

ARREST AND DETENTION OF LAWYERS

As part of a criminal investigation on “FETÖ lawyers’ structure”, around 47 lawyers in Ankara and seven other provinces were detained in dawn raids on 11 September 2020 as a result of an arrest warrant of Ankara Chief Public Prosecutor. After 12 days in detention, around 15 lawyers were remanded in pre-trial detention on “terrorism”-related charges, while the others were released on bail.

The lawyers are accused of having links with the Gülen movement that the Turkish government calls Fethullahist Terrorist Organization (FETÖ), accused of having carried out the attempted coup on 15 July 2016. Lawyers were taken into police custody, on suspicion of ‘membership of a terrorist organization’.¹² They are accused of allegedly acting upon instructions of the organization and of influencing the criminal investigations in favour of the organization.¹³

According to two police interrogation records seen by Amnesty International, lawyers were mainly questioned in relation to their professional activities such as the types of cases they litigate and the number of cases related to suspects alleged to have links with the Gülen movement; contractual and monetary relations with their clients; how they find their clients and the average fee charged to the clients. During their interrogation at Ankara Security Directorate, the lawyers were shown a list of names including other lawyers being investigated as part of the same criminal investigation and asked which ones they knew. They were also interrogated in relation to their historic mobile traffic search (HTS) records and wiretapped telephone conversations with their clients and colleagues which should have remained confidential to protect lawyer-client confidentiality, as outlined in the UN Basic Principles on the Role of Lawyers which state that: “Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their relationship are confidential.”¹⁴

The lawyers whose interrogation records Amnesty International examined show they were questioned about their professional relations with other lawyers arising from basic lawyering practices, such as attending each other’s hearings or allocating case files to each other implying an organizational relationship.

As the investigation is subject to a secrecy order, the lawyers and their legal representatives were not allowed to examine the investigation files or obtain information concerning the substance of the allegations until their clients were interrogated at Ankara Security Directorate, denying them the right to adequate time and facilities to prepare a defence.

The lawyer of one suspect who was remanded in pre-trial detention after 12 days in police detention at the Ankara Security Directorate Anti-Terrorism branch, told Amnesty International that he was not allowed to access and examine HTS and interception records to legally inform and assist his client before the interrogation. He further stated his client was questioned about the cases which mostly concerned the legal representation of relatives and family friends who were alleged to have links with the Gülen Movement.

Amnesty International notes with concern that the procedural law was not respected by the Prosecutor’s office during the searches of lawyers’ home in Ankara. According to Article 58 of Attorney’s Act (No. 1136), lawyers’ offices and residences may be searched only in presence of both the public prosecutor and a lawyer from the bar association. It was reported by the Ankara Bar Association in a public statement that home searches of lawyers in Ankara were carried out without a lawyer from the Bar being present.¹⁵

It appears that the investigation carried out by the Ankara Chief Public Prosecutor lacks evidence that clearly demonstrates the involvement of the detained lawyers in any criminal act. According to the UN Basic Principles on the Role of Lawyers, governments must ensure that lawyers are not threatened with prosecution or any other sanctions for the

¹² Article 314/2 of the Turkish Penal Code.

¹³ Press Statement by Ankara Chief Public Prosecutor’s Office, 11 September 2020, <https://ankara.adalet.gov.tr/fetopdy-nin-avukatlik-yapilanmasina-yonelik-yurutulen-sorusturmada-60-supheli-hakkinda-arama-el-k>

¹⁴ UN Basic Principles on the Role of Lawyers, Principle 18.

¹⁵ Press Statement of Ankara Bar Association, 14 September 2020, <http://www.ankarabarasu.org.tr/HaberDuyuru.aspx?DUYURU&=7348>

exercise of their legitimate duties and should not be identified with their clients or their clients' causes simply for discharging their duties.¹⁶

Investigating lawyers for exercising their professional duties and representing clients accused of "terrorism"-related offenses threatens the very core principles of the right to a fair trial. Criminal proceedings against lawyers in connection with their professional activities and associating them with the alleged crimes of their clients undermine the right to legal representation and defence.

Amnesty International is deeply concerned that identifying lawyers with the profile and alleged crimes of their clients may have a chilling effect on the rights of the accused to a fair trial as it might dissuade lawyers from taking on the legal defence of those accused of terrorism-related charges and may hamper their right to the presumption of innocence.

Amnesty International urges the Turkish authorities to respect the independence of the legal profession, to allow lawyers to conduct their work freely, individually or in association with others, and to protect the lawyers' right to privacy by enforcing client/lawyer confidentiality in line with international human rights standards. All those lawyers who are detained solely for exercising the legal profession should be immediately and unconditionally released.

OPERATIONS AGAINST ACTIVISTS AND SOCIAL MEDIA USERS

Activists and social media users across the country including journalists, lawyers and authors were detained in dawn raids on 25 September in operations conducted by the Istanbul Security Directorate Cyber Crimes Bureau. The state-run Anadolu Agency reported that 24 individuals were detained over provocative social media posts 'inciting the public into enmity and hatred, degraded state officials and attempted to erode the elected government' in the name of the 'Movement of the Nameless',¹⁷ although not all those taken into custody were related to each other.

Six detainees were released after deposing at the security directorate and the remaining 18 people were referred to the court.¹⁸ On 29 September, after four days in detention, 11 people including author Temel Demirer were released following their deposition at the Prosecutor's Office.¹⁹ The remaining seven individuals were referred to the criminal peace judge; four people were released on bail and three others were remanded in pre-trial detention on the charge of 'insulting the President'.²⁰

As there is a secrecy order over the investigation, lawyers of the detainees did not have knowledge about the substance of the allegations before the interrogation by investigating authorities.

Amnesty International has seen the content of the interrogation record of author Temel Demirer, in which he was accused of 'membership of a terrorist organization',²¹ 'making propaganda for a terrorist organization',²² 'inciting the public into enmity and hatred',²³ and 'defamation against the President of the Republic'²⁴ based on digital materials obtained from the examination of image files of his computer's hard disk. Investigating authorities questioned Demirer in relation to his photos taken during peaceful demonstrations, panels and seminars where he was invited as a speaker, none of which come remotely close to constituting evidence to the alleged criminal charges.

Authorities asked Demirer questions about his social media sharings, which did not contain language inciting violence or hatred. Demirer was also questioned in relation to viewing social media posts of the twitter account "Movement of the

¹⁶ Principles 16 and 18.

¹⁷ Anadolu News Agency, 25 September 2020, <https://www.aa.com.tr/tr/turkiye/sosyal-medyanin-terror-orgutune-operasyon-24-gozalti/1985107>

¹⁸ Medyanews, 29 September 2020, <https://medyanews.net/twenty-three-detained-in-movement-of-nameless-operation-in-turkey/>

¹⁹ Bianet, 29 September 2020, <http://bianet.org/english/print/231720-investigation-against-movement-of-the-nameless-3-people-arrested>.

²⁰ Medyanews, 29 September 2020, <https://medyanews.net/twenty-three-detained-in-movement-of-nameless-operation-in-turkey/>

²¹ Article 314/2 of the Turkish Penal Code.

²² Article 7/2 of the Anti-Terror Law No. 3713.

²³ Article 216 of the Turkish Penal Code.

²⁴ Article 299 of the Turkish Penal Code.