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European Criminal Bar Association Human Rights Committee

Norwegian Bar Association Human Rights Committee

Lawyers on trial in Turkey: trial observation and fact-gathering mission to Istanbul September 2021

Introduction:

The two Bar Associations Human Rights Committees, represented by its member Maria Hessen Jacobsen, together with many other European Bars were invited to a fact-finding mission in Istanbul, September 15th to 20th 2021. The invitation came from the CHD (Cagdas Hukukcular Dernegi - Progressive Lawyers Association).

The program contained trial observation of the hearing in a criminal case against lawyers and CHD members Barkin Timtik and Selcuk Kozagacli, prison visits to Silivri, Kandira and Edirne, and meetings with lawyers who have had their licences revoked. In addition, our representative made additional appointments through own contacts, with persecuted lawyers and relatives of persecuted lawyers and judges, not connected through the CHD organizers.

Ms. Hessen Jacobsen also met with Mehmet Durakoglu, president of the Istanbul Bar Association. Of all the prison visits she attended the one to Kandira, visiting the convicted lawyer and member of CHD Ayca Cicek¹.

The task given the representative was to collect facts, observe the hearing, conduct meetings with the persecuted lawyers and assess the process and information gathered against well-established international standards for human rights in criminal proceedings.

As of November 2021, 474 lawyers have been sentenced to a total of 2966 years in prison on grounds of membership of an armed terrorist organization or spreading terrorist propaganda². In recent developments, Turkish parliament have passed legislation changing the structure of bar associations, weakening their independence.

There is international consensus amongst leading Human Rights NGOs and institutions such as the UN OHCHR and CoE Human Rights Commissioner that Turkish authorities are wrongfully persecuting lawyers, judges, political dissidents, journalists, politicians, activists, social media users and human rights defenders by great numbers³.

The ECHR has repeatedly found violations in cases where Turkish lawyers and human rights defenders, judges, politicians, journalists, and dissidents have been unlawfully deprived of liberty or convicted.

¹ The accounts are also portrayed in Advokatbladet:

<https://www.advokatbladet.no/menneskerettighetsutvalget-tyrkia/du-sitter-i-en-tilsynelatende-helt-vanlig-rettssak-men-du-forstar-at-den-er-rigget/168226>

² According to The Arrested Lawyers Initiative, Brussels

³ <https://www.amnesty.org/en/location/europe-and-central-asia/turkey/report-turkey/>, see also note 9 and 12



For example, the decisions to arrest and remand the accused has not met the requirements of reasonable suspicion⁴ or the convictions have not met the *lex certa* demands⁵. The decisions have either not been substantiated by evidence or based on facts that could not reasonably be considered criminal conduct under domestic law, but rather related mainly to the exercise of Convention rights⁶.

Although invited by an individual organization, the European Criminal Bar Association and Norwegian Bar Association work independently and do not hold or express opinions regarding internal Turkish political matters not connected to Rule of Law or Human Rights. The Human Rights Committees is in no capacity connected to the CHD or any political entity in Turkey.

Based on the gathered information, we co-signed a joint statement on September 20th together with our international colleagues, expressing grave concerns regarding Rule of Law in present day Turkey and the persecution of lawyers. We also demanded the release of the indicted lawyers from the CHD⁷.

The European Criminal Bar Association (ECBA) Human Rights Committee and The Norwegian Bar Association Human Rights Committee wish to express the following:

1. We stress the importance of respect for the importance of lawyers' rights to perform their duties without "intimidation, hindrance, harassment or improper interference" as stated in the UN "Basic Principles on the Role of Lawyers", Art. 16. Lawyers have a right not to be identified with their clients or causes (Art. 18).
2. We urge the Turkish authorities to have due respect for the right to a fair trial as stated in Art. 6 of the ECHR and Art.14 of the International Covenant on Civil and Political Rights.
3. We stress the importance of an independent judiciary, as a prerequisite of a fair trial, see ECHR Art. 6 § 1 and ICCPR Art. 14 § 1.
4. We urge Turkish authorities to abstain from prosecuting lawyers based on statements and actions protected by the freedom of expression and of assembly in ECHR Art. 10 and Art. 11 and ICCPR Art. 19.
5. Several of the charges (terrorism-related) are based on laws that in our opinion does not meet the required standards of *lex certa* and we strongly fear that indictments are not supported by sufficient evidence to merit criminal persecution.
6. We regret the Turkish state interference with the Bar Association's right to independence. Lawyers are entitled to form and join independent professional associations (UN principles §§ 23 and 24, and Art. 22 of the ICCPR), and these are essential for the lawyers' ability to perform their duties and thus the well-functioning of the legal system.

⁴ Ex. ALPARSLAN ALTAN v. TURKEY 12778/17

⁵ Ex. BAKIR and OTHERS V. TURKEY 46713/10

⁶ Ex. SELAHETTIN DEMIRTAS V. TURKEY 14305/17 and AHMET HUSREV ALTAN V. TURKEY 13252/17

⁷ https://www.ecba.org/extdocserv/projects/HR/20210920_HRC_TurkishLawyers_FactFindingmission.pdf

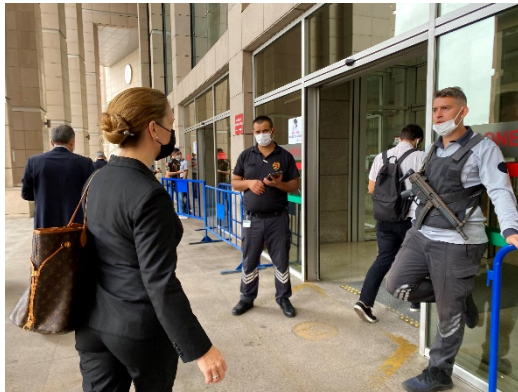


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The following is the observer Ms. Maria Hessen Jacobsen's own account of the mission:

Trial observation, Istanbul Heavy Penal Court , Wednesday, September 15th:



I attended a hearing in Istanbul 37th Heavy Penal Court in the case against the two CHD lawyers Selcuk Kozacagli and Barkin Timtik.

Left: entering the heavily guarded Istanbul Courthouse
Photo: Kari Hegstad, Advokatbladet

Right: defendants Selcuk Kozacagli and Barkin Timtik

The hearing was attended by a great number of lawyers representing the defendants, more than 140 in all. Signing up as the defendant's defence lawyer is regarded an act of solidarity in trials against fellow lawyers on trial in Turkey. Also, the trial was attended by more than 30 international observers from Belgium, Netherlands, Spain, Switzerland, France, Germany, Norway and Italy. The Bar presidents of Istanbul, Ankara, Izmir, Diyarbakir, Adana, Batman, Van, Bursa, Sanliurfa and Mardin attended, and all made statements during the hearing. They demanded a fair trial, the immediate release of the defendants, loudly condemning the political persecution of CHD and other lawyers.



The presidents stated that the decision in this case would directly influence the independence of lawyers in Turkey. The president of the Izmir bar proclaimed loudly: *"we will not stay quiet, we will not sit down"*, while the Diyarbakir president said that they were resilient and will continue the fight for lawyers' independence. Lastly, the presidents reminded the court that also judges might need a lawyer one day, and that if the state continued to arrest all the lawyers, nobody would be left to defend them.



The persecution of lawyers in CHD and HHB:

Background of the trial against the members of CHD (Progressive Lawyers Association) and HHB (The peoples law office) members is found in a great number of sources. In short, the lawyers are accused of being members of a terror-organization. Several of the lawyers were convicted in March 2019 and given sentences ranging from a few years to 18 years 3 months (Barkin Timtik).

Barkin Timtik was sentenced for "founding and managing a terrorist organization" upon the article 314-1 of the Turkish Penal Code while her colleagues was sentenced for "membership of a terrorist organization" upon Article 314-2 of the Turkish Penal Code. Selçuk Kozağaçlı was given 10 years and 15 months.

Timtik and Kozağaçlı's sentences was later revoked by the Supreme Court in case 2020/3679 October 8th 2019⁸, and the case referred back to Penal Court first instance, where the said hearing took place.

The evidence that forms the indictment grounds are several witness statements, and documents retrieved from Netherlands and Belgium in the late 1990s. The alleged criminal activities include contact with known members of terror-organizations, whom the lawyers represented as clients. Some of the witnesses have remained undisclosed to this day.

The defence have repeatedly questioned the evidence and petitioned for the courts' further examination of their reliability. Thus far, the courts have denied this request.

The evidence was also sought by the UN special rapporteurs in the UN Working group on Arbitrary Detention in 2017, who concluded that the Turkish officials *"failed to explain the core issue of how the criminal accusations against the defendants and their arrests were compatible with the rights to freedom of opinion and expression as well as peaceful assembly and association under international human rights law."* In particular, the Working Group regretted that *"the reply did not explain which of the defendants' activities amounted to membership of a terrorist organization"*⁹.

There is international consensus that the criminal prosecution of CHD members is politically motivated. The CoE Commissioner for Human Rights stated in 2020 that the CHD *"were targeted by criminal proceedings in connection with the exercise of their professional duties"*¹⁰. The Istanbul Bar have stated that the right to a fair trial is clearly violated in the CHD-trial¹¹.

⁸ The Supreme Court wrote that they should have been tried as members, not managers, of a terror-organization. Full English translation of the verdict has been available to the observer.

⁹ <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23402>

¹⁰ <https://www.coe.int/en/web/commissioner/-/commissioner-reiterates-her-call-to-restore-and-uphold-the-role-of-lawyers-as-human-rights-defenders-in-turkey-in-the-aftermath-of-the-death-of-lawyer>

¹¹ <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=15928>



“[the numbers of persecuted jurists] seems to evidence a pattern of using this type of offense to target individuals and organizations legitimately expressing dissent with the policies of the current Turkish Government.” The UN Working Group on Arbitrary Detention, 2017

Barkin Timtik's sister Ebru Timtik, went on a hunger strike on January 2nd 2020, demanding a fair trial, and was later joined by her colleague Aytac Ünsal. Unfortunately, she passed away August 27th 2020 after 238 days of hunger strike, weighing only 30 kg. The Council of Europe Commissioner of Human Rights stated that she was «deeply saddened by the death» and that Timtik died “fighting against her sentence (...) following a criminal trial which lacked fairness and credibility.”.



A panel of UN Human Right experts stated that “This is an utter waste of a human life, and we are greatly dismayed at the death of this, courageous woman human rights defender, as well as the circumstances that led to her death.”¹² At Ebrus sisters trial, the Bar presidents stated that Ebru’s coffin lied in the middle of the courtroom

“Ms Timtik’s death is a tragic illustration of the human suffering caused by a judicial system in Turkey that has turned into a tool to silence lawyers, human rights defenders and journalists, through systematic disregard for the most basic principles of the rule of law.”

CoE Human Rights Commissioner, August 2020

The trial hearing against Selcuk Kozacagli and Barkin Timtik September 15th was brief and lasted only four hours. After the presidents of the different bars and the defense lawyers had addressed the court, the two defendants made their statements. They made fierce allegations of Rule of Law flaws in their case, thanked their national and international colleagues, touched by the massive support. Mr. Kozacagli asked the court to either release them or give sufficient grounds, and Ms. Timtik stated that they were on trial for actions that fall well within the scope of their professional duties.

The judge postponed the hearing and scheduled the next hearing for November 17th 2021. As regards remand imprisonment, the defense had requested a release pending trial for the two defendants who has been deprived of their liberty since 2017. The decision on remand imprisonment gave a very vague reference to the relevant grounds: “...considering the conditions listed under article 101 of Criminal Procedure Code, the nature of the crime, strong suspicion of crime, the insufficiency of the judiciary monitoring measures as per the principle of proportionality and existence of grounds for detention...”. The Courts’ reasoning is in my opinion in clear violation of the criteria’s applied by the ECHR case law related to article 5 §§ 1, 3 and 4, see for instance Kavala v. Turkey 10.12.19 (28749/18).

¹² <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26203&LangID=E>



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Prison visit – Kandira No. 1 type F prison, Thursday September 16th:

I conducted a visit to High security women's prison facilities in Kandira prison. We were five lawyers, among them Irma Van den Berg and Angela Meijer from Lawyers for lawyers, Annina Mullis from the Geneva Bar and ELDH, and Sybille Gioe from the CCBE, Bars of Liege-Huy and Bruxelles, Avocats.be and UIA-IROL. After the approval process at the gate, we were given lawyers ID and registered by biometric iris-scan. We took turns talking to ms. Ayca Cicek, focusing on separate themes; her story of persecution, the prison conditions, and the disciplinary sanctions of isolation she was given while on remand.



Ms. Cicek was a lawyer in the CHD office and was arrested in 2017 with her colleagues. She was sentenced to 10 years and 6 months in 2019, on the same grounds as stated above.

Regarding the prison conditions, ms. Cicek told us the prisoners are kept in units with two or three prisoners, and the pandemic halts all other socializing. She spent a whole year with only one cellmate for company. She described unnecessary rigidity by the staff, and staff behaviour and attitude issues. She also said that for political prisoners, the state disciplines them by moving them to prisons far away from their families and friends. Ms. Cicek has in total been given more than 200 days of solitary confinement as a disciplinary measure, for smaller violations of peace such as shouting slogans. As of today, only 35 of these have been executed.



When Cicek's friend and colleague Ebru Timtik died, she describes that her and her cellmates sang songs over the walls separating their cell units, and on the recent anniversary of Timtik's death, they sang, read poems, and made a traditional Turkish meal – Ashure – together, with inventive use of their cell teapot.



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Meeting with the president of the Istanbul Bar Association, Friday September 17th:

President Durakoglu greeted me in his office, and we had a talk exchanging our concerns on the situation for lawyers in Turkey. The Istanbul Bar has more than 50.000 members. President Durakoglu stated that the Turkish government wishes to limit lawyers' role and independence, and *"want us to sit down and just do our jobs, get paid and avoid political activities"*.



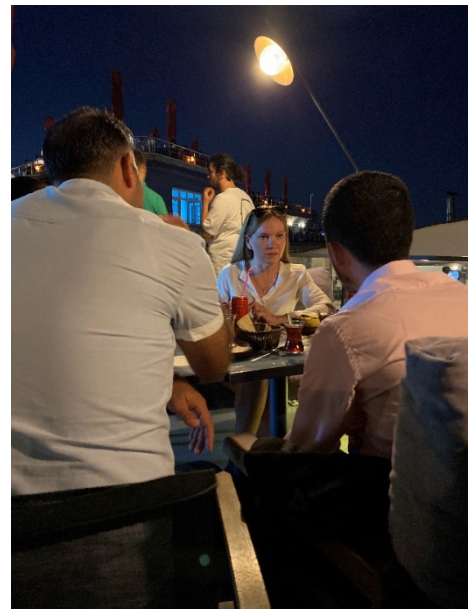
Mr. Durakoglu expressed his concerns on the repression of lawyers and judges, the fair trial violations the bar sees in lawyers' cases, and the erosion of Turkish Rule of Law. As of today, he said only 20 % of the population have confidence in the judiciary. The Istanbul Bar work to reach and educate the public on freedoms and guarantees of Human Rights and Rule of Law. Also, they intervene in criminal cases against lawyers, as the hearing against Selcuk Kozacagli and Barkin Timtik. President Durakoglu expressed gratitude that the international lawyer community keep focusing on Turkey and stated the importance we continue to do so.

Meeting with persecuted lawyers and relatives of persecuted lawyers and judges, September 17th:

In the evening, I met with a group of lawyers and their relatives at a terrace restaurant overlooking the Bosphorus strait.

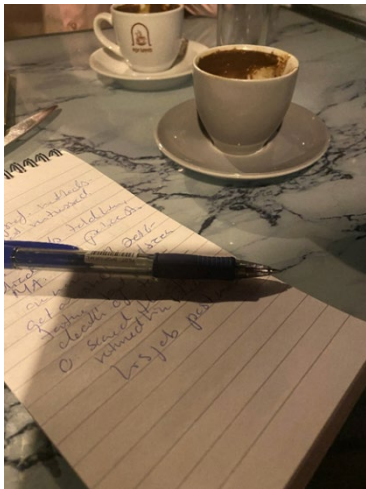
The lawyers I met here, wish to stay anonymous out of fear for their ongoing cases. Their accounts and details have therefore been forwarded to the Human Rights committees only.

In addition to more accounts of judicial persecution of lawyers and judges, I received several detailed descriptions of police brutality. The stories were corroborated from other sources not connected to these three. An example I was given, was that in police detention, prisoners were forced to kneel, then their ankles were forced up behind the prisoners' back, straining their thigh muscles and knee joint and causing extreme pain.





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Thick newspapers would be held up to the prisoners' stomach before beatings, to ensure no bruising. Also, another description that stayed with me, was several unconnected people describing the feeling of loss of self as any type of mirrors were absent from the police detention cells. After a long period of time without foreseeability of detention duration, the lack of seeing one's own reflection meant losing a sense of who they were. The uncertainty was worse than the physical violence, another formerly detained lawyer stated. They would ask to and be relieved to be detained by a court decision, this meant they would be transferred from the police detention to a prison facility.

A note of credit

Lastly, I wish to credit the international community of lawyers who participated in the fact-finding mission, and the organizations and bars they represent. The goal of the observer group is to produce a joint report for publishing in early 2022. The former report is available for downloading¹³.



“Lawyers have borne the brunt of these developments in their double capacity as human rights defenders and as a fundamental component of an increasingly hostile judicial system¹⁴.”

¹³ <https://www.uanet.org/es/valores/turkey-final-report-fact-finding-mission-chds-trials>

¹⁴ <https://www.coe.int/en/web/commissioner/-/commissioner-reiterates-her-call-to-restore-and-uphold-the-role-of-lawyers-as-human-rights-defenders-in-turkey-in-the-aftermath-of-the-death-of-lawyer>