



To:

Minister of Justice

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Milan, January 24, 2020

Re: Request for the release of Lawyers Esra Uymaz Saral, Ozge Elif Hendekci and Busra Cinkara

Dear Minister of Justice Gül,

We are a group of Italian Lawyers members of the **Italian Association of Criminal Lawyers – UCPI** (www.camerepenali.it).

We have been informed about the situation of three Turkish colleagues (namely Esra Uymaz Saral, Ozge Elif Hendekci and Busra Cinkara) who are currently detained in Turkish prisons despite (i) their vulnerable conditions as mothers of infants/pregnant women and (ii) the unlawful grounds for the applied measure itself. We therefore ask and urge Turkey to release them, for the reasons better underlined as follows.

(i) Vulnerability and health issues related to detention



Lawyer **Esra Uymaz Saral** is currently 18 weeks pregnant, has a uterus myoma (more risky during weeks 18 to 24) and for such reasons she faces a high risk of miscarriage. She is also suffering nervous breakdown due to her conditions.

Lawyer **Ozge Elif Hendekci** was imprisoned more than two years ago while pregnant. Her baby Bahar is now 2.5 years old, and they are still in prison.

Lawyer **Busra Erdal Cinkara** was imprisoned on 5 December 2018 with her infant who was then 6 months old.

(ii) Unlawful grounds for detention

➤ Charges based on ByLock App

The allegation against Esra Uymaz Saral is that she is linked to the Gülen group, given that the father downloaded the ByLock chat application on her mobile phone.

According to the **UN Human Rights Committee** and the **UN Working Group on Arbitrary Detention**, arrests, convictions and imprisonment based on the alleged or established use of the ByLock App breach Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.

➤ Detention of pregnant women/children

Concerning Turkish law, under **Art. 16 of Law no. 5275**, custodial sentences which may be given to pregnant women and women with a child younger than 6 months old shall be suspended.

Moreover, pursuant to Article 37 (b) of the **Convention on the Rights of the Child**, “*No child shall be deprived of his or her liberty unlawfully or arbitrarily.*”

As per General Comment No. 14 (at para. 61) of the Committee on the Rights of the Child, “*Given the gravity of the impact on the child of separation from his or her parents, such separation should only occur as a last resort measure, as when the child is in danger of experiencing imminent harm or when otherwise necessary; separation should not take place if less intrusive measures could protect the child. Before resorting to separation, the State should provide support to the parents in assuming their parental responsibilities, and restore or enhance the family’s capacity to take care of the child, unless separation is necessary to protect the child.*”



The **UN General Assembly Global Study** on Children Deprived of Liberty (A/74/136) dated 11 July 2019 states “115. *When a primary caregiver of a young child is convicted of a criminal offence, judges should prioritize non-custodial solutions.*

116. If imprisonment is unavoidable, individualized assessments of the child’s best interests should inform any decision about whether and when a child should accompany a caregiver in prison or be separated from her or him. This applies to children born prior to the criminal justice proceedings, as well as to those born to an imprisoned mother”.

Conclusions

In the light of the above, we urge the Government of Turkey to:

- **immediately release from detention** Lawyers Esra Uymaz Saral, Ozge Elif Hendekci and Busra Erdal Cinkara with their children;
- **stop** the unlawful practices of detention (i) of pregnant women/women with young children; (ii) based on the use of the ByLock App;
- comply with **fundamental rights**, international conventions and obligations, and ensure **compassion, sensitivity** and **respect** towards such vulnerable persons.

Thank you for your attention, we hope our requests will be met soon.

Kind regards

Osservatorio Avvocati Minacciati UCPI