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**Observation mission on the Human Right's situation of the Turkish lawyers
members of the a ÇHD and the People's Law Office**

(Istanbul, 15th to 20th of September)

Asociación libre de Abogadas y abogados (ALA)

Report of the Situation

From the 15th to the 20th of September in Istanbul, three ALA lawyers took part in a fact-finding mission to observe the human rights situation of imprisoned Turkish lawyers accused of, among other crimes, terrorism, some of who have been in pre-trial detention for more than five years. These lawyers belong to various progressive lawyers' associations such as ÇHD, OHD or the People's Law Office.

The mission consisted of about fifty lawyers from different European associations and collegial institutions. The ALA lawyers are also representatives of AED (European Democratic Lawyers) of which ALA is a member and which is currently co-chaired by a member of our association.

This is a chronological summary of the visits and activities carried out and the findings of the mission.





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Wednesday, 15 September: Observation of the Trial of Selçuk Kozagaçlı, Barkin Timtik and others in Çağlayan, Istanbul (Case 2014/117 at the 18th Heavy Penal Court).

We went to the Criminal Court in Istanbul, concretely to Criminal Court No. 18.

These lawyers are accused of terrorism in a trial, in which Selçuk Kozagaçlı has been in pre-trial detention for more than 4 years. The prosecuted colleagues were represented by 148 Turkish lawyers, as Turkish law allows it, among them the Deans of the main bar associations of the country, headed by the Istanbul and Ankara bar associations. They were called one by one, before the hearing began.

The lawyers prosecuted in this case are members of the Turkish Progressive Lawyers Association and the People's Law Office. They have defended cases such as the worst mining disaster in Turkey in Soma, in which 301 workers died, and other cases such as torture by the Turkish authorities, violence against women, expropriation of houses by the Turkish authorities or participation in protests in defence of various human rights.

Selçuk Kozagaçlı was first arrested on the 20th of January 2013 and charged with membership of a Kurdish terrorist organisation (DHKP-C).

He was released on 21st of March 2014. The case has been going on in different hearings, with defence lawyers requesting that different procedural defects be remedied, as they did not have access to question certain (secret/protected) witnesses, nor to the originals of certain documents known as "Belgian and Dutch documents".

The prosecution added charges of forgery of documents, conspiracy and membership of FETO/PDY.

On the 13th November 2017 he was arrested again and the police detention lasted for 5 days. Between the 10th and 14th of September 2018 he was released along with the other lawyers arrested as part of the same police operation.



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However, on the 17th September 2018 he was arrested again. It is noted that the members of the court were appointed ad hoc, in violation of the principle of the judge predetermined by law.

From the 18th to 20th March 2019 he was charged with membership of a terrorist organisation.

Barkin, another lawyer on trial, was arrested on the 20th of September 2017 along with 13 other lawyers and charged on the 22nd March 2018 with being an executive member of the DHKPC terrorist organisation. On the 3rd of September 2020, the Turkish Supreme Court agreed not to prosecute her as an executive member of a terrorist organisation but as a member of a terrorist organisation (attenuated form), and that her case should be considered together with Selçuk's case.

The main evidence in the case is the following:

- Witness statements.
- Statements of secret witnesses (which defence lawyers have not had the possibility to cross-examine).
- Digitalised documents obtained in September 1999 in Belgium and the Netherlands (to which the defence lawyers have not had access).
- Digitalised documents obtained at the Idil Cultural Centre (Istanbul), in 2016.
- Professional activities:
- The case files the lawyers were working on (criminal cases of terrorist organisations, workers', women's and students' rights cases).
- Attendance at funerals of clients.
- Freedom of expression and freedom of demonstration and assembly (attendance at demonstrations on the 1st of May (Labour Day) and the 8th of March (Women's Day)).
- Monitoring of social media activity.

In the trial, it is being debated whether access to the prosecution's evidence has respected fundamental rights (legality of evidence, equality of arms between



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the parties and the principle of contradiction), with the defence claiming that they have not had access to the originals of the digitalised documents, that the defence lawyers have not been present (because they have not been allowed) at the interviews of the secret witnesses and that when they have been present, they have not been allowed to cross-examine them.

When the accused lawyers arrive in the courtroom, Selçuk proclaims "Ebru is immortal" in memory of the lawyer who died in prison on the 27th of August 2020 as a result of a hunger strike, and all the attending lawyers begin to applaud, with the presiding magistrate threatening to clear the courtroom.

The documents provided by the parties are read out and the presiding judge indicates that the procedural time for questioning the accused has already expired.

It is alleged on the part of the defence (several defence lawyers may intervene for the same accused) that there are serious contradictions between the evidence used in the investigation and that there is a serious delaying tactic, lawyers are released for one case and then arrested a few hours or days later for a different case but for the same offences. They allege that, when they are arrested, ad hoc judges are appointed to take charge of the cases, witness statements are prepared by the investigating judges, which is a non-exhaustive list of violations of international defence law.

Judges have changed on numerous occasions, with some magistrates being moved to different jurisdictions after hearing cases.

Defence lawyers request to be able to participate in the examination of witnesses.

It is clear that there are several judges and prosecutors who have been involved in the investigation and who are currently in prison for providing (false) evidence, and it is contradictory that the procedure continues when the investigation has suffered so many irregularities and illegalities.



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With regard to the so-called "Belgian and Dutch documents", it is stated that there has been no access to the originals of these documents (only photocopies of dubious veracity and integrity have been given to them). Those who provided these documents are currently in prison or on the run from justice (or tried to provoke coups d'état).

The defences request that these documents be excluded (they are the basis of the accusation), on the grounds of nullity of the evidence.

They state that one of the witnesses has admitted to giving false testimony.

Finally, it is requested that judgement be handed down on the day of the hearing, so that the proceedings are not delayed any longer.

After the intervention of several defence lawyers, several deans of the Bar Associations take the floor.

Finally, Selçuk and Barkin speak, stating that the principle of the presumption of innocence had not been respected, that the prosecution had not been able to prove guilt after 8 years of investigation. Selçuk reads out the statement of a witness who admitted to having lied because he had been threatened.

The Court agrees that the trial will continue until the 17th of November 2021, with both defendants to remain in pre-trial detention.

There has been no pronouncement on any of the issues raised by the Defence.

The defences ask the Prosecutor to have access to the dossier and to have a summary of it for the next session and request that all the requests made should be available before transferring them to the Prosecutor's Office so that they can be challenged.

Defences complain that the President of the Court has based the extension of pre-trial detention on an erroneous article. According to the OIAD, *"the use of criminal and anti-terrorism legislation to criminalise the legitimate professional activities of lawyers jeopardises the rule of law in Turkey. In particular, the use of*



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vaguely defined offences to detain and prosecute lawyers, politically motivated prosecutions, and lack of evidence, framed in trials before courts that lack independence and impartiality".

Thursday, 16 September: Visit to Silivri prison, where several of the lawyers prosecuted the day before are being held.

We go to Silivri prison, about 60 km from the capital, where we are divided into groups of two lawyers who, together with an interpreter, will visit four prisoners: Selçuk Kozagaçlı, Oya Aslan, Barkin Timtik and Behiç Asci.



Behiç Asci: is sentenced to 12 years as a member of a terrorist group. He has been a practising lawyer for 25 years, having defended the families of miners who died in a disaster in 2015.



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He tells us that there are three lawyers sharing the same cell, which has two floors (the first floor with the kitchen and bathroom and the second floor with the beds) with a total of 50 square metres and access to a courtyard of about 30 square metres.

Before the pandemic, he was able to receive visits once a week. Now, only once a month.

He was accused of having participated in the opening of a law firm.

In 2026 he can apply for a sort of pardon or parole, but this will not be granted as it would imply acknowledging the facts (membership of a terrorist group)

Oya Aslan: Her proceedings are being followed separately. She was arrested in December 2019.

At her first hearing, her defence was not allowed to cross-examine witnesses and the judge was leading and suggesting the witnesses' answers. There are now new judges in her court.

The latest information received indicates that the main secret witness in his case has retracted his incriminating statement.

She faces a sentence ranging from 7 to 15 years.

She has been a practising lawyer since 2005.

She indicates that the Minister of Interior manages the functions of the Ministry of Justice, controlling the Court of Appeal, so that there is no division of powers.

Selçuk Kozagacli: He expects to be sentenced in February 2022. His defence is trying to delay the trial as some cases are already under consideration at the ECHR and they prefer to wait to see if the ECHR rulings could be favourable to them in any way.



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He explains that his case has 4 strands:

- The case that started in 2013.
- The separate case of Oya Aslan.
- The cases already sentenced.
- The pending cases.

They hope that the ECHR will rule that this is a political case and that the arrests and proceedings have been illegal.

They believe that the European Bar Associations could press or urge the ECHR to take decisions on the cases already under consideration.

Barkin Timtik: With her we talked more about the role of women in the political struggle and about her sister Ebru, who died a year ago after a long hunger strike.

Friday 17 September: visit to Edirne prison to meet Aytac Unsal

We travelled to Edirne prison, about 240 km from the capital.

Once again we split into teams of two lawyers and an interpreter to visit Aytac Ünsal, who was released after a long hunger strike and later re-imprisoned.

He tells us, among other things, about the struggle of his colleague Ebru Timtik, who died on hunger strike while she was imprisoned in the same prison.

Aytac was prosecuted for membership of a terrorist group. He was convicted at first instance and the sentence was overturned by the higher court. This sentence came when he was on hunger strike and he was released from prison in September 2020 and admitted to hospital to overcome the logical physical deterioration. Once he left the hospital, the prosecutor ordered him to be sent to prison on the same charges for which he had been acquitted. He has been in



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prison for seven months awaiting the court's ruling on the prosecutor's decision to commit him on the same charges.

Saturday 18 September: meeting at the Istanbul Bar Association to draft press release

All the international organisations participating in the mission agree on the points to be included in the press release.

The EDA members present (SAF, SAD and ALA) agree to draft their own press release, independently of subscribing as organisations to the joint press release with the other associations.

Sunday 19 September: interview with ÇHD

The president of AED and the president of ALA are interviewed by members of ÇHD for a documentary about their motivation for taking part in the international observation mission and their opinion on the legality of the evidence observed and the violations of international criminal law found.

Monday 20 September: attending the trial of Oya Aslan in Istanbul.

We are once again at the Central Criminal Court in Istanbul.

On this occasion, there are two defence lawyers and in the courtroom, the international lawyers occupy the entire bench dedicated to the public.

Once again, several defence lawyers intervened after Oya Aslan's intervention. The reports are very lengthy, and assess the evidence given in the pre-trial phase or in the previous hearings (this point is not clear to us).

The defence question the real existence of the secret witnesses (that they correspond to real people), as they have not been able to question them and may not really exist.



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They claim that the witness evidence is invalid and that the testimonies (with obvious contradictions in the various statements) should be eliminated as prosecution evidence in the proceedings.

Nor have they been able to question the police officers involved in the investigation, and they do not even know their officer numbers.

In alternative, they request that the interrogations be repeated again with the defence present and entitled to cross-examine. Apparently, there is even a witness who testified that he did not know Oya Aslan, but testified against her, incriminating her.

It appears that there were 15 other lawyers prosecuted with her, all of whom, except her, are on provisional release.

The defendants claim that there is no evidence that they belong to a terrorist organisation that would justify keeping them in pre-trial detention.

After an hour's recess, we are having problems gaining access to the courtroom. It seems that the judge, citing security reasons, has prevented the international lawyers from entering the courtroom. Finally, we are allowed access but only to the door of the courtroom where we hear that the next hearing will be held on the 13th of December 2021.

However, there has been a positive development, as the Court has agreed to ask for the original prosecution documents provided by the police, which the defence lawyers consider a great success.

In the afternoon, we meet with Álvaro de la Riva Guzmán, Consul General of Spain in Istanbul, to inform him about the international observation mission and the participation of Spanish lawyers in it, and we also had a telephone interview with Javier Hergueta Carnica, Ambassador of Spain in Turkey.



At the meeting, the Consul tells us that they have been closely following all the proceedings against Turkish lawyers and that the person in charge of this matter at the diplomatic level in Turkey is Luis Fonseca.

Madrid, 11 November 2021

AED-ALA Working Group