

To: Minister of Justice, Mr. Abdulhamit GÜL

Email: info@adalet.gov.tr

To: Chief Judge of the Court of Cassation's 16th Chamber, Justice Mr. Eyup Yesil

Email: info@yargitay.gov.tr, iletisim@yargitay.gov.tr

To: General Director of Prisons and Detention Houses, Mr. Yılmaz Çiftçi

Email: cte@adalet.gov.tr

Brussels, May 15, 2020

Re: Request for the release of Lawyer Turan Canpolat

Dear Sirs,

Human right organisation undersigned this letter have been informed about the situation of a Turkish colleague, Mr. Turan Canpolat, who was sentenced to 10 years and has been detained (and still is) in Malatya prison (Turkey), in solitary confinement, for more than 50 months now. For 14 months, he has filed 14 requests for appeal and so far, the Court of Cassation has not considered his appeal. We ask and urge Turkey to release him, for the reasons better underlined as follows.

(i) Unlawful grounds for detention

▪ Charges based on forged documents, fabricated and inconsistent evidence

According to our sources, evidence and accusations have been collected and used to justify allegations and detention in a censurable way. Forged documents, inconsistent timeline of accusations, files and witnesses, allegations of events that concretely could never have taken place due to the location of the charged person. Any charge must be based on solid evidence, and terrorism allegations shall follow such principles as well. In a report published on 10 January 2012 following a visit to Turkey between 10 and 14 October 2011, Mr Thomas Hammarberg, the former Commissioner for Human Rights of the Council of Europe, stated the following: “68. The Commissioner is fully aware of the severe threat posed to Turkish society by terrorism and terrorist organisations, as well as of the obligation of the Turkish state to combat it with effective measures, including effective investigations and fair proceedings. He wishes to underline, however, that a major lesson learned in the fight against terrorism in Europe has been the importance of public confidence in the justice system. This means that any allegation of terrorist activity

must be established with convincing evidence and beyond any reasonable doubt. Experience has shown time and time again that any deviation from established human rights principles in the fight against terrorism, including in the functioning of the judiciary, ultimately serves the interests of terrorist organisations.”

▪ **Charges based on ByLock App**

One of the allegations against Mr. Canpolat is that he used the ByLock App. 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.

In her country [report](#) dated February 19, 2020, Dunja Mijatovic, Commissioner for Human Rights of the COE urged Turkey to implement the [UN Human Rights Committee’s decision dated 26 March, 2019](#) and and comply with the principles established therein.

The decision mentioned by the Commissioner had established that the criteria used by the Turkish Government to prosecute and convict individuals, such as having used the encrypted chat application called Bylock or having a deposit account in Bank Asya, were not enough to justify such conduct. The UN Human Right Committee concluded that a detention based on above-mentioned criteria was unlawful.

(ii) Unjustifiable lack of feedback to the 14 appeals

Mr. Canpolat filed, over the past 14 months, 14 appeal petitions against his detention and none of them were adequately considered and resulted in his release although he has been already in pretrial detention for 51 months. According to the European Court of Human Rights, “Article 5 § 4, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful (*Idalov v. Russia* [GC], § 154; *Baranowski v. Poland*, § 68)”.

Moreover, “Where an individual’s personal liberty is at stake, the Court has very strict standards concerning the State’s compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Kadem v. Malta*, §§ 44-45, where the Court considered a time-period of seventeen days in deciding on the lawfulness of the applicant’s detention to be excessive, and *Mamedova v. Russia*, § 96, where the length of appeal proceedings lasting, inter alia, twenty-six days, was found to be in breach of the “speediness” requirement).”

Solitary Confinement

According to the Mandela Rules, Rule 43 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement” where solitary confinement is defined by rule 44 Rule 44 For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Conclusions

In the light of the above, we urge the Government of Turkey together with the competent Authorities to:

- end the solitary confinement of Lawyer Turan Canpolat;
- immediately release him from detention;
- comply with fundamental rights, international conventions and obligations;
- stop targeting (in an unjustified manner and especially using anti-terrorism measures), key players in the protection of human rights, as lawyers certainly are.

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

Kind regards.

SIGNATORIES

1. FIDU - Italian Federation for Human Rights – Italy
2. IDHAE - L’Observatoire mondial des Avocats – Luxemburg
3. Monitoring Committee on Attacks on Lawyers, International Association of People's Lawyers – France
4. Lawyers Rights Watch Canada – Canada
5. Open Dialogue Foundation – Belgium
6. Plataforma Pro Derechos y Libertades – Spain
7. PPJ – Platform for Peace and Justice – Belgium
8. SACC - Scotland Against Criminalising Communities – Scotland
9. The Arrested Lawyers Initiative – Belgium
10. The Foundation The Day of The Endangered Lawyer – Netherlands
11. Boye-Elbal & Asociados – Spain
12. Vogelaar Advocatuur - Netherlands

