



THE DAY OF THE ENDANGERED LAWYER – 24TH JANUARY 2012

PETITION

**WITH URGENT REQUESTS TO THE TURKISH AUTHORITIES
TURKISH PRIME MINISTER RECEP TAYYIP ERDOGAN
TURKISH PRESIDENT ABDULLAH GÜL
AND ALL MEMBERS OF THE TURKISH GOVERNMENT**

EUROPEAN LAWYERS PROTEST AGAINST UNFOUNDED AND UNLAWFUL ARRESTS AND OBSTRUCTION OF LAWYERS IN TURKEY

Grave human rights violations in Turkey have been reported for many years. Not only human rights organisations like Amnesty International and Human Rights Watch but also the European Union, in the course of the procedures for Turkey's accession, have clearly denounced these human rights violations which have been committed or tolerated by the Turkish state.

These violations have been perpetrated not only against political opponents to the Government but also against minorities, in particular against the Kurdish population in Turkey. They are also directed against lawyers who have the courage to defend the victims of such human rights violations committed by the state. When such lawyers become victims of arbitrary rule, their clients become double victims. They are both victims of state arbitrary rule, and are also robbed of the chance of a fair trial. When lawyers are prevented from fulfilling their professional duties, not only is their personal future and that of their clients in danger, but justice itself is endangered.

According to unofficial estimates, almost 8.000 alleged members of KCK have been arrested since 2009 on the basis of the Anti-Terror Law of 1991. The KCK or Union of Communities in Kurdistan is a Kurdish organization, founded by Abdullah Öcalan, which is suspected by the Turkish Government of collaboration with the PKK. More than half of the arrested people are still in custody. In a response to the concerned request of the European Commission, the Turkish government confessed only to the continued detention of 605 persons.

The trial against the alleged members of KCK has started on 18 October 2010 at the Diyarbakir 6th High Criminal Court. Out of the 151 defendants, 103 are still in custody; 8 of them are lawyers themselves. On 19 October 2010, as well as in later hearings, the defence

insisted on a defence in Kurdish, which was rejected by the court. Instead more than 100 lawyers – many of them from the Diyarbakir Bar Association - have been interrogated for this demand.

During many sessions of the court, lawyers from several European countries participated as observers, among them several colleagues from AED-EDL and ELDH. A lawyer from Italy who intended to observe the KCK trial in Diyarbakir was arrested at the airport of Istanbul, and deported after one day.

These violations of human rights have culminated in mass arrests of 36 Turkish and Kurdish lawyers, during raids which were simultaneously carried out in many Turkish cities and provinces on 22 November 2011, in the course of the so-called KCK operation, . Similar actions were carried out on 20 December 2011 against journalists in Turkey, of whom 20 have been arrested.

Many of the arrested lawyers were active as defence advocates in the KCK trial or for Abdullah Öcalan. A lawyer from Italy who intended to observe the KCK trial in Diyarbakir was arrested at Istanbul airport, and deported after one day. The current KCK operation was carried out on the basis of the Turkish Anti-Terror law of 1991.

The lawyers detained were :

Şaziye ÖNDER (Ağrı), Yaşar KAYA (Ardahan), Muhdi ÖZTÜZÜN (Batman), Mehmet Deniz BÜYÜK (Bursa), Faik Özgür EROL (Diyarbakır), Muharrem ŞAHİN (Diyarbakır), Osman ÇELİK (Diyarbakır), AKBAŞ (Diyarbakır), Fuat KOŞACAKandıra (Diyarbakır), Mehmet AYATA (Diyarbakır), Mehmet Nuri DENİZ (Diyarbakır), Aydın ORUÇ (Denizli), Davut UZUNKÖPRÜ (Hakkari), İbrahim BİLMEZ (İstanbul), Mustafa ERASLAN (İstanbul), Emran EMEKÇİ (İstanbul), Cengiz ÇİÇEKÇİ (İstanbul), Asya ÜLKER (İstanbul), Doğan ERBAŞ (İstanbul), Hatice KORKUT (İstanbul), Hüseyin ÇALIŞCI (İstanbul), Ömer GÜNEŞ (İstanbul), Mehmet Sani KIZILKAYA (İstanbul), Mehmet BAYRAKTAR (İzmir), Servet DEMİR (İzmir), Mizgin IRGAT (İzmir), Mahmut ALINAK (Kars), Bedri KURAN (Mersin), Mensur IŞIK (Muş), Şakir DEMİR (Siirt), Mehmet Sabır TAŞ (Siirt), Veysel VESEK (Şırnak), Hakzan SADAK (Şırnak), Cemo TÜYSÜZ (Urfa), Sabahattin KAYA (Van), Cemal DEMİR (Van).

All of them are still held in custody.

These actions violate basic rights of access to lawyers, and the rights of lawyers to practice their profession without fear and intimidation.

For these reasons three European lawyers associations the EUROPEAN DEMOCRATIC LAWYERS (AED-EDL, www.aed-edl.net) the EUROPEAN ASSOCIATION OF LAWYERS FOR DEMOCRACY & WORLD HUMAN RIGHTS (ELDH, www.eldh.eu) and the EUROPEAN BAR HUMAN RIGHTS INSTITUTE (IDHAE, www.idhae.org), which together represent lawyer's associations all over Europe, have decided to promote greater public awareness of the severe situation of lawyers in Turkey on the Day of the Endangered Lawyer. For this reason lawyers in different European countries will protest in front of Turkish Embassies and Consulates.

The Day of the Endangered Lawyer is an initiative which was started by AED-EDL in 2010, on behalf of the lawyers of Iran. The date of 24 January was chosen this year in remembrance of the assassination of 4 trade union lawyers and one employee in Madrid in

1977 (Massacre of Atocha), in the time of transition after the death of the Spanish dictator Franco (in 1975). The perpetrators arrested were close to far-right parties and organisations.

AED-EDL, ELDH and IDHAE condemn in the strongest possible terms the above mentioned actions and demand the following:

- The Turkish Anti-Terror Law of 1991 protects the security of the state at the expense of the freedom and security of individuals, violates international human rights law and must therefore be repealed.
- The immediate release of all lawyers detained for political reasons,
- A fair trial for the defendants in the KCK trial, including permission for foreign legal observers to attend the trial
- An international independent investigation into the actions noted above with the objective of holding those responsible for these arrests accountable for violations of basic human rights.

Prof. Bill Bowring, barrister, President of ELDH, London

www.eldh.eu

Mr. Gilberto Pagani, barrister, President of AED-EDL, Milan

www.aed-edl.net

Mr. Bertrand Favreau, barrister, President of IDHAE, Paris

www.idhae.org

Mr. Thomas Schmidt, barrister, Secretary General of ELDH, Düsseldorf, 0049 172 6810888

Mr. Hans Gaasbeek, barrister, Vice President of AED, Haarlem, 0031 6 52055043

and coordinator of the Commission "Defense de la Defense" of the AED

Mr. Ivonne Leenhouders, barrister, co-coordinator of the Commission Defense de la Defense

Annex:

Turkey's legal obligation concerning civil and political rights

Turkey has ratified the International Covenant on Civil and Political Rights which provides in part:

Article 1 (1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 2 (1) Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 9 (1) Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

Article 18 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 19 (1) and (2) Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include the freedom to seek, receive, and impart information and ideas of all kinds...

The actions of the Turkish Government mentioned above violate these provisions of the Covenant.

Furthermore, AED-EDL, ELDH and IDHAE have observed over the years that with respect to the Kurdish population the government of Turkey and certain right wing forces have demonised those who identify themselves as Kurdish, and have painted all Kurdish activists using the broad brush of the definition of "terrorism" in the Anti-Terror Law.

Turkey's obligations concerning the rights of lawyers

AED-EDL, ELDH and IDHAE remind the government of Turkey of the rights of lawyers to defend their clients vigorously without adverse consequence as follows:

1. Absolute privilege attaches to any statements made by judges, witnesses and advocates during the course of judicial or quasi-judicial proceedings. The principle and the immunity it provides from both civil and criminal proceedings has been of primary importance to the integrity of common law legal systems for over three hundred years. The parameters of the doctrine of absolute privilege, which have remained constant, were enunciated in 1772 by Lord Mansfield in *R v. Skinner*. "Neither party, witness, counsel, jury, or Judge, can be put to answer, civilly or criminally, for words spoken in office."

2. The 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, provides international legal standards concerning the rights, responsibilities, and protections for lawyers. Some of those Principles are as follows:

Article 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.

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

Article 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.

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

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

Article 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.

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

Article 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.

3. These same principles are recognized by the United Nations in General Assembly Resolution 53/144 entitled the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.