

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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January 21, 2020

Mr. Abdulhamit Gül
Minister of Justice
06659 Kizilay
Ankara, Turkey

Re: International law obligations to release Esra Uymaz Saral, Ozge Elif Hendekci and Busra Cinkara

Dear Minister of Justice Gül,

We write on behalf of Lawyers' Rights Watch Canada (LRWC), a committee of lawyers and human rights defenders who promote international human rights, the independence and security of human rights defenders, the integrity of legal systems and the rule of law through advocacy, education and legal research. LRWC has Special Consultative Status with the Economic and Social Council of the United Nations.

LRWC has written in the past with respect to several Turkish lawyers and human rights defenders who have been detained, arrested, charged and/or imprisoned in violation of the Republic of Turkey's (Turkey) international human rights law obligations and the Constitution of Turkey. Communications to the Government of Turkey have been made by LRWC regarding the cases of: Özgür Urfa, Selçuk Kozağaçlı, Şebnem Korur Fincancı, Ramazan Demir, Erin Keskin, Mustafa Aydın, Can Tombul, Taner Kilic and numerous other Turkish lawyers. LRWC has also made oral and written statements to the UN Human Rights Council and submissions to the UN Human Rights Council and Special Procedures regarding widespread persecution of lawyers, journalists and other human rights defenders through wrongful prosecutions and convictions, arbitrary detentions and other grave rights violations.

In this instance, we are writing with respect to lawyers Esra Uymaz Saral, Ozge Elif Hendekci and Büşra Erdal Cinkara, all of whom are women lawyers who have been imprisoned. Esra Uymaz Saral is pregnant; Ozge Elif Hendekci and Büşra Erdal Cinkara are imprisoned with their infants. All of them face health challenges as a result of their imprisonment.

Further Background

Lawyer Esra Uymaz Saral is 28-years of age. We understand that she is presently 18 weeks pregnant and faces a high risk of miscarriage. Her imprisonment was ordered by the İzmir court. The allegation against her is that she has "links" to the Gülen group, based on the allegation that her father had downloaded the ByLock chat application to her mobile phone. According to the

information we have received, Esra Uymaz Saral has a 10 centimeter myoma [in the uterus], which puts her at risk of miscarriage. According to her doctor, weeks 18 to 24 are particularly risky due to the myoma. She was taken to hospital two times in the last two weeks. Reports indicate that she has had a nervous breakdown.

Lawyer Ozge Elif Hendekci was detained on 17 August 2017 while she was 8 months pregnant. Her baby Bahar is now 2.5 years old, and they remain in prison

Lawyer Busra Erdal Cinkara was detained in 5 December 2018 with her infant who was then 6 months old.

Legal Analysis

The UN Human Rights Committee and the UN Working Group on Arbitrary Detention have both concluded after careful consideration that detentions, arrests and convictions based on the alleged or established use of the ByLock mobile phone messaging application violate Articles 19, 21 and 22 of the *International Covenant on Civil and Political Rights* (ICCPR). Conviction or detention on these grounds is therefore unlawful.

LRWC has previously written regarding the fact that reliance on the ByLock application to arrest, charge and imprison Turkish citizens is a violation of both Turkey's international law obligations and the internationally protected rights of the victims.

In addition, Turkey routinely contravenes the Turkish law that requires postponement of the arrest of pregnant women until the targeted woman has given birth and the infant reaches the age of six months. We are advised that there are hundreds of women arrested and detained in violation of this law.

Convention on the Rights of the Child

The detentions of the two infant children of Ozge Elif Hendekci and Busra Erdal Cinkara constitute a grave violation of the *Convention on the Rights of the Child* (CRC) to which Turkey is a State Party. The CRC specifically prohibits the unlawful or arbitrary detention of children. Article 37 (b) provides, "No child shall be deprived of his or her liberty unlawfully or arbitrarily." The Committee on the Rights of the Child, in General Comment No. 14 (at para. 61) provides further clarification of the State duty to protect children from unlawful or arbitrary imprisonment,

in cases where the parents or other primary caregivers commit an offence, alternatives to detention should be made available and applied on a case -by-case basis, with full consideration of the likely impact of different sentences on the best interests of the affected child or children.

The UN General Assembly Global Study on Children Deprived of Liberty (A/74/136) published on 11 July 2019 concluded that because deprivation of liberty may have lasting negative effects on the physical and mental health and future development of children, States are required to apply non-custodial solutions when dealing with primary caregivers. The Report recommends (at paras. 115 and 116) that in criminal proceedings involving primary caregivers, "it is essential to ensure recognition of the affected children as rights holders" and on conviction "to prioritize non-custodial solutions."

LRWC also calls on the Government of Turkey to ensure that these three women lawyers and the two infant children are treated with compassion and respect and to do whatever is necessary to ensure their immediate release and access to necessary medical care and attention.

Conclusion

LRWC urges the Government of Turkey to:

- a. Immediately and unconditionally release from imprisonment lawyers Esra Uymaz Saral, Ozge Elif Hendekci and Busra Erdal Cinkara with the two children;
- b. Immediately release from imprisonment all other pregnant women and women (and their children) who have children under the age of six years;
- c. Put an end to the practice of imprisoning pregnant women and women with infant children;
- d. Put an end to the practice of charging Turkish citizens with criminal offenses based simply on their use or possession of the ByLock application; and
- e. Ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments.

Thank you for your prompt attention to this important matter.

All of which is respectfully submitted:



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Gail Davidson, LRWC Executive Director

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