



**BY AIRMAIL**

Mr. Abdulhamit Gül  
Ministry of Justice  
Adalet Bakanlığı  
06659 KIZILAY /ANKARA, **TURKEY**

Amsterdam, 12 December 2018

Subject: Trial of lawyer Can Tombul

Your Excellency,

We write on behalf of Lawyers for Lawyers<sup>1</sup>, Fair Trial Watch, Lawyers' Rights Watch Canada (LRWC)<sup>2</sup>, the Avocats Européens Démocrates / European Democratic Lawyers (AED) and the Human Rights Committee of the Norwegian Bar Association.

The aforementioned organizations are concerned about the arrest, prosecution and ongoing pre-trial detention of Can Tombul, lawyer of the Law Bureau of the Oppressed (EHB). Together with his colleagues Mr. Tombul represents victims and family members of victims of the bombings / massacres in Ankara and Suruç in 2015. He has also been involved in documenting human rights violations in South-East Turkey.

According to our information, Mr. Tombul was arrested on 31 July 2018 in Istanbul on charges of 'membership of a terrorist organization', and has been held in pre-trial detention ever since. The first hearing in his case will be on 13 December 2018. We were informed that his case file contains information that directly relates to his work as a lawyer: regarding meetings with clients, telephone calls, twitter messages about cases and about human rights violations, demonstrations etc. Two funerals he attended in 2013 and 2015 are also cited as evidence of the charges against him.

Sezin Uçar, Özlem Gümüstas and Gülhan Kaya, Mr. Tombul's colleagues at EHB, are also being prosecuted for alleged involvement in terrorist activities. These lawyers represented family members of people who died in Syria while fighting ISIS. In the course of representing these clients, the lawyers offered legal aid to repatriate the bodies of the deceased, attended autopsies, gathered facts about victims' deaths and attended victims' funerals. They also attended protests, presented press statements and posted social media posts about human rights violations. Ms. Uçar and Mrs. Gümüstas were in pre-trial detention from 19 October 2017 until 5 October 2018. The next hearing in their case will be on 14 February 2019.

---

<sup>1</sup> Lawyers for Lawyers (L4L) is a Dutch independent civil society organization which seeks to promote and protect the independence of the legal profession through the support of lawyers around the world, who face reprisals, improper interferences or restrictions in carrying out their professional functions. L4L has special consultative status with the UN Economic and Social Council since 2013. [www.lawyersforlawyers.org](http://www.lawyersforlawyers.org)

<sup>2</sup> LRWC is a committee of lawyers and other human rights defenders who promote international human rights, the rule of law through advocacy, education and legal research. LRWC is a volunteer-run NGO in Special Consultative Status with the Economic and Social Council of the United Nations.



The undersigned organizations consider the arrests and prosecutions of Can Tombul, Sezin Uçar, Özlem Gümüstas and Gülhan Kaya unlawful and arbitrary, intended to prevent and punish legitimate activities as lawyers.

These arrests, detentions and prosecutions form part of a wave of arrests of lawyers accused of involvement in terrorism for activities performed in their professional capacity. Since July 2016 more than 1500 lawyers have been prosecuted, 593 lawyers have been arrested, and 208 lawyers have been sentenced - 15 of them in November 2018 alone - to long imprisonments by first instance courts under article 314 of the Penal Code of Turkey. Article 314 criminalizes membership in and leadership of an armed organization. Lawyers have particularly been targeted due to the identity or the affinity of their clients.<sup>3</sup>

Article 314 of the Penal Code refers to all the offences in Parts 4 and 5 of the Penal Code which range from catch-all offence of 'disrupting the unity of the State (Article 302) to the specific offence of 'assassinating the President' (Article 310). Several of the offences captured by Article 314 violate the international law requirements of certainty and therefore cannot provide a legal justification for detention or conviction. The principle of legality requires a clear definition of the illegal conduct, which sets forth its elements and makes it possible to distinguish it from non-punishable behavior or illegal activities punishable with non-criminal measures.<sup>4</sup>

The UN Working Group on Arbitrary Detention (WGAD) has characterized legality as "a cardinal principle of international human rights law"<sup>5</sup> and of "modern criminal law"<sup>6</sup> that is "required by the rule of law".<sup>7</sup> It is a fundamental guarantee of due process in criminal proceedings.<sup>8</sup> Legality is essential to the WGAD's "Category I" classification of arbitrary detention:

Category I applies when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty. Category I embodies a principle of legality. This requires a legal base for detention in domestic law that complies with international law.<sup>9</sup>

The UN Human Rights Committee has confirmed that "arrest or detention that lacks any legal basis" is arbitrary<sup>10</sup> and in violation of the International Covenant on Civil and Political Rights. International human rights laws and standards provide clear guidance to states on their obligation to promote the role of lawyers and ensure that they are free to carry out their professional duties. The United Nations Basic Principles on the Role of Lawyers<sup>11</sup> 16, 18 and 23 read:

<sup>3</sup> <https://arrestedlawyers.org/2018/12/04/persecution-of-turkish-lawyers-november-2018-15-lawyers-were-sentenced/>

<sup>4</sup> See *Castillo-Petruzzi v. Peru*, Judgment (Merits, Reparations, and Costs), Series C, No. 52 (30 May 1999), at para. 121. [*Castillo-Petruzzi v. Peru*]

<sup>5</sup> WGAD, Opinion No. 61/2016, at para. 49 (A/HRC/WGAD/2016/61).

<sup>6</sup> WGAD, Opinion No. 27/2011, at para. 38 (A/HRC/WGAD/2011/27).

<sup>7</sup> WGAD, Opinion No. 32/2016, at para. 62 (A/HRC/WGAD/2016/32).

<sup>8</sup> WGAD, Opinion No. 10/2018, at para. 50 (A/HRC/WGAD/2018/10). [*Waleed Abulkhair*]

<sup>9</sup> WGAD, Opinion No. 10/2013, at para. 37 (A/HRC/WGAD/2013/10).

<sup>10</sup> Human Rights Committee, General Comment No. 35, Article 9 (Liberty and security of person), at para. 11 (CCPR/C/GC/35). [General Comment No. 35]

<sup>11</sup> The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba, on 7 September 1990. Subsequently, the UN General Assembly 'welcomed' the Basic Principles in their 'Human

Lawyers for Lawyers | P.O. Box 7113 | 1007 JC Amsterdam | The Netherlands | [www.lawyersforlawyers.nl](http://www.lawyersforlawyers.nl)

Lawyers for Lawyers has Special Consultative Status with the Economic and Social Council of the United Nations since 2013



16. *Governments shall ensure that lawyers a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference (...) 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.*
18. *Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.*
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.*

As a member of the United Nations (UN) and a State Party to the UN International Covenant on Civil and Political Rights (ratified on 23 September 2003) Turkey is obliged to guarantee for all persons within its territory rights to, inter alia, liberty and freedom of arbitrary detention (article 9); the presumption of innocence (article 14.2); pre-trial release (article 9.1); and to the determination of charges and rights by an independent, impartial and competent court (article 14).

In view of the above, Lawyers for Lawyers, Fair Trial Watch, LRWC, AED and the Human Rights Committee of the Norwegian Bar Association respectfully urge the relevant authorities to:

- Immediately and unconditionally release Can Tombul, withdraw all charges against him, and put an end to all acts of harassment against him;
- Withdraw all charges against Sezin Uçar, Özlem Gümüstas and Gülhan Kaya, lift their travel bans, and put an end to all acts of harassment against them;
- Ensure that all authorities strictly comply with and act in accordance with the due process rights of the lawyers, guaranteed by the ICCPR and referred to above;
- Guarantee in all circumstances that all lawyers in Turkey enjoy and carry out their legitimate professional rights and duties without fear of reprisals and free of all restrictions, including judicial harassment.

---

rights in the administration of justice' resolution, which was adopted without a vote on 18 December 1990 in both the session of the Third Committee and the plenary session of the General Assembly.



We look forward to a detailed response to our concerns as set out above and we will continue to monitor this case and the situation of lawyers in Turkey closely.

Yours sincerely,

Lawyers for Lawyers  
Fair Trial Watch  
Lawyers' Rights Watch Canada  
Avocats Européens Démocrates / European Democratic Lawyers (AED)  
Human Rights Committee of the Norwegian Bar Association.

Letters concerning the same topic were sent to:

- President of Turkey, Recep Tayyip Erdoğan. Email: [contact@tccb.gov.tr](mailto:contact@tccb.gov.tr)  
Cumhurbaşkanlığı Külliyesi 06560 Beştepe-Ankara-Turkey

A copy of these letters was sent to:

- UN Special Rapporteur on the independence of the judges and lawyers, Mr. Diego Garcia-Sayan. Email: [SRindependenceJL@ohchr.org](mailto:SRindependenceJL@ohchr.org)
- UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. David Kaye. Email: [freedex@ohchr.org](mailto:freedex@ohchr.org)
- UN Special Rapporteur on the situation of human rights defenders, Mr. Michel Forst. Email: [defenders@ohchr.org](mailto:defenders@ohchr.org)
- UN Working Group on Arbitrary Detention. Email: [wgad@ohchr.org](mailto:wgad@ohchr.org)
- Head of mission of the Turkish Embassy in The Hague, Mr. Saban Disli. Email: [embassy.thehague@mfa.gov.tr](mailto:embassy.thehague@mfa.gov.tr)