervisory Board (DDK) are now competent to suspend the chairperson and board members of those Bar Associations when they consider that it is necessary for the soundness of the inspection or the public weal. This new decree entails the potential risk of hindering the independence of Bar associations in the protection of their professional integrity, and therefore further jeopardises lawyers' freedom of expression, belief, association and assembly, which we believe are essential guarantees for the protection of the Rule of Law.

In this context, the CCBE wishes to draw your attention to the United Nations Basic Principles on the Role of Lawyers (attached), in particular Principle 10 on Qualification and training of lawyers, Principles 16 and 17 on Guarantees for the functioning of lawyers, Principle 23 on the Freedom of expression and association and Principle 24 on Professional associations of lawyers.

In view of the above, the CCBE respectfully urges Your Excellency to ensure that all lawyers who have been arbitrarily arrested are immediately released, as it is believed that their arrests are solely motivated by their activity as a lawyer. In addition, the CCBE asks you to take all the necessary measures to guarantee that all lawyers in Turkey are able to perform their professional duties without fear of reprisal, hindrance, intimidation or harassment, in order to preserve the independence, integrity of the administration of justice and the Rule of Law.

Yours faithfully,



Antonín Mokry
President

ANNEX

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

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion,

Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

Whereas the International Covenant on Civil and Political Rights proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenant on Economic, Social and Cultural Rights recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

Whereas the Standard Minimum Rules for the Treatment of Prisoners recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

Whereas the Safe guards guaranteeing protection of those facing the death penalty reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights,

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest, The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

Access to lawyers and legal services

Conseil des barreaux européens – Council of Bars and Law Societies of Europe

association internationale sans but lucratif

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1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.

2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.

4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

Special safeguards in criminal justice matters

5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.

6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.

7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

Qualifications and training

9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.

11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to

enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

Duties and responsibilities

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

13. The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.

14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

15. Lawyers shall always loyally respect the interests of their clients.

Guarantees for the functioning of lawyers

16. 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.

17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.

21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.

22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

Freedom of expression and association

23. 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. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

Professional associations of lawyers

24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

Disciplinary proceedings

26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.