

Fact-finding mission on CHD's trials

Breach of Fair Trial, Independence of the Judiciary and Principles on the Role of Lawyers

October 2019, Istanbul



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PART I - About the fact-finding mission

A group of 15 lawyers from 7 European countries met in Istanbul from 13 till 15 October 2019 for a fact-finding mission to clarify the legal circumstances that led to the conviction of the following 18 Turkish lawyers by the 37th High Criminal Court of Istanbul in March 2019:

- **For "founding and leading a terrorist organization"** - Barkin TIMTIK: 18 years and 9 months **For "membership of a terrorist organization"** - Ebru TIMTIK and Özgür YILMAZ: 13 years and 6 months - Behiç ASÇI and Sükriye ERDEN: 12 years - Selçuk KOZAGACLI (President of the ÇHD) : 11 years and 3 months - Engin GÖKOGLU, Aytac ÜNSAL and Süleyman GÖKTEN : 10 years and 6 months - Aycan ÇIÇEK and Naciye DEMİR: 9 years - Ezgi ÇAKIR: 8 years
- **For "willfully and knowingly aiding a terrorist organization"** - Aysegül CAGATAY, Yagmur EREREN, Didem Baydar ÜNSAL and Yaprak TÜRKMEN: 3 years 9 months - Zehra ÖZDEMİR and Ahmet MANDACI: 3 years, 1 month and 15 days (sentence reduced because of their presence at the hearing on 20 March 2019, unlike the other defendants).

The European lawyers of the monitoring team came from Austria, Belgium, Catalonia/Spain, Greece, Germany, France, and Italy. They represented, among others, two international associations of lawyers, two European lawyers' organizations, the European umbrella association of bar associations, various national and regional bar associations and lawyers' organizations.

Most of the European lawyers who participated in the fact-finding mission have already participated as observers of the mass trials of lawyers in Turkey and other politically motivated proceedings. Their main focus was on the question of whether Turkish and European law was violated in the proceedings. The results of these observations were recorded in various reports.

1. Objective of the fact-finding mission

The participants of the fact-finding mission examined the following questions, taking into account the reasons of the judgment:

- the extent to which the independence and impartiality of the Court was respected in the proceedings
- whether the principles of a fair trial applicable under Turkish and European law have been respected, including:
 - whether the principle that no one should be tried twice for the same offense has been respected (*ne bis in idem*)
 - whether the evidence satisfied the legal requirements

2. General observations

The observations of the two CHD trials, as well as numerous other politically motivated trials in Turkey, raised serious concerns about the respect of the rights of the accused and the defense lawyers. This was particularly the case with the 37th High Criminal Court of Istanbul, presided over by the judge, Akin Gürlek.

Among other cases, he was in charge of the proceedings against Selahattin Demirtaş (one of the two HDP presidents), Canan Kaftancıoğlu (the Istanbul CHP president), Ahmet Altan (writer and journalist), Şebnem Korur Fincancı (the president of the Human Rights Foundation of Turkey and one of the academies for peace), Ihsan Eliaçık (theologian and author).

3. Experts Interview

During their stay in Istanbul, the European lawyers held discussions:

- with the following **four lawyers who are imprisoned in Silivri**:
 - Selçuk Kocağaçlı (the chairman of the Turkish lawyers' organization CHD),
 - Ebru Timtik,
 - Behiç Aşçı and
 - Barkın Timtik
- with the **defense lawyers** who are on the defense team and who participated in the meeting at the Bar Associations hall:
 - Hasan Fehmi Demir
 - Fikret İlkiz
 - Derviş Aydın
 - Cigdem Akbulut
- with the following **defense lawyers** from other politically motivated trials before the 37th High Criminal Court (see above), who are also in the group of registered defense lawyers representing our colleagues in CHD's trials:
 - Tora Pekin (lawyer in the Cumhuriyet Newspaper trial)
 - Melike Polat Bursalı (Lawyer of some Academics for Peace and lawyer in Ahmet Altan and Mehmet Altan trials)
 - Fırat Öpözdemir and Pınar Bayram (Lawyers of Selahattin Demirtaş and Sırrı Süreyya Önder)
- with a **member of the Turkish Parliament**:

- Sera Kadıgil (CHP)
- with the **President of the Istanbul Bar Association:**
 - Av. Mehmet Durakođlu.

PART II - Observation of the two mass trials against Progressive Lawyers Association (ÇHD)

1. Mass trials pending against progressive lawyers

There are currently two mass trials in Turkey against members of the Turkish lawyers' organization ÇHD Çağdaş Hukukçular Derneği (Progressive Lawyers Association).

The first trial (**ÇHD I trial**) opened in 2013, prosecuting 22 lawyers (***Selçuk Kozağaçlı***, Taylan Tanay, ***Barkın Timtik***, ***Ebru Timtik***, ***Naciye Demir***, ***Şükriye Erden***, ***Günay Dağ***, Nazan Betül Vangölü Kozağaçlı, Avni Güçlü Sevimli, Güray Dağ, Gülvin Aydın, Efan Bolaç, Serhan Arıkanoğlu, Zeki Rüzgar, Mümin Özgür Gider, Metin Narin, Sevgi Sönmez Özer, Alper Tunga Saral, Rahim Yılmaz, Selda Yılmaz Kaya, ***Oya Aslan*** and ***Özgür Yılmaz***). The case has been pending at the trial court since 2013.

The accusations are:

- Support, membership, leadership of a terrorist organization (DHKP/C)
- One is accused of attempting premeditated murder and of abolishing constitutional order

The second ÇHD trial (**ÇHD II trial**) opened in autumn 2018, prosecuting 20 lawyers of which 8 are also prosecuted in ÇHD I trial (Ahmet Mandacı, Aycan Çiçek, Ayşegül Çağatay, Aytaç Ünsal, ***Barkın Timtik***, Behiç Aşçı, Didem Baydar Ünsal, ***Ebru Timtik***, Engin Gökoğlu, Ezgi Çakır, ***Naciye Demir***, ***Özgür Yılmaz***, ***Selçuk Kozağaçlı***, Süleyman Gökten, ***Şükriye Erden***, Yağmur Ereren Evin, Yaprak Türkmen, Zehra Özdemir). Two other lawyers (***Günay Dağ*** and ***Oya Aslan***) were also defendants in this trial, but, due to their absence, the Court separated their case, which is still pending in the trial court – (**CHD II bis proceeding**).

On 20 March 2019, these 18 lawyers were convicted by the 37th High Criminal Court of Istanbul. On 8 October 2019, the Istanbul Regional Court of Appeal uphold the judgment, without an oral hearing. The case is currently pending before the Supreme Court.

The accusations are identical in both trials, i.e., being a (leading) member or a supporter of a terrorist group (DHKP/C).

On 22 November 2016, the ÇHD was dissolved by governmental decree.

2. Accusations in both trials

The convicted lawyers in the ÇHD II trial are members of the Progressive Lawyers Association (ÇHD) and of the People's Law Office (HHB, Halkın Hukuk Bürosu). In both trials, they are accused of issuing propaganda for, or membership or administration of a terrorist organization (DHKP/C), through their law office.

In the ÇHD II trial, the accusations are grounded on the specific provisions of the Turkish Penal Code against an armed organization acting with political aim:

- Article 314/1 of the Turkish Penal Code¹ which provides for a sentence of 10 to 15 years of imprisonment for forming and directing an armed organization (Barkin Timtik and Özgür Yılmaz)
- Article 314/2 of the Turkish Penal Code which provides for a sentence of 5 to 10 years of imprisonment for membership to an armed organization (all the other lawyers).

According to Article 3 and Article 5 of the Law on Fight against Terrorism in Turkey, n°3713, these offenses are of a terrorist nature and therefore are increased respectively to 20 to 22.5 years of imprisonment and 7.5 to 20 years of imprisonment².

The scope of the material facts included in these provisions is specified in article 7 and follows the Law on Fight against Terrorism in Turkey: establishing, leading or being a member of a terrorist organization, organizing activities of the organization, issuing propaganda, ...

In the CHD I trial, in addition to the accusations under articles 314/1 (Selçuk Kozağaçlı and Taylan Tanay) and 314/2 (all the other lawyers) of the Turkish Penal Code, two other accusations are made:

- Ebru Timtik is accused of attempting premeditated murder and of abolishing constitutional order under Articles 82 and 309/1 of the Turkish Penal Code;
- Taylan Tanay, Barkin Timtik, Ebru Timtik and Günay Dag, are also accused of preventing the Prosecutor from performing his duty, under Article 265/1-3 of the Turkish Penal Code.

In both cases, the lawyers concerned are accused of acting in union or communicating with a qualified terrorist organization, via the law firm HHB and the association ÇHD. In the ÇHD I trial, it is alleged that the accused lawyers were active in ÇHD. In the ÇHD II trial, it is alleged that there is a relationship between the activities of accused lawyers as members of a terrorist organization and the activities of ÇHD.

Among other things, the lawyers are accused of passing messages between detained DHKP-C members and non-detained DHKP-C members. In support of this charge, the Prosecutor identified the lawyers with their clients and considered the following material facts which are activities connected with their professional functions: participation in anti-torture demonstrations or in human rights protests, attending the funerals of clients, inviting their

1 - The Turkish Penal Code is available here :

https://www.legislationline.org/download/id/6453/file/Turkey_CC_2004_am2016_en.pdf

2 - The Law on Fight against Terrorism in Turkey is available here :

https://www.legislationline.org/download/id/3727/file/Turkey_anti_terr_1991_am2010_en.pdf

clients to exercise their right to silence, or representing numerous clients accused of being members of DHKP-C, etc.

The accused deny membership of the DHKP-C in both proceedings.

3. Evidences and material elements in CHD II proceeding

The conviction in the CHD II trial and the indictment in the CHD I trial are based on almost identical evidence.

In the CHD II trial, **three types of evidence**, leading to numerous instances of circumstantial evidence, were presented by the Prosecutor: witnesses, digital documents allegedly seized during a search in a musical studio, and printed documents that are allegedly a copy of digital documents taken by Turkish police from Belgian and Dutch authorities in those countries, respectively.

During the fact-finding mission, defense lawyers detailed the reasons why they considered the evidence on which the conviction was based to be unreliable.

Of the **witnesses**, 7 of 8 were anonymous, all repentant. Three of these anonymous witnesses were not heard during the trial, but in its final decision the 37th High Criminal Court of Istanbul relied on their previous testimonies, which were taken during the investigation period. The testimonies of the witnesses were particularly problematic, regarding the circumstances surrounding these testimonies (obvious psychological problems of some witnesses, hundreds of pages of testimonies with hundreds of names, used in numerous trials, inconsistent periods, etc.)

Defense lawyers argued that the alleged printed version of the **digital documents from Belgium and Dutch authorities**, were tampered with: conversations and reports of the illegal organization's activities were placed in the file and used to convict the accused. As a matter of fact, the authenticity of the documents could not be confirmed by the experts, since the originals of these digital documents were not communicated. The experts were therefore unable to check whether any information had been modified during the extraction of the digital files. Some of these computer files were shared with the Turkish authorities by Belgium and the Netherlands in 1998 and 2003. They circulated in 2006 in Turkey and began to be used in trials from 2013 onward.

The originals of the **digital documents which were allegedly seized in a musical center** were not available to the defense lawyers either. No digital material or printed versions of them were submitted in the case file. These documents would have been submitted by police officers to the witness, Berk Ercan, during his testimony, in order for him to confirm the content of those documents. The minutes of Berk Ercan's testimony is therefore the only trace, in the file, of these documents.

4. Detention in CHD II trial

Arrest warrants were issued against 20 ÇHD lawyers at the end of 2017, on 12 and 21 September, on 13 November and on 20 December.

Two of these lawyers had their files separated (Günay DAĞ and Oya ASLAN) and two of them were provisionally released (Ezgi ÇAKIR and Ahmet MANDACI).

The first arrests took place the day before the trial of teachers Nuriye GÜLMEN and Semih ÖZAKÇA, represented by lawyers from ÇHD.

Seventeen of the lawyers were detained, dispersed among different prisons, some in isolation, until their trial began on 10 September 2018.

On 14 September 2019, after the first week of hearings, the Court released all seventeen lawyers.

However, the Prosecutor appealed within 24 hours. The appeal chambers of the Court, with an unusual composition of seats, issued "re-arrest warrants", the legality of which is uncertain.

Six lawyers were re-arrested, and six others were wanted. Lawyer Selçuk KOZAĞAÇLI went to court on his own initiative.

5. Hearings of CHD II trial

5.1. First hearings (10 - 14 September 2018)

The purpose of these hearings was to take the statements and determine the preventive detention of the accused lawyers. Lawyers had to struggle to appear in person and not through the SEGBIS videoconferencing system.

The following observations were made on the first day:

- the presence of gendarmes was excessive, all around the accused, which did not allow defense lawyers and accused lawyers to interact during the hearing;
- a lawyer was threatened with torture by one of the anti-terrorist police officers while she was pleading for them to leave the courtroom, as they had tortured some of the accused lawyers;
- during a break, the gendarmes beat the lawyers because the lawyers were trying to communicate with each other;

The hearing was moved, on the last day, to the courtrooms adjoining Silivri prison.

On 14 September 2018, at the end of the first week of hearing, the 37th High Criminal Court of Istanbul ordered the release of all the detained lawyers and postponed the case to the hearing of 19-20 February 2019. After the renewed arrest of the lawyers, the next hearing date was scheduled for an earlier date, from 3-5 December 2018, because the February 2019 date would have exceeded the lawful reasonable detention period.

5.2. Second hearings (3 – 5 December 2018)

The purpose of the hearings from 3 to 5 December 2018 was to hear the witnesses.

The Prosecutor and the composition of the Court have changed since the September hearings. The hearings are conducted by the President, Akin GÜRLEK.

Most of the witnesses were anonymous and repentant. They testified via the SEGBIS video-conferencing system, following very lengthy written statements, which had often been written from the prisons where they are incarcerated, sometimes even after consulting some elements of the Prosecutor's case.

The facts reported by the witnesses were, for example, that a lawyer had advised his client on his attitude to adopt in a court of law, that a lawyer had invited his client to remain silent, that a lawyer had a code name in the organization, that a lawyer had attended a legal conference, that a lawyer had confirmed to his client that there was nothing in the file and that he would be released, or simply that a lawyer was defending a person. Many of the testimonies were hearsay.

The facts of transmitting messages or participating in DHKP-C activities never seemed to be corroborated by evidence other than witness statements.

In general, the credibility of these witnesses was lacking:

- they often did not know for which trial they were appearing (since they testify in very many trials);
- their statements were ostensibly directed by the judge;
- one of the witnesses even confirmed that he knew a lawyer, whose name had just been invented by a defense lawyer on cross-examination;
- they were often asked if they confirmed their statements, even though they were often unable to summarize the contents;
- it was difficult to verify that the testimony via the videoconferencing system was voluntary, particularly when one of the witnesses whose name is known was able to testify with his face blurred at his request...

These hearings were marked by numerous incidents. We observed the following events:

- the President of the Bar of Izmir was beaten in the face before the public entered the courtroom on the first day;
- the request to challenge the three judges was dismissed after a short break, and the President continued the hearing, despite the fact that the lawyers had indicated their intention to appeal;
- police officers who have no jurisdiction in Silivri entered the courtroom disguised as journalists (with a press badge); they departed as soon as the defense discovered them;
- the presiding judge was particularly aggressive with the defense lawyers, yelling at them, interrupting them, never listening to the opinions of the other two judges, issuing them warnings, using familiar language;
- on the first day, the President suddenly decided to apply a limitation of the number of defense lawyers per accused;
- the President excluded from the courtroom the accused lawyers - who had expressed their disapproval following the President's decision to exclude two defense lawyers from the courtroom after cross-examining a witness, Bahattin Özdemir and Kemal Aytaç... - and the public who expressed their support for the accused lawyers by applauding. The defense lawyers wished not to continue the hearing and their defense work without the presence of their clients and the public. The President therefore proceeded to hear a witness in an empty room (with the exception of the two international observers);
- without any request from the Prosecutor, the President decided on his own will not to hear three witnesses, the testimonies of whom defense lawyers later learned were manipulated by the police and that the witnesses testified under duress;
- the President refused to hear the witnesses for the defense, even though two of them were in the courthouse, ready to testify.

5.3. Third hearings (18 – 21 of March 2019)

The purpose of these hearings was to present requests for additional duties, hear the closing arguments and plead. They were taking place in a context where defense lawyers had been on a hunger strike for dozens of days.

The defense lawyers made various requests, all of which were rejected after a 15-minute break (recusal of the judges on the basis of their partiality, hearing of defense's witnesses, additional investigations, additional time to prepare the pleadings, gathering additional evidence, etc.).

The defense lawyers were regularly interrupted. In this trial, the prosecutor had submitted his final consideration before the hearing, it was communicated to the defense before the hearing and it was not read during the hearing.

The defense lawyers did not have the opportunity to prepare their defense (see below). Only the non-detained lawyers who participated at the hearing pleaded for themselves, in the absence of their defense lawyers.

We observed the following incidents in particular:

- a hostile attitude of the President towards defense lawyers (see above);
- an excessive presence of gendarmes (more than 50 gendarmes for 5 detainees);
- on 19 March 2019, the President again excluded the accused lawyers, the public and the defense lawyers from the courtroom; the defense lawyers tried to reach the defense benches but were prevented from doing so by the gendarmes guarding the courtroom door; a mob followed; neither the detained accused lawyers nor the defense lawyers were informed by the President that they would be allowed to re-enter the court the next day to present their final statement and have a last word ;
- a one-hour deliberation to impose sentences of 3 to 18 years' imprisonment for 18 lawyers;
- the public, observers and defense lawyers were pushed out of the courthouse by the gendarmes after the reading of the judgment;

6. Judgment of the CHD II trial

The sentences of the judgment of the 37th High Criminal Court of Istanbul are as follows:

- Ahmet MANDAÇI and Zehra ÖZDEMİR (appearing voluntarily): 2 years, 13 months and 15 days in prison, lifting of judicial review, as they appeared throughout the proceedings;
- Didem BAYDAR ÜNSAL, Aysegül ÇAGATAY, Yagmur EREREN EVIN, Yaprak TÜRKMEN (all refusing to appear): 3 years and 9 months in prison. Their detention had been lifted in September, but they did not appear on the last day of the hearing.
- Ezgi ÇAKIR (absent): 7 years and 12 months in prison, under house arrest subject to electronic surveillance, since she is a single mother of a young daughter, in the absence of her husband, also imprisoned.
- Aycan ÇIÇEK (prisoner) and Naciye DEMİR (absent): 9 years in prison.
- Engin GÖKOĞLU (absent), Aytaç ÜNSAL (prisoner), Süleyman GÖKTEN (absent), 10 years and 6 months in prison.
- Selçuk KOZAGAÇLI (prisoner): 10 years and 15 months in prison.
- Behiç ASÇI (prisoner) and Sükriye ERDEN (absent): 12 years in prison.
- Özgür YILMAZ (absent) and Ebru TIMTIK (absent): 13 years and 6 months in prison.
- Barkin TIMTIK (prisoner): 18 years and 9 months in prison, considered to be the leader of the organization.

This judgment relies on questionable circumstantial evidence: repeatedly, minor events are included in the grounds of the judgment as evidence of membership in a terrorist organization or of the connection of the People's Law Office with the DHKP-C, such as:

- the possession of various books of left-wing authors
- the possession of a book noting the “recommended style of conduct of members of the DHKP-C”
- Photos of the founder of DHKP-C

- A paper with the names of lawyers and phone numbers of the HHB lawyers found in the pocket of the person who killed a prosecutor
- The organization of a funeral in Turkey for the deceased alleged leader of DHKP-C in the Netherlands
- The criminal defense of alleged members of DHKP-C before the tribunal
- Visiting imprisoned, alleged members of DHKP-C
- Instructions given to clients to remain silent and not to give any statements
- Participation at the “Fête de l’Humanité” in Paris, a huge cultural event which is organized every year by the communist party in France

For example, the circumstantial evidence for the conviction of Selçuk KOZAGACLI was:

- Division of labor among the lawyers of the People’s Law Office
- He was head of the People's Law Office
- Provided criminal defense for alleged members of the DHKP-C
- He informed detained alleged members of the DHKP-C about their rights as defendants and prisoners
- He appeared at a symposium, where he explained the activities of the DHKP-C
- He became active in Soma after the mining accident to advise and represent the families of the victims as a lawyer
- He attended funerals of deceased alleged members of the DHKP-C
- On the website which is related to DHKP-C, his arrest was announced
- He was quoted in a left-wing magazine for the families of prisoners
- He spoke at a memorial service for deceased who were allegedly members of the DHKP-C
- He spoke at many national and international events
- He is President of the ÇHD and speaks on behalf of the ÇHD

7. Appeal of CHD proceeding before the Istanbul Regional Court of Appeal

The appeal was rejected on 14 October 2019 by the Istanbul Regional Court of Appeal on the following basis:

“Considering the defense of the defendants and the trial in place, the evidence collected and shown in the judgment venue, the opinions and the estimations of the court which was formed in accordance with the results of the investigation and the contents of the reviewed file, it is decided that the verdict of the court does not contradict with the law in terms of the merits and the procedures, that there were no deficiencies in the evidence and the proceedings, that the assessment was appropriate in terms of the proof and that the penalty was applied within a legal context.” (Translation made by our Turkish colleagues)

8. Matters of concern during the observations of CHD II trial

The initiation of a second criminal proceeding with the same accusations and with 8 identical defendants generates the impression that influence was exerted on an ongoing proceeding and that the independence and impartiality of the judiciary was no longer guaranteed.

In particular, we raise our concern about the following matters:

- The re-arrest of the lawyers, on 17 September 2018, after their release from pretrial detention on 14 September 2018, was without legal basis.
- The chairman and members of the 37th High Criminal Court were exchanged during the proceedings. The new chairman was Judge Akin Gürlek.
- The conviction on 20 March 2019 was handed down in the absence of the defendants and their defense lawyers and without taking into account the defense's requests for additional evidence and their demand for comments, allegedly because they were too late, although there is no legal deadline for comments and requests for evidence under Turkish criminal law.
- The defense's request to add all witness statements to the trial file was rejected.
- There is no convincing evidence that the lawyers were members of DHKP-C. For example, the accusation that Selcuk Kozagacli was an ambassador for the DHKP-C with the code name ODTÜLÜ is disputed. Also the claim that he had the authority for intra-organizational communication is disputed.
- The hearing of the witness Baris Önal was rejected by the court without justification.
- The press statements were peaceful statements that did not have the character of organizational statements.
- The meetings where he participated were public.

- The international symposiums and conferences where he participated were not related to the indictment. As chairman of ÇHD, he was invited to many international conferences.
- There is no justification for accusing him of being the chairman of the DHKP-C.

PART III - Analysis in light of the fair trial standards (article 6 of the European Convention on Human Rights)

During the ÇHD II trial, European lawyers have observed and reported facts detailed in the above summary and attachments. Without being exhaustive, this chapter will list the violations of guarantees in criminal procedures protected by Article 6 of the Convention, leading to the conclusion that, as a whole, the ÇHD proceeding was unfair.

1. Right to an independent and impartial tribunal (article 6§1)

« I have been a lawyer for 25 years and I would have never thought that what has happened during the hearing yesterday could be real. I have never seen a judge who shares his sentence in an intermediate decision. The judge is even lacking the courage to act up as a judge in this trial. »
(Selcuk KOZAGACLI, 19 March 2019)

According to article 6 of the Convention, all accused have the right to appear before an independent and impartial tribunal. The impartiality of the Tribunal is assessed on the basis of an objective approach and a subjective approach³.

Regarding both the objective and the subjective approach, the facts leading to a conclusion of partiality of the presiding judge Akin Gürlek are, among others, the following : use of familiar form of address towards defense lawyers instead of the polite form, interrupting the accused and defense lawyers during their speeches and switching off their microphones, rejection of all requests without taking an appropriate time to examine them and to confer with the two other judges, reputation of presiding over all political trials with harshness and extreme severity, the

3 - Kyprianou v. Cyprus, 15 December 2005, § 118

presiding judge Akin Gürlek has convicted one of the repentant witnesses of the Prosecutor, change of the composition of the tribunal between the first hearings and the second hearings.

On Tuesday 4 December 2018, the defense submitted a request to challenge the composition of the 37th High Criminal Court, according to article 24 of the Turkish Criminal Procedure Code, on the following grounds:

- constant lack of respect of the defense lawyers, in disregard of the principle of equality of arms, the defense being constantly interrupted by the President who sued many warnings in order to intimidate the lawyers;
- refusal of the presiding judge Akin Gürlek to transcribe in the minutes of the hearing some objections from the defense lawyers;
- violation of the publicity of the hearing, following the removal of the public from the courtroom.

Following this request, the presiding judge Akin Gürlek issued a warning to the lawyers, noting that the challenge request would be contempt of Court. The presiding judge then rejected the request, refusing to suspend the hearings in order for the appeal to be examined.

As a whole, the breach of many other guarantees set out in article 6 of the Convention under the 37th High Criminal Court of Istanbul, in the CHD II proceeding, leads to the conclusion that the accused lawyers were not presented in front of an independent and impartial tribunal.

Finally, the change in the composition of the 37th High Criminal Court between the hearings conducted in September 2018, leading to the release of the accused lawyers, and the hearings in December 2018, presided over by Akin Gürlek, also raises a serious concern about the independence of the Tribunal. Regarding the independence of the judicial system in Turkey, see *below* (part III).

2. Right to participate effectively in the proceedings (article 6§1)

According to the Guide on Article 6 of the Convention⁴, “Article 6, read as a whole, guarantees the right of an accused to participate effectively in a criminal trial⁵. In general, this includes, *inter alia*, not only his or her right to be present, but also to hear and follow the proceedings. (...) Accordingly, poor acoustics in the courtroom and hearing difficulties could give rise to an issue under Article 6⁶. (...) Given the importance attached to the rights of the defense, any measures restricting the defendant’s participation in the proceedings or imposing limitations on his or her

4 - The Guide is accessible here: https://www.echr.coe.int/Documents/Guide_Art_6_criminal_ENG.pdf

5 - ECtHR, Murtazaliyeva v. Russia [GC], no. 36658/05, § 91, 18 December 2018 1

relations with lawyers should only be imposed to the extent necessary, and should be proportionate to the risks in a specific case⁷.”

In the ÇHD II trial, European lawyers have observed at the 37th High Criminal Court of Istanbul:

- courtrooms were not equipped with enough microphones and screens, preventing the defense and the public to properly listen to testimony, argument and pleadings;
- heavy presence of police forces and gendarmes inside the courtrooms, close to the defense, and also on the benches, preventing the accused lawyers from communicating with their defense lawyers ;
- the President of the Court was at the origin of several incidents and, without any legal reason, ordered numerous suspensions and prohibited the families, the accused lawyers and the defense lawyers from entering the courtrooms;
- lawyers’ numerous requests (challenge the Court, present additional evidence, hearing the defense witnesses,) were immediately and systematically rejected;
- all of the above mentioned led to tangible and palpable tension;

3. Equality of arms and limitation of the rights of the defense (article 6 § 1)

The equality of arms principle supposes that “each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a disadvantage *vis-à-vis* his opponent”⁸. The limitation of the rights of the defense may therefore be an issue in regard of the principle of equality of arms⁹.

In this regards, several restrictions of the right of the defense have been observed:

- *Regarding the removal of the accused lawyers and the public from the courtrooms in December 2018*

6 - ibid Stanford, § 26

7 - ECtHR, Yaroslav Belousov v. Russia, nos. 2653/13 and 60980/14, §§ 151, 153 and 154, 4 October 2016,

8 - ECtHR, Öcalan v. Turkey [GC], no. 46221/99, § 140, ECHR 2005-IV

9 - ECtHR, Eftimov v. the former Yugoslav Republic of Macedonia, no. 59974/08, §§ 38-40, 2 July 2015

During the hearings of cross-examination of the witnesses, one of the defense lawyers demonstrated that a witness was lying, after asking him to confirm that a lawyer with an invented name was also part of the organization. As retaliation, the presiding judge cut off the defense lawyer's microphone and prevented this defense lawyer from continuing his cross-examination. Following the protest of the accused lawyers who were deprived of their defense by this lawyer, the presiding judge decided to remove the accused lawyers from the courtroom. Following the protest (applauses) of the public against this decision, the presiding judge decided to remove the public from the courtroom. The defense lawyer left the courtroom, being unable to defend his client without the client's presence.

- *Regarding the sudden limitation of the number of lawyers for each accused in December 2019*

Around 200 defense lawyers composed the defense team of the mass trial against ÇHD lawyers. During the hearing in December, the presiding judge suddenly decided to limit to three the number of defense lawyers per accused lawyers. The accused lawyers were denied representation by their chosen defense lawyers.

- *Regarding the removal of the accused lawyers, the public and the defense lawyers from the courtroom in March 2019*

On 19 March 2020, the accused lawyers, one by one, orally challenged the Court's authority on the basis that the Court was not impartial. After Selçuk Kozagacli's speech, the public applauded him and, thereafter, the presiding judge Akin Gürlek decided to remove the accused lawyers from the courtroom. As a consequence, the public applauded in protest and then they were also removed from the courtroom. The defense lawyers decided to leave the courtroom since there were no clients and no public allowed to attend the hearing.

After a break, the presiding judge refused entrance to the courtroom by the defense lawyers. After a door of the courtroom opened, the defense lawyers tried to reach the benches but were prevented by the police to do so. A defense lawyer, Bahattin Özdemir, who reached the bench, was taken outside the courtroom by the police and forbidden from representing his client.

The accused lawyers and defense lawyers were never informed that they would be allowed to re-enter the courtroom the next day and that the judge would hear the final statements then before handing down the judgment. Therefore, the accused lawyers weren't present on their last days to give their final words and the defense lawyers couldn't prepare their defense on such a short notice, their request for postponing the last hearing having been denied.

- *Regarding the sanction upon Bahattin Özdemir prevented to represent his client*

The defense lawyer Bahattin Özdemir has been threatened with prosecution for having tried to reach the bench of the defense, during the events of the 19th of March 2020. He was forbidden to defend his clients, including Zehra Özdemir.

- *Regarding the right to the last word*

Article 216 of the Turkish Criminal Procedure Code provides that the accused who is present shall be granted to he very last word before the judgment. However, this right was denied to the accused lawyers.

On 20 March 2020, the accused lawyers couldn't reach the courtroom, weakened by their hunger strike and the tension during the hearing of the previous day. Moreover, they weren't informed that they would be allowed the courthouse on 20 Mars 2020 and that it would be the last day of the trial when they could present their final word.

The defense lawyers were, under such circumstances, unable to prepare a defense, given such short notice of the hearing on 20 March. Moreover, they were not informed that they would be allowed back into the courthouse on March 20, or that 20 March would be the last day of the hearings. Only Ahmet Mandaci and Zehra Özdemir appeared to present their last words, expressing their inability to present their defense in these conditions.

In these very particular circumstances, the equality of arms, in the meaning of the right to have the last word, was also breached.

4. Right not to be tried or punished twice (article 4 of Protocol No. 7)

The *ne bis in idem* principle is set by article 4 of the Protocol No. 7 to the ECHR, as well as in article 38 of the Turkish Constitution. Eight lawyers are defendants in both the CHD I and the CHD II (and II bis) trials : Selçuk Kozağaçlı, Barkın Timtik, Ebru Timtik, Naciye Demir, Şükriye Erden, Günay Dağ, Oya Aslan and Özgür Yılmaz.

Both proceedings rely on substantially identical evidence (same witnesses and same digital documents from Belgium and the Netherlands). Both proceedings are grounded on articles 314/1 and 314/2 of the Turkish Penal Code. Both proceedings are related to the accusation of the lawyers as alleged members of DHKP-C, as a continuous offense.

These eight lawyers have been tried simultaneously twice for the same offense. The 18th High Criminal Court of Istanbul, in charge of the CHD I proceeding, postponed its decision on this matter until the Supreme Court's decision on the CHD II trial.

5. Right to have adequate time and facilities to prepare oneself defense (article 6 § 3 (b))

Article 6 § 3, (b) of the Convention provides for the right to have adequate time and facilities for the preparation of one's defense. The European lawyers have observed the following events demonstrating that this right has been violated many times:

- *Regarding access to the file*

Selçuk Kozagacli argued he was denied the right to access his file, which he needed to prepare his defense.

- *Advancement of the date of the hearings*

At the end of the hearing in September 2018, the continuation of the hearing had been announced for 19 and 20 February 2019. It was only late in November, fifteen days before the actual hearing date that the parties were notified of the advancement of the date from February 2019 to December 2018.

- *Denial of time to prepare the defense*

During the hearings in March, the defense lawyers did not expect that all their requests for complementary investigation, challenge to the Court's lack of impartiality, additional evidence, etc. would be rejected so quickly and without *bona fide* consideration. They expected an additional set of hearings at which to plead and asked for it, but their request was, again, rejected. Zehra Özdemir expressly stated, on 20 March 2020 that she was not ready to defend herself. Moreover, they weren't even informed that they could enter the courtroom on 20 March 2020 (since they were excluded the previous day) and that it would be the final hearing where the defense statements and the last words of the accused would be heard.

- *Denial of time to prepare the hearing of a witness*

On 4 December 2018, an unscheduled witness was called by the President. The lawyers were denied time to prepare the cross-examination of this witness.

6. Right to publicity of the debate (article 6§1)

The right to the publicity of the debate is set out in article 6§1 of the Convention. The public and the accused can be excluded from the courtroom only for the interests of morals, public order or national security, protection of juveniles, protection of private life, or in the interests of justice in exceptional circumstances and where the limitation is strictly necessary.

Articles 182 and 184 of the Turkish Criminal Code provides similar guarantees regarding the publicity of the debate.

However, the European lawyers observed on many occasions restrictions on the publicity of the debate, not only with respect to the public but also with respect to the defense and the accused lawyers.

On 3 December 2018, the presiding judge first excluded two defense lawyers from the courtroom because they were successfully cross-examining a witness, then excluded the accused lawyers protesting against the decision to deprive them of their lawyers, and finally excluded the public protesting against the removal of all lawyers from the courtroom. The presiding judge of the 37th High Criminal Court of Istanbul then interrogated a witness in a courtroom empty except for two European lawyers observers and the police.

On 19 March 2020, the presiding judge of the 37th High Criminal Court of Istanbul even forbade all the defense lawyers to enter the courtroom, leading to threats of prosecution of those lawyers who sought to enter the courtroom and , and in particular, against Bahattin Özdemir who reached the bench.

Each time, the restrictions on the publicity of the debate appear to have been motivated by retaliation towards the defense and not in the interests of justice. The exclusion from the courtroom of the public and of the accused lawyers because of their protest by applauding is also disproportionate.

7. Right to examine and to obtain attendance of the witnesses (article 6 § 3 (d))

Article 6 § 3, (d) sets that every accused has the right “to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him”.

Several guarantees have been breached during the trial, with respect to the right to examine and to obtain the attendance of witnesses.

- *Equal treatment between the witnesses of the prosecution and the defense*

Witnesses for the prosecution and the defense must be treated equally¹⁰. However, the presiding judge refused to hear three witnesses of the Prosecutor (see below), all witnesses from the defense, and showed more respect for the witness (polite form of address) than towards the lawyers (familiar form of address). On 4 December 2018, while the public and the lawyers entered the courtroom, a witness was already visible on the screen and it is impossible to know what he heard before he testified. .

- *Refusal to hear witnesses admitting to be put under pressure by the police*

Refusal to hear any witnesses or examine evidence for the defense but examining the witnesses and evidence for the prosecution may raise an issue from the perspective of equality of arms¹¹. Only good reasons can justify the absence of a witness, provided that the Tribunal tasks all efforts to secure their presence¹².

On 5 December 2018, the presiding judge of the 37th High Criminal Court of Istanbul refused to hear three last witnesses of the prosecution, without asking the lawyers. He rejected the oral requests from the defense for the attendance and testimony of these three witnesses. After a short break during the hearing, the lawyers asked for additional time to draft a written request, on the basis of the minutes of the hearing that they had not yet received, with respect to the attendance and examination of the three last witnesses. This request was denied, and the three last witnesses were never required to attend and be subject to examination during the trial. The defense lawyers claimed that these witnesses admitted, in another trial, that their testimony was manipulated by the police and that they were put under pressure.

As the testimony of the witnesses was crucial to demonstrate the total lack of credibility of the witnesses, no good reason was given for their absence and no efforts were made to secure their presence. It appears from the basis of the judgment of 18 March 2019 that the judges assessed the credibility of the witnesses, only taking into account the declaration of seven of them, even if two of them couldn't be cross-examined by the defense lawyers. Therefore, article 6§3 was breached.

10 - ECtHR, *Bönisch v. Austria*, 6 May 1985, §§ 31 and 32, Series A no. 92

11 - ECtHR, *Borisova v. Bulgaria*, no. 56891/00, , §§ 47-48, 21 December 2006; *Topić v. Croatia*, no. 51355/10, §§ 45, 48 and 49, 10 October 2013; *Abdullayev v. Azerbaijan*, no. 6005/08, §§ 59-60 7 March 2019

12 - ECtHR, *Schatschaschwili v. Germany*, [GC], no. 9154/10, §§ 119-122., ECHR 2015,;

Moreover, the judge constantly interrupted the lawyers while they were cross-examining the witnesses, thus encouraging them not to respond properly to the relevant questions of the defense lawyers. By this attitude, the judge also prevented the full hearing of the witnesses.

- *Refusal to hear any witness from the defense list*

The 37th High Criminal Court rejected the request to hear any witness from the defense list, which was submitted in a written request, even when two of these witnesses were present in the courtroom, ready to testify.

The defense was thus deprived of its right to submit evidence and witnesses, which is also an essential element of the principle of equality of arms. The defense was denied its right to disprove the claims and impeach the testimonies of anonymous and repentant witnesses and the other claims by the Prosecutor.

- *Anonymous and repentant witnesses*

Five of the witnesses were anonymous witnesses and several guarantees of fairness in such circumstances were also breached. Firstly, the defense lawyers were constantly interrupted by the judge during the cross-examination, preventing the full hearing of these witnesses, which led some of them to refuse to respond to the questions of the defense lawyers (see above)¹³.

Secondly, the reasons for the anonymity of witnesses is also questionable¹⁴, especially as evidenced by two incidents: one of the anonymous witnesses had his real name revealed by the presiding judge; at his demand, one of the known witnesses (Berk Ercan) was blurred on the screen by the presiding judge.

Thirdly, the combination of the anonymous status and the repentant status of the witnesses raises concerns about the reliability of their testimonies. According to the ECtHR, “The Court reiterates that the use of statements given by witnesses in return for immunity or other advantages may cast doubt on the fairness of the proceedings against the accused and can raise difficult issues to the extent that, by their very nature, such statements are open to manipulation and may be made purely in order to obtain the advantages offered in exchange, or for personal revenge. The risk that a person might be accused and tried on the basis of unverified allegations that are not necessarily disinterested must not, therefore, be underestimated”¹⁵. All the witnesses were imprisoned during their testimonies, and refused to

13 - ECtHR, *Craxi v. Italy* (no. 1), no. 34896/97, §88, 5 December 2002

14 - ECtHR, *Doorson v. The Netherlands*, 26 March 1996, §§ 69 – 70, Reports of Judgments and Decisions 1996-II

15 - ECtHR, *Habran and Dalem v. Belgium*, , nos. 43000/11 and 49380/11, § 100, 17 January 2017

respond to the questions of the defense lawyers regarding the advantage they obtained with their testimonies.

The lack of reliability of these testimonies also comes from the fact that several witnesses admitted that they had testified in many trials and couldn't recollect in which case they were presently testifying or the names of the accused lawyers in the trial.

- *Contradiction between the declaration of the witnesses and unfairness of the collection of their statement*

If article 6§3 (d) does not specify which declaration prevails, when there are contradictions between the testimonies during the pretrial and trial stages or when the witness declares he no longer has recollection of the facts, the jurisprudence of the ECtHR requires an assessment of the circumstances under which evidence was taken¹⁶.

The Turkish Criminal Code provides several guarantees with respect to the assessment of witness testimonies. For instance, article 209 and 210 of the Code requires a reading of the full declaration of witnesses, especially if they claim not to recall the facts about which they testified.

However, the declarations of the witnesses during the pretrial phase were not fully read by the Tribunal. The witnesses were constantly led by the presiding judge with respect to their answers. Some of them admitted not recalling the entire declaration they had made about the accused. .

During the fact-finding mission as well as during the observation of the hearing in December 2019, the European lawyers observed that all the witnesses were repentant and were generally refusing to identify what benefit they received in return for testifying.

One of the witnesses, Berk Ercan, was also given access to the digital material allegedly seized during the investigation before his written statement during the pretrial phase. The probity of this witness is also challenged by the fact that he suffered psychological problems and, before his second written statement, wrote to the authorities to express how the detention was problematic regarding his psychological problems. Finally, it is to be noted that this witness was convicted, in his own case, by the presiding judge of the 37th High Criminal Court of Istanbul, Akin Gürlek.

16 - ECtHR, *Vidgen v. The Netherlands*, , no. 68328/17, §§38-41, 8 January 2019

One of the witness, Ismet Özdemir, (alleged to be a member of both DHKP-C and FETÖ) was also convicted for false testimony in a trial in 2013. The defense lawyers request for a copy of the evidential documents relating to this this previous conviction was denied.

Another witness confirmed having drug issues.

8. Right to be defended by legal representation of his own choosing (article 6§3(c))

On 3 December 2019, the presiding judge of the 37th High Criminal Court suddenly decided to limit to three the number of defense lawyers per accused. However, at the beginning of the trial, there were about 200 defense lawyers defending all 20 accused lawyers. The presiding judge of the 37th High Criminal Court suddenly decided to enforce Article 149 of Code of Criminal Procedures, after its amendments in 2016 and 2018, which states that a maximum of three lawyers can represent each defendant who is being tried for organized crimes.

Moreover, several times, the presiding judge prevented lawyers from defending their clients, as mentioned above (see publicity of the debate).

8. Right to be informed promptly informed of the nature and cause of the accusation (article 6 § 3)

The Article 6§3 ECHR provides that *‘Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him’*.

On 14 September 2018, the Istanbul 37th Heavy Penal Court ordered the release of the accused lawyers from pre-trial detention. A few hours later, on 17 September 2018, the same lawyers were arrested a second time, without legal basis.

The accused lawyers, released and re-arrested, have not been promptly informed of the alleged new charges against them, preventing them from drafting defensive petitions.

10. Right to cross-examine the validity of a proof and present proofs (article 6 § 1 and 6 § 3)

According to the Guide on Article 6 ECHR, “unrestricted access to the case file and unrestricted use of any notes, including, if necessary, the possibility of obtaining copies of relevant documents, are important guarantees of a fair trial. The failure to afford such access has weighed in favour of finding that the principle of equality of arms had been breached¹⁷. The

17 - Beraru v. Romania, no. 40107/04, §§ 70 and 71; 18 March 2014,

right to an adversarial hearing means the opportunity for the parties to have knowledge of and comment on all evidence adduced or observations filed by the other party with a view to influencing the court's decision¹⁸”.

Since the beginning of the CHD trial, the original documents have never been available, despite numerous submissions to obtain them made by the defence lawyers.

According to ECtHR, “Respect for the rights of the defence requires that limitations on access by an accused or his lawyer to the court file must not prevent the evidence from being made available to the accused before the trial and the accused from being given an opportunity to comment on it through his lawyer in oral submissions”¹⁹.

According to the Guide on Article 6, “It must be examined whether the applicant was given an opportunity to challenge the authenticity of the evidence and to oppose its use. The quality of the evidence must be taken into consideration, as the circumstances in which it was obtained, whether these circumstances cast doubt on its reliability or accuracy, whether the evidence was or was not decisive for the outcome of the criminal proceedings²⁰, the use of evidence obtained through exertion of pressure on a co-accused²¹, unfair use of other incriminating witness and material evidence against an accused²², and use of expert evidence in the proceedings²³”.

In this trial, substantial evidence was not accessible to the defence, who was then unable to challenge the authenticity and reliability of that evidence.

In particular, the **digital material allegedly seized during a search of a musical centre** was never presented to the defence. No printed copy of these documents was submitted in the case file. The defence lawyers only had an idea of the alleged content of these documents, based on the testimony of Berk Ercan, who had access to these documents during his statements made in the pretrial phase. No details are provided about the conditions under which the USB key, on which the alleged documents were copied, was found. It was always the same expert who processed the digital materials and raises questions about the reliability of this expert. One can

18 - Brandstetter v. Austria, 28 August 1991, § 67, Series A no. 211

19 - Öcalan v. Turkey [GC], no. 46221/99, § 140, ECHR 2005-IV

20 - Gäfgen v. Germany [GC], no. 22978/05, § 164, ECHR 2010

21 - Erkačić v. Croatia, no. 51198/08, 25 April 2013; Dominka v. Slovakia, no. [14630/12](#), 3 April 2018

22 - Ilgar Mammadov v. Azerbaijan (no. 2), no. 919/15, 16 November 2017

23 - Erduran and Em Export Diş Tic A.Ş. v. Turkey, nos. 25707/05 and 28614/06, §§ 107-112, 20 November 2018; see also Avagyan v. Armenia, no. 1837/10, § 41, 22 November 2018.

question the reliability of this expert. Digital evidence was never communicated to the defence which was not able to analyse it and subject it to counter-expertise.

For instance, the claim that Selçuk KOZAĞAÇLI used the code name ODTÜLÜ (FROM METU) is based only on Berk Ercan's indirect statements. Likewise, there is no substantial evidence that KOZAĞAÇLI had authority to conduct secret intra-organizational communication; the court derived this conclusion from Berk Ercan's indirect statement.

Also, the defence lawyers could not test the authenticity of the **printed version of the documents from the Belgium and the Dutch authorities** because the original digital documents were never accessible to the defence lawyers.

The defence lawyers made several submissions to challenge the source of the data and to gain access to the data used as evidence against the accused lawyers in the current case were made by the defence lawyers. They also challenged the role of the expert in assessing how the data was stored. These submissions were all rejected after a one minute-discussion by an oral decision from the Court.

By denying access to the documents presented by the Prosecutor as evidence, and by denying all requests related to the cross-examination of these documents, as well as the hearing of all the witnesses from the defense list, the 37th High Criminal Court of Istanbul violated Article 6 § 1 and 6 § 3 ECHR.

PART IV - Analysis in the light of the Basic Principles on the Role of Lawyers (Havana, 1990)

The Basic Principles on the Role of Lawyers adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, on the 27th of August to the 7th of September 1990, provides principles “to assist Member States in their task of promoting and ensuring the proper role of lawyers” and “should be respected and taken into account by Governments (...) and be brought to attention of (...) judges, prosecutors, (...)”.

In light of the numerous observed flaws in the prosecution and trial, with respect both to the accused lawyers and the defence lawyers, the European lawyers/observers find that the Basic Principles were ignored.

Principle 1: assistance of a lawyer of their choice

“All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”

As regard the accused lawyers, they were deprived on several occasions of this right, particularly when the defense lawyers were excluded from the courtroom. As regards the accused lawyers, it must be noted that their arrest and the prosecution against them started a few days before the trial of their clients (Nuriye Gülmen and Semi Özakça) in a political case.

Principle 4: assisting the poor and disadvantaged persons

“Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.”

With respect to the accused lawyers, their association (CHD) was well-known for defending the poor, the oppressed and disadvantage persons, such as victims of the collapse of the Soma mine, victims of the Cizre bombing, victims of expropriation, workers of the construction of the new airport, victims of torture, etc. By targeting the CHD association, the Turkish authorities impair this work of defending the poor and disadvantaged persons.

Principle 8: time and facilities to consult with a lawyer in detention

“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”

The imprisonment of the accused lawyers in different jails in different cities was one of the many obstacles to defence lawyers having sufficient time and facilities to prepare and consult with their clients. Moreover, the fact that some of the accused lawyers were placed in a high security prison (type F – Silivri), increased the difficulties of the consultation between the accused

lawyers and the defense lawyers, because of the difficulties of access to the detained (many security checks, long waiting times, etc.).

Principle 9: ensuring appropriate education and training

“Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.”

The prosecution of the accused lawyers relied on their attendance at legal conferences, both national and international. The CHD is also well-known for training lawyers in human rights. By targeting these lawyers, presumably on the basis of their attendance at attending human rights conference and trainings, it properly infringes on the very conduct required by this Principle 9.

Principle 10: no political discrimination to continue the practice

“Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.”

The CHD lawyers were prosecuted because of their opinions and their political beliefs based on the progressive practice of lawyering.

Principle 13: duties of the lawyer

“The duties of lawyers towards their clients shall include:

(a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;

(b) Assisting clients in every appropriate way, and taking legal action to protect their interests;

(c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.”

The CHD lawyers have been accused of being members of a terrorist organization on the ground that they fully respected their duties towards their clients, such as informing them of their legal right (to remain silent, for example); informing them of the lack of merit of a prosecution file in their cases; assisting them in every appropriate way, such as via press conferences; and defending them in Court.

Principle 14: act freely in the protection of the client’s interests and in the upholding of human rights

“Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.”

The CHD lawyers were prosecuted in order to impeach them to defend freely their clients' human rights.

Principle 16 (a): interdiction of intimidation, hindrance, harassment or improper interference

"Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;"

The masse prosecution of the CHD lawyers, both, in the CHD I trial and the CHD II trial, simultaneously, for the same facts, because of their defense of human rights, was obviously an attempt to intimidate them, to create obstacles and interference in their work, and to harass them.

Moreover, it has been observed, during the CHD II proceeding, that the defense lawyers were also intimidated (e.g., threats of torture by anti-terror police on the first day, and they faced many obstacles and interference in the defense of their colleagues.

Principle 16 (c): interdiction to sanction the lawyers for their professional actions

"Governments shall ensure that lawyers (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."

The CHD lawyers have been prosecuted because they were defending – with respect to their professional duties, standards and ethics -- persons accused of being members of a terrorist group. Moreover, their defense lawyers were many times threatened with sanctions even while pleading during the CHD II trial.

Principle 18: no identification with their clients

"Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

The CHD I and CHD II trials are based on the fact that the lawyers, because they are defending persons accused of being members of DHKP-C, are therefore themselves members of DHKP-C.

Principle 19: right to appear before a court for his/her client

"No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles."

The CHD II proceeding started a few days before the opening of a political trial in which the accused lawyers were presenting their clients (Semih Ozakça and Nuriye Gülmen). On several occasions, in the CHD II trial, defense lawyers were excluded from entering the courtroom to represent their clients.

Principle 21: time and facilities to prepare the clients' defense

"It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time."

On several occasions, the defense lawyers were denied the time to prepare the defense (by sudden advancing of the schedule, denying requests for additional time to prepare the cross-examining of an unexpected witness, additional time to prepare the pleadings, etc)

Principle 23: freedom of expression and association

"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."

The CHD association was dissolved by governmental decree on 22 November 2016. During the CHD II trial, the prosecution largely relied on the participation of the lawyers in public debate with respect to the interdiction of torture, human rights, etc.

PART V - Analysis as regards the independence of judiciary and the Rule of Law principles

1. Overview of the general situation

The independence of justice in Turkey is challenged by several factors.

Since 2010, several reforms have contributed to impair the independence of the judiciary, increasing the control of the government over the judiciary²⁴:

- dependence of the Council of the Judges and Prosecutors under the Ministry of Justice and direct nomination of 4/22 members of the Council directly by the president (2010);
- control by the Ministry of Justice of the composition of the chambers of the Council of the Judges and Prosecutors, responsible for recruitment, promotion, appointment and transfers of judges and prosecutors (2014 – subsequently canceled by the Constitutional Court and condemned by the Venice Commission);

After the failed coup d’Etat on the 15th of July 2016, the State of Emergency was declared in Turkey on the 21st of July 2016, and more than 4,000 judges and prosecutors were dismissed from their positions during the two following years, for their presumed membership in the Gülenist organization²⁵.

On 23 January 2017, the Inquiry Commission for State of Emergency measures was created, in order to control the measures taken under the emergency decree laws, such as revocation and dismissal of organizations²⁶. However, this Commission has been severely criticized for its lack of

24 - See Bar Human Rights Committee of England and Wales, Human Rights Institute of International Bar Association and the Law Society of England and Wales, “Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches concerning the Independence of Legal Profession in Turkey, 18 September 2018, p. 6, available here : <https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article> [consulted the 10/06/20]

25 - Human Rights Joint Platform (IHOP), Updated Situation Report -State of Emergency in Turkey (21 July 2016 -20 March 2018), published on 17 April 2018 (hereinafter "IHOP Report"), available at https://ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf [consulted the 10/06/2020]; International Commission of Jurists (ICJ), “Justice suspended : access to justice and the State of Emergency on Turkey”, available at <https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf> [consulted the 10/06/20]

26 - See Bar Human Rights Committee of England and Wales, Human Rights Institute of International Bar Association and the Law Society of England and Wales, “Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches concerning the Independence of Legal Profession in Turkey, 18 September 2018, p. 6, available here : <https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article>

independence, as the majority of its members are appointed by the executive, and its inquisitorial proceedings have led to a lack of guarantee of fair trial or effective remedies²⁷, despite the position of the ECtHR confirming the necessity to exhaust remedies at the national level before applying for relief to the EctHR²⁸.

In April 2017, a referendum increased the power of President Erdogan over the judiciary, leading to a decrease of the independence of the judiciary (reducing the number of Constitutional judges and appointment of 12/15 by the President, reducing the members of the Council of the Judges and the Prosecutors and appointment of 6/13 by the President)²⁹.

While the State of Emergency ended in 2018, an anti-terrorism bill was adopted to allow authorities to continue to suspend judges suspected of being members of the Gülen organization³⁰.

2. UN Principles on the Independence of the Judiciary and UN Guidelines on the Role of Prosecutors

It is essential, in regard to the Rule of Law, to guarantee the independence of Justice. Following the Basic Principles on the Independence of the Judiciary³¹, several guarantees are a matter of concern with respect to the judiciary in Turkey, especially:

[risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article](https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article)

27 - See Bar Human Rights Committee of England and Wales, Human Rights Institute of International Bar Association and the Law Society of England and Wales, "Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches concerning the Independence of Legal Profession in Turkey, 18 September 2018, p. 6, available here : <https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article>

28 - ECtHR (decision) - ÇATAL c. TURQUIE, No 2873/17, 7 March 2017 available only in French (<http://hudoc.echr.coe.int/eng?i=001-172247>).

29 - See Bar Human Rights Committee of England and Wales, Human Rights Institute of International Bar Association and the Law Society of England and Wales, "Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches concerning the Independence of Legal Profession in Turkey, 18 September 2018, p. 6, available here : <https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article>

30 - See Bar Human Rights Committee of England and Wales, Human Rights Institute of International Bar Association and the Law Society of England and Wales, "Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches concerning the Independence of Legal Profession in Turkey, 18 September 2018, p. 6, available here : <https://communities.lawsociety.org.uk/lawyers-at-risk/un-submission-on-turkey-international-law-breaches-regarding-the-independence-of-the-legal-profession/5065977.article>

- **Principle 1:** The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary
- **Principle 2:** The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
- **Principle 4:** There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
- **Principle 8:** In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
- **Principle 18:** Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.
- **Principle 20:** Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

Similarly, the Guidelines on the Role of Prosecutors³² is a matter of concern regarding:

- **Principle 2 (a) :** States shall ensure that: (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
- **Principle 4:** States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

31 - The Basic Principle on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

32 - Guidelines on the Role of Prosecutors adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

- **Principle 8:** Prosecutors 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 disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
- **Principle 21:** Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.
- **Principle 22:** Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

3. Specific observations of European lawyers

The European lawyers have observed the CHD I proceeding and the CHD II proceeding and have participated in a fact-finding mission in October 2019.

During the fact-finding mission, the Dean of the Istanbul Bar Association, Mehmet Durakoğlu, confirmed the impression of the European Lawyers that changes are necessary to guarantee the independence of the judiciary. : *“The problem is that the Council of Judges and Prosecutors has 13 members, 6 are appointed by the President, 7 by the Parliament, where AKP also has the majority. And the President of AKP is the president. The Council of Judges and Prosecutors is presided by the Minister of Justice. The chair of the council is appointed by the President. So it is impossible to have an independence of the judiciary without amending this. The evaluation of justice should be made by a commission of the national assembly. But the problem is not restricted to this. The President has expressed that the separation of powers hampers him. He considers it his right to put pressure on the judiciary.”*

The European Lawyers believe that the lack of independence of the Judiciary in Turkey has significantly impacted the above mentioned mass trials against lawyers.

Firstly, the change in the composition of the 37th High Criminal Court between the first hearings conducted in September 2018 and the second hearings in December 2018 would appear to be coincidental. As a matter of fact, this change occurred after the first presiding judge decided to end the pretrial detention of the accused lawyers (who were subsequently re-detained, after a legally questionable appeal of the Prosecutor). The second presiding judge, Akin Gürlek, is famous for being in charge of political trials, such as: Selahattin Demirtaş (one of the two HDP presidents), Canan Kaftancıoğlu (the Istanbul CHP president), Ahmet Altan (writer and

journalist), Şebnem Korur Fincancı (the president of the Human Rights Foundation of Turkey and one of the academies for peace), Ihsan Eliaçık (theologian and author).

Secondly, as we conducted interviews with the defense lawyers in these political trials, we found that a specific pattern applies in the conduct of the trial (harassment of the defense lawyers, fanciful evidences and witnesses, denial of all requests made by the defense, denial of sufficient time to prepare the defense, etc.).

Similarly, the appeal brought to the Regional Court of Appeal was rejected on the basis of the substance of one paragraph, without oral hearing, which creates doubt about the independence of this Court.

CONCLUSIONS AND DEMANDS

The associations represented during this investigation therefore demand of Turkish authorities:

- the immediate release of the lawyers accused in both the CHD I and the CHD II proceedings;
- the application of the principle *ne bis in idem* in the CHD I proceeding;
- the cancellation of the judgement of the 37th High Criminal Court of Istanbul of the 18th of March 2019, as confirmed by the Regional Court of Appeal, for its non-compliance with article 6 ECHR and article 4 of Protocol 7 to the ECHR ;
- the full respect of the Basic Principles on the Role of Lawyers, and, in particular, the immediate cessation of the harassment of human rights lawyers, the immediate cessation of identifying lawyers with their clients' cause, and the immediate cessation of attempts to bar lawyers to act freely for the defence of their clients;
- the full respect of the Principles of the Independence of the Judiciary and, in particular, to abstain from conducting political trials by interfering in the composition of the Tribunals;
- the full respect of the Guidelines on the Role of Prosecutors;

LIST OF THE ASSOCIATIONS REPRESENTED DURING THE FACT-FINDING MISSION

The lawyers of the monitoring team represented the following organizations:

- ELDH - European Association of Lawyers for Democracy and World Human Rights
- AED-EDL - European Democratic Lawyers
- The foundation The Day of the Endangered Lawyer
- IADL - International Association of Democratic Lawyers
- Progress Lawyers Network
- Giuristi Democratici
- CCBE The Council of Bars and Law Societies of Europe
- CNB - French National Bar Council (Conseil national des barreaux)
- OIAD - Observatoire International des Avocats en Danger (The International Observatory of Endangered Lawyers)
- UCPI - Unione delle Camere Penali Italiane
- Consiglio Nazionale Forense (Italian National Bar Association)
- DSF AS - Défense Sans frontière - Avocats Solidaires
- UIA International Association of Lawyers
- OBF/Avocats.be (Association of French speaking Bars of Belgium)
- Paris Bar Association
- Athens Bar Association
- Barcelona Bar Association
- Berlin Bar Association
- Brussels (French-speaking) Bar Association
- Brussels (Dutch-speaking) Bar Association (NOAB)
- Liège Bar Association
- Vienna Bar Association

LIST OF THE ANNEXES

1. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Rapport de Mission : Turquie – Audience Istanbul du 23 mai 2018, dossier CHD, 18ème chambre, FR, 23/05/18*
2. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Mission Report : Istanbul – CHD Trial – Hearing before the 37th High Criminal Chamber (High Criminal Court) of the Bakirköy Court of Istanbul, September 10, 2018, EN, 05/10/18*
3. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Rapport de Mission : Istanbul 24 octobre 2018 – Procès CHD – audience devant la 18ème chambre criminelle, D-FR, 30/10/18*
4. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Mission Report : Istanbul – CHD Trial – Hearing before the 37th Criminal Chamber of the High Criminal Court of Silivri, December 3rd to 5th 2018, EN, 14/02/2018*
5. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Rapport de Mission : Procès dit “CHD 1”, Audience du 6 mars 2019 devant la 18ème chambre de la Cour de CAGLAYAN, Istanbul, FR, 12/03/19*
6. Joint Statement of the International Observers of the trial against CHD Lawyers, Silivri, 20/03/19
7. Défense Sans Frontières – Avocats Solidaires (DSF-AS), *Mission Report : Istanbul, CHD 2 Trial, Hearing before the 37th Criminal Chamber of the High Criminal Court of Bakirköy in Istanbul, March 18-20, 2019, EN, 08/04/2019*
8. Joint letter to UN Special Rapporteur on the independence of judges and lawyer, to UN Special Rapporteur on the situation of human rights defenders, to the UN Special Rapporteur on the promotion and protection of the rights to freedom of opinion and expression and to the UN Special Rapporteur on the promotion and protection of human rights while countering terrorism, 20/05/19
9. Belgian Observers representing several Bar associations and organizations, *Rapport synthétique du procès des avocats “CHD 2”, 04/07/19*
10. Press release, *European Fact-Finding mission to clarify the circumstances leading to the conviction of 18 Turkish lawyers, 15/10/19*



Rapport de Mission: TURQUIE

Audience Istanbul du 23 mai 2018, dossier CHD.18ème Chambre

Chargés de mission:

- Françoise Fraigneau
- Claire Boullery
- Daniel Losq

Voir en fin de rapport la liste des avocats internationaux présents à l'audience, les associations internationales d'avocats et les barreaux français représentés.

Cette liste a été remise au président en début d'audience et a été annexée au dossier.

Historique de l'affaire:

Les avocats poursuivis dans cette affaire ont été interpellés en janvier 2013, dans des conditions brutales et contestables.

Initialement, ils devaient être jugés par la Cour Spéciale de SILIVRI, qui a été supprimée en mars 2014.

En avril 2014, ils ont été libérés et renvoyés devant la 18^{ème} chambre criminelle de la Cour d'Istanbul, qui renvoie régulièrement l'examen de ce dossier depuis novembre 2014.

Ce 23 mai 2018, il s'agit de la **9^{ème} audience.**

Audience du 23 mai 2018:

L'audience a commencé à 11h15 (au lieu de 10h30). Nous craignons un nouveau renvoi ou une audience sans grand intérêt comme c'est souvent le cas, mais en fait, les débats ont été fort intéressants.

22 avocats, tous membres de l'association CHD, association d'avocats progressistes, qui luttent pour que soient respectés les droits des détenus et en général les droits de l'homme, sont poursuivis dans cette affaire pour complicité de propagande terroriste et complicité d'actes terroristes.

Aujourd'hui, aucun des accusés n'est détenu dans ce dossier. Toutefois, 7 d'entre eux, arrêtés en septembre et novembre 2017, sont en détention provisoire dans le cadre d'un autre dossier qui sera évoqué devant une autre chambre (32ème Chambre) en septembre prochain sous les mêmes chefs d'accusation et fondés pour l'essentiel, sur les mêmes documents que ceux invoqués dans la présente affaire.

Actuellement il y a 3 procédures qui sont fondées sur les mêmes faits et dans lesquelles sont poursuivis tour à tour les mêmes avocats, tantôt en détention provisoire dans un dossier et en liberté provisoire dans un autre et auxquels l'accusation rajoute ici où là quelques autres



avocats, tous ayant la particularité d'être membres de l'association CHD, et ces mêmes documents sont aussi invoqués contre des fonctionnaires et des syndicalistes.

L'accusation fonde pour l'essentiel ses poursuites sur la base de témoignages anonymes et de documents étrangers provenant de Belgique et de Hollande.

Or, les prévenus et leurs avocats n'arrivent pas à obtenir les originaux de ces documents malgré leurs demandes régulièrement réitérées depuis 2013 (début des arrestations et des poursuites dans cette affaire), ni une confrontation avec les soi-disant témoins puisque ceux-ci ont témoigné sous couvert d'anonymat!

Les documents en provenance de Belgique et de Hollande auraient été recueillis sur CD-ROM ou clés USB, mais nul ne sait où ils sont! Ils n'ont pas été placés sous scellés, ils n'ont pas été communiqués aux avocats qui n'ont eu que la photocopie d'extraits.

Dans ces documents, il y aurait des correspondances et/ou des mails échangés entre un avocat et sa petite amie ou un avocat et un membre de sa famille vivant en Belgique ou en Hollande qui seraient selon l'accusation des actes de propagande terroriste, ce que contestent les accusés. La seule correspondance qu'un des avocats a effectivement échangée avec un membre de sa famille en Belgique consistait à lui demander une aide financière pour faire réparer sa voiture suite à un accident!!!

Les accusés ont refusé d'être jugés tant que les originaux des documents invoqués par l'accusation ne leur seront pas communiqués et qu'ils n'auront pas obtenu une confrontation avec les soi-disant témoins, sachant que l'on peut sérieusement s'interroger sur le point de savoir si ces documents et témoins existent réellement et quelle crédibilité on peut accorder à ces documents et témoins, dans la mesure où les policiers, 3 procureurs et des magistrats qui sont intervenus précédemment dans ce dossier sont actuellement incarcérés et inculpés pour corruption, falsification de documents, de preuves etc....

Un des avocats accusé et détenu dans le dossier qui sera évoqué en septembre a rappelé au président d'audience que ces policiers procureurs et magistrats sont détenus dans la même prison que lui et ses confrères et qu'un des procureurs est dans la cellule juste en dessous de la sienne!

Les avocats de la défense ont donc réitéré pour la énième fois leurs demandes de communication des originaux des documents invoqués, la confrontation avec les soi-disant témoins et une enquête pour vérifier la moralité des policiers, procureurs et magistrats qui sont intervenus dans ce dossier, ou que ces documents soient écartés des débats auquel cas leurs clients doivent être acquittés puisqu'il n'y a aucun autre élément à charge dans le dossier.

Ils ont d'ailleurs rappelé que dans d'autres dossiers des accusés ont été acquittés, ces documents ayant été jugés comme n'ayant aucune valeur juridique.

Comme d'habitude, le procureur à l'audience n'a jamais pris la parole et donc posé la moindre question aux accusés ou requis quoi que ce soit.

Le président a affirmé, concernant certains prévenus, qu'ils auraient profité du fait qu'ils allaient en prison pour voir leurs clients détenus pour faire de la propagande terroriste et organiser des grèves de la faim à l'intérieur de la prison pour discréditer le gouvernement.



Un avocat de la défense ayant demandé sur quoi il fondait cette accusation, le président lui a répondu qu'il ne voyait pas pour quoi faire d'autre ces avocats allaient voir leurs clients en prison et de surcroît plusieurs le même jour.

Il lui a été rétorqué que cela faisait partie pour le moins du rôle de l'avocat et que c'était même une obligation pour lui que d'aller voir ses clients détenus et que compte tenu de l'éloignement des lieux de détention, effectivement, ils essayaient de voir plusieurs clients lors de chaque déplacement à la prison.

Le président a aussi reproché à certains des avocats prévenus d'avoir participé à une journée sur le droit des femmes ou au défilé du 1er mai ou d'être allé aux obsèques d'un client, ou d'avoir participé à une collecte de fonds pour aider une amie avocate membre du CHD qui était à l'hôpital.

A plusieurs reprises, il a demandé aux accusés s'ils étaient membres de l'organisation DHKPC (considérée comme une organisation terroriste par le pouvoir). Il leur a lu une liste de 10 noms d'avocats détenus ou inculpés dans d'autres dossiers pour savoir s'ils étaient membres de cette organisation. Tous ont répondu par la négative. ils ont ajouté qu'ils les connaissent mais seulement dans le cadre de leur activité professionnelle.

Le président a, par ailleurs, posé quelques questions surprenantes:

- Connaissez vous les autre accusés dans cette affaire et si oui comment vous êtes vous connus? .

Ce à quoi il lui a été répondu que tous les inculpés dans ce dossier sont avocats, inscrits au barreau d'Istanbul qui se voient à l'occasion des réunions de l'ordre et de la profession, au palais de justice, plaident tantôt côte à côte pour des co-incipulés, tantôt les uns contre les autres, et que lui même les connaît tous puisqu'ils ont plaidé devant lui à plusieurs reprises!

Autre question: Pouvez vous m'expliquer ce que ça fait de faire partie de l'opposition?

Cette question a bien évidemment soulevé l'indignation des avocats accusés et de leurs défenseurs. (le ton est monté et il y a eu une suspension d'audience). Les avocats de la défense et les accusés ont dénoncé les questions orientées et non juridiques du président. Ils ont rappelé qu'il n'y a pas de délit d'opinion. Ils ont demandé que toute cette partie de l'interrogatoire soit enlevée du dossier, ce qui a été refusé.

SERHAN ARIKANOGLU, un des avocats accusé, ancien président local du CHD de 2007 à 2009 a rappelé qu'un avocat à le devoir de défendre tous les accusés même s'ils font partie de l'opposition et que dans une démocratie faire partie de l'opposition c'est avoir le droit d'analyser la situation politique, de la contester, et de bénéficier de la liberté d'expression.

Le président lui a reproché d'avoir participé à l'élaboration, d'un documentaire de propagande du DHKPC.

Il a expliqué que ce documentaire portait sur les conditions de détention dans les prisons en Turquie et qu'il avait seulement accepté d'être interviewé pour apporter son témoignage sur les conditions de sa propre détention ayant lui-même été placé en détention provisoire au début de ce dossier.

Selçuk Kosagacli (avocat accusé et détenu dans le dossier qui viendra en septembre devant la 32ème chambre), souligne que les documents dont fait état l'accusation et qui servent de base



dans 5 autres dossiers, représenteraient 5000 pages dont l'accusation est incapable de présenter les originaux mais seulement des photocopies de soi-disant extraits, lesquels de surcroît ne sont pas présentés exactement dans le même ordre et de la même façon dans les différents dossiers ce qui les rends encore plus suspects.

Il considère que ce ne sont pas des preuves et il y a tout lieu de penser que ces documents, soit n'ont jamais existé, soit ont été fabriqués et/ou détruits par les policiers et les procureurs en charge de surveiller à l'époque le DHSPC, ces policiers et procureurs étant actuellement détenus pour corruption et falsification de preuves.

Il déclare qu'en fait il ne s'agit que d'un procès purement politique et qu'il faudrait avoir l'honnêteté et le courage de le dire et qu'au moins les choses seraient claires.

" je suis socialiste et je l'assume".

Après un quart d'heure de délibéré, les demandes des accusés et de la défense sont rejetées,

L'affaire est renvoyée à l'audience du 24 octobre 2018 à 10h30 étant précisé que pour ceux des accusés qui seront encore détenus à cette date, il y aura une visioconférence et ce bien que les accusés détenus et leurs avocats se soient battus pour obtenir que ce 23 mai ils comparaissent en personne, la visioconférence étant souvent de mauvaise qualité et du fait de la difficulté pour les accusés de suivre les débats, d'intervenir spontanément au cours des débats et l'impossibilité de communiquer avec leur avocat (qui lui est à l'audience). Ils en avaient remercié le président!!! qui leur a répondu manifestement par le mépris, en dépit des droits de la défense et du droit pour les accusés au procès équitable.

Le tribunal a par ailleurs pris un mandat d'arrêt contre deux des accusés qui ne s'étaient pas présentés à l'audience.

L'audience s'est terminée à 18h.

Les confrères Turc accusés, les avocats de la défense, Elvan Olkun, Clarisse Kilic nous ont chaleureusement accueillis et remerciés de notre présence nous rappelant que pour eux ce soutien est essentiel. Certains ont rappelé la présence des avocats internationaux à l'audience et nous ont rendu hommage au cours de leur intervention.

Nous ne pouvons qu'être admiratifs vis à vis de ces confrères qui se battent au prix de leur liberté pour défendre les valeurs de la profession et il nous faut absolument continuer de les soutenir.

Nous sommes allés ensuite au consulat de France pour rencontrer à sa demande, Mr le consul adjoint Aurélien Maillet qui suit ces dossiers avec beaucoup d'intérêt et qui n'avait pu ce jour assister à l'audience.

Françoise Fraigneau

Claire Boullery

Daniel Losq



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Audience du mercredi 23 mai 2018

Liste des Avocats internationaux présents

Nom Prénom	Barreau d'origine	Barreau représenté	Association
LOSQ Daniel	Coutances-Avranches	Aix en Provence Bordeaux Brive Lyon Toulouse	Défense sans Frontière
FRAIGNEAU Françoise	La Roche sur Yon	«	«
BOULLERY Claire	Nanterre	«	«
BORG Florian	Lille		Association des Avocats Européens Démocrates (AED-EDL)
LESAGE Etienne	Paris		Conseil National des Barreaux (CNB) Observatoire International des Avocats en Danger (OIAD)
KNIGHT Stephan	Royaume Uni United Kingdom		Haldane Society of Socialist Lawyers & European Lawyers for Democracy and Human Rights
LAHNER Clemens	Autriche		EDLH Vienna Bar Ass.



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**MISSION REPORT DSF-AS - ISTANBUL - CHD Trial
HEARING BEFORE THE 37th HIGH CRIMINAL CHAMBER (HIGH CRIMINAL
COURT) OF THE BAKIRKÖY COURT OF ISTANBUL
September 10, 2018**

Report of the State of Emergency Symposium, October 7 to 9

Mission Objectives:

- To support our colleagues,
- Witness the proceedings of the hearing,
- Defend the fundamental principles of the profession, including the freedom to the defense, and respect of a fair trial.

1. Background on the political context:

These cases follow on from the victory of the "yes" vote to the referendum on Sunday, 16 April 2017, which allowed President Erdogan to establish a super presidency and to hold unprecedented powers, allowing him to control not only the executive, but also the legislative and judicial powers.

According to two of the 18 articles (immediately implemented) of the Fundamental Law which will come into force in 2019:

- The head of State may be the leader of his party;
- The Head of State becomes the "High Council of Judges and Prosecutors" in charge of appointing and removing court staff

He will appoint 12 of the 15 members of the Constitutional Court, and six of the 13 members of the High Council of Judges and Prosecutors. Parliament will choose the other seven.

In September 2018, a decree-law gave the President the power to control over professional organisations, foundations and trade unions, which includes the professional bodies and the Bar Associations...

Arrests of lawyers on account of their professional practice as defence counsel happen daily...

2. Reminder of the procedures followed by DSF-AS in Turkey:

1/ "KCK2" file: DSF-AS, together with other professional organisations of European lawyers, has responded to the call of our colleagues launched in 2012, to follow the so-called "**KCK2**" trial involving 46 lawyers arrested throughout Turkey in 2011 and tried since July 2012. What these lawyers have in common is that they have been, during a period, defender of the Kurdish opponent Oçalan, of whom they are accused of being accomplices. Judged initially before a special court sitting in SILIVRI prison compound, the case was sent back in April 2014, before the **18th Chamber of the Court in Istanbul** because of the abolition of the exceptional jurisdictions. At that time, the last detainees were released. From one referral to the next, the proceedings continue without the documents of the prosecution, challenged by the defence, to be produced in the original to be examined... despite successive requests from the court. **This case will return to the October 30, 2018 hearing.**

2/ CHD 1 file: subsequently, DSF-AS supported fellow members of the defence team of the so-called "KCK2" case and the lawyers' association "**CHD**", very militant to defend lawyers before the Special Court of SILIVRI for incitement and complicity in terrorism. They were released in April 2014 during the referral of their case to the **19th Chamber of the Court in Istanbul** after the abolition of the special jurisdiction of Silivri. As in the previous one, referrals follow another one since then with the same lack of formal evidence. The lawyers appear free except for 8 of them detained for other reasons.

This file will return at the hearing on October 24, 2018.

3/ OHD file: DSF-AS also supported lawyers who are members of the Association of Lawyers for Freedom "**OHD**" which campaigns for an independent justice, liberties, respect for laws and international conventions ratified by Turkey and to denounce the malfunctioning of the judiciary Turkish system, conditions of detention, massacres of civilian populations, the violence and outrages upon human dignity and systematic repression of the Kurdish people.

52 defendants are thus prosecuted before the **14th Chamber of the Istanbul Court**, including 40 lawyers. 12 of them are also members of the "KCK2" trial, in particular Ramazan DEMIR and Ayse ACINIKLI, arrested in March 2016 and detained from 6 April to 7 September 2016.

These lawyers are also accused of working with members of the THUAD-FED association (Federation of associations of the families or relatives of convicted or detained persons). This association, like the OHD or the CHD, is considered to be a terrorist, which means its members are terrorists...

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It should be remembered that 300 associations were banned by decree in 2016.

In addition, in this OHD file, **our colleague Ramazan DEMIR** is accused of an additional charge of "**terrorist propaganda**" for:

- Posting on Facebook decisions by the ECHRt condemning the Turkish State for violation of Human Rights in response to complaints that he had filed in various cases.
- Having participated in the demonstration in Gezi Park against the destruction of the park to build a real estate complex and publishing photos on Facebook of this event.
- Protesting the curfew imposed in southern Turkey - particularly in the Kurdish region - and the serious consequences that followed for the population.

This case was returned on **6 September 2018** before the Court of CAGLAYAN. Followed by two members of DFS-AS, a **separate report was drafted, attached hereafter in this report. It has been postponed until 11 December 2018.**

4/ "Propaganda" file: DSF-AS has been asked by our colleagues to support 18 lawyers who are being prosecuted for publicly protesting on 15 September 2015, against violations of fundamental rights committed at CIZRE on the population; of the hundred or so lawyers who participated in this pacifist movement of protest, 18 of them, including Ramazan DEMIR, Ercan KANAR, Hüseyin BOGATEKIN and Ebru TIMTIK, defenders in the KCK2 case, are suffering from these prosecution; they appear free except for 3 who are detained for other reasons. All are accused of terrorist propaganda. The first hearing in this case was held before the 36th Chamber of the Istanbul Court on 10 May 2018.

This case will return to the hearing on 8 November 2018.

5/ Case CHD2: Finally, DSF-AS was **again asked** to support 20 lawyers, all members of the CHD (and for 8 of them also prosecuted in the "CHD1" case) arrested between September and December 2017, and have since been detained except for three who have been released.

In this trial, the 20 lawyers being prosecuted were appearing for accession and leadership of a terrorist organization.

These acts are punishable by 7 to 20 years of criminal imprisonment.

This case came for the first time to the hearing of the 37th chamber of the BAKIRKOİ Court in Istanbul on 10 September 2018, and is reported hereafter in this report.

a. Conduct of the mission: Trial CHD 2 (10-15 September)

A large delegation of European lawyers (Italian, German, Swiss, French) had come to follow the week's hearings.

Several Turkish Bar Association Presidents, including the President of the Istanbul Bar, were also present.

The court was initially determined to hear the lawyers by videoconference, scattered in prisons far away from Istanbul, except for two of them detained in Istanbul. After 3 days of hunger strike led by our colleagues during the week before the trial began, the newly appointed President finally decided to bring them to the hearing. As a result, it was announced later that the hearings would last whole week.

The hearing was scheduled for 10:00am. As usual, it was preceded by a pre-meeting at 9:00am with our defense colleagues. The Consulate General, which had sent a delegation to the October 6 hearing, informed us of the impossibility for them to be present at this hearing.

At the entrance to the court there was a large police force and difficulties were opposed to us entering the courthouse through a side door reserved to lawyers and court personnel without being bag searched, as wished by our Colleagues.

After discussions between our Turkish colleagues and the police force, it was decided to get international lawyers in through a public entrance with a single control of our bags and professional cards.

The international lawyers then gathered in the lawyers' room to make an update of the procedure and the facts against our colleagues.

Arriving in front of the courtroom at about 10:30, we waited 15 minutes before being informed of a change of room to a larger room due to a very large number of people that came to attend the trial. We then waited another long hour before entering the courtroom.

The trial finally began at approximately 11:45am.

The hearing



The audience, which was very large, stood up at the beginning of the hearing to applaud at length the arrival of the accused lawyers. The applause was repeated several times in the course of the debates, during each other's speeches.



The public is composed largely of the families and clients of our accused colleagues, including families of miners who died in the mining disaster of Soma (301 dead people).

Are also present the Association for Mutual Aid with the Families of political Prisoners (TAYAD), deputies from the People's Democratic Party (HDP, left, pro-Kurdish) and the Republican People's Party (CHP, Social Democratic and Kemalist) and many European trade unionists.

DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

Defence lawyers, also very numerous, are separated from their clients by a double row of gendarmes and anti-terrorist police officers surrounding the accused persons.

The court is composed of three judges, including the president, who is in his forties, newly appointed, and the Prosecutor.

In opening the hearing, the President states that, as a newly appointed, he is badly aware of this voluminous file and that he is aware that many people present in the room have more experience than he does...

Then he proceeds to identify the present defendants:

- Ahmet MANDACI
- Aycann CICEK
- Aysegül CAGATAY
- Aytac ÜNSAL
- Barkin TIMTIK
- Behic ASCI
- Didem BAYDAR ÜNSAL
- Ebru TIMTIK
- Engin GÖKOGLU
- Naciye DEMIR
- Özgür YILMAZ
- Süleyman GÖKTEN
- Sükriye ERDEN
- Yagmur EREREN EVIN
- Zehra ÖZDEMIR
- Ezgi ÇAKIR
- Selçuk KOZAGACLI
- Yaprak TURKMEN

Arrest warrants have been issued for Günay DAG and Oya ASLAN, absent from the hearing.

All are members of the *Progressive Lawyers Association* (CHD) and the majority of them are also lawyers from the *People's Law Office* (HHB).

Our Colleagues were indicted between September and December 2017. Their offices and homes were searched.

They are all in pre-trial detention, with the exception of Ezgi ÇAKIR, who was the subject of a placement under judicial supervision to enable her to look after her 3-year-old daughter, as her husband was also prosecuted and held in detention provisional in the same case.

The debates

Defense lawyers are complaining about the conditions under which the trial is being held, all of them are unable to sit down due to insufficient seating in the courtroom.

First defense lawyer requests that the special anti-terrorist forces present in the courtroom (about 15-20 people) leave because they have no reason to be present in addition to the gendarmerie forces (approximately 30 persons), used for escorts and for maintaining order in the courtroom. His request was not granted.

Our colleague Ayse ACINIKLI then speaks. *"All the people prosecuted are colleagues"*, she says.

She reminds the Tribunal of the Havana principles on the rights of the defence and the guarantees relating to the exercise of the legal profession adopted by the United Nations.

"Under both national and international law, all lawyers must be able to carry out their missions without hindrance and to express themselves freely.

This is not possible here. The Lawyer's independence is constantly being violated.

Lawyers can be members of organizations in addition to their professional practice, it's a right, it's not a crime.

"Under the terms of the indictment, the accused persons are charged with membership in a terrorist organization, but the charge is actually only to be a defense lawyer".

At this point the President informs her that due to a technical problem, her comments could not be recorded, that she regrets.

A third defence lawyer, recalls that according to the Law on Lawyers, the Prosecutor in charge of an investigation against a lawyer applies for a prior authorization to the Minister of Justice before any action or investigation. In the present case, this authorisation was neither requested nor given. Consequently, the procedure must be stopped and the accused persons released pending the Ministry's decision on the appropriateness of the investigation.

A new defence lawyer gives an example of a case where the defence Lawyers had made the same criticism, requiring that the authorisation is sought from the Ministry of Justice (after one year of investigation). The judges upheld this request and stopped the ongoing trial in order to apply for this authorization.

A hearing suspension is announced. The judges withdraw to deliberate on the need to stop the trial in order to apply for an investigation authorisation to the Ministry of Justice.

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The chairman of the CHD is shouting that they will continue to fight. Members of the public who support him answer him. He is applauded at length by the audience.

After 10 minutes the hearing resumes. The judges refuse to ask authorization to the Ministry of Justice on the grounds that the charge is serious - "form and "run an illegal organization" and "be a member of an illegal organization" - and that it doesn't fall under the Law for Lawyers. This is why the matter is tried by the *High Criminal Court* and not by the *Criminal Court* (NB: there are two first-level criminal courts, the *Criminal Court* and the *High Criminal Court* for the most serious crimes. The court of appeal is the *High Court*).

Then, the President reminds the defendants of their rights (right to silence, right to a lawyer, etc.) while telling them "*you are lawyers, you know your rights*".

The indictment being 512 pages long, the President asks the defence lawyers if they have read it and if it is possible for them to proceed only with the reading of a summary.

At that moment, one of our colleagues gave him the list of the present delegations to be put inside the file.

The President announces that he would read statements from anonymous witnesses and by an identified witness: Berk ERCAN (testimonies of 19 July 2017, 25 August 2017, 23 October 2017 and 3 March 2018).

Our Colleagues are accused of having been lawyers for the members of the DHKP/C, an organization considered to be a terrorist organization, and for meeting their clients several times in prison and for having informed them of their rights.

It is here the very exercise of the legal profession that is being prosecuted, the Prosecutor assimilating lawyers to the people they defend.

In addition, the debates are supposed to be recorded by a system of transcription during their interventions. This system failed on the day of the hearing.

A defense lawyer requests a suspension to confer with their clients and decide whether they agree to give their written statements in court and not being recorded.

A one-hour break is scheduled at 1:30pm. We're having lunch at the court cafeteria with our Turkish and European colleagues.

Hearing resumes at 2:30pm.

Selçuk KOZAGACLI, lawyer and President of the CHD, speaks for an advocacy for the Profession for 1 hour and 15 minutes.



He first of all thanks the international observers for coming.

He then talks to the judges: *"We have a positive image of you because you're trying to do things in a legal way.*

But I do not trust you because I do not trust the Turkish judiciary system. I don't feel like I'm in court. You give the impression of being a court, but you are not. You look like you are doing justice, but you do not. You are just a facade. The Germans, French, etc. who are here know that there is no justice.

A famous judge, John Marshal, said that a good lawyer is the one who leads the judge to reach reality.

What you're doing does not allow you to reach reality. Putting someone in prison for a long time, torturing him, oppressing his family, is not the right way to reach reality. Shame on you. We are only doing our job of lawyer.

Our first role is to prevent torture, even if the accused is a criminal.

You are judging the work of lawyers. If you can find a single lawyer in Turkey who says that what we did is not the normal work of a lawyer, so I will take your grief.

Two policemen who are here are the ones who beat me up in the police station to get my fingerprints. Did you have to do that to take my fingerprints?

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We cannot be asked to act like in the American system and demand that we say the "truth, nothing but the truth, the whole truth" because an organization that one day is a legal organization with which a Ministry discusses, may, on the following day, be considered a terrorist organization.

If you are asking me if I have any regrets when a person prosecuted for terrorism is released, I'm asking if you had enough evidence for keeping her imprisoned.

If I did defend the parents of the victims of the Soma massacre, it is not to bring light on me, it is because it was my job.

You are not free. Whatever you decide, no one will be surprised. No one trust you.

I am a social democrat lawyer (socialist). You are asking me if I have any connection with the organizations I defend that are considered to be terrorist organizations. Of course I have links, how else would I be able to defend them?

Do I know people who want to destroy the constitutional order? The answer is yes. Do I think like them? The answer is no. I do not want destroying an order that I helped to build over all these years as a lawyer.

I am in prison next to a bomber who killed 50 people in an Istanbul nightclub. He uses violence against innocent and defenceless victims. Me, I am a lawyer".

He ends by saying, "The Prosecutor tells me that he is going to look for evidence against me. He should be very careful: those who have sought evidence against me are today in prison with me!"

Selçuk KOSAGACLI receives a standing ovation.

A break is declared (to proceed with the recording of this statement)

We take advantage of the break to shake hands with our Colleagues surrounded by two rows of security forces (gendarmes as well as anti-terrorist forces) who try to prevent any contact with both the members of the public, but also with their own lawyers.

When the audience resumes, we feel a large hubbub with shouting and very great commotion and a stampede around the defendants.

The court withdraws. Police officers, called for assistance, enter the courtroom, molest Süleyman GOKTEN and handcuff Selçuk KOZAGACLI.

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Finally, it is the defence lawyers who calm down the situation, reminding us that they are not here to fight but to get justice. One of the President of the Bar present is arguing with the police to restore calm. The court comes back!

One will explain us thereafter the reason of this jostling: one of the defendant, Ezgi CAKIR, appearing free, tried to get closer to her husband appearing in custody and was violently pushed away by police forces.

When calm returned, Bahri BELEN, a lawyer, speaks out to say that the police officers can only act on the instructions of the Court (which was not the case, the judges and the President of the Tribunal having withdrawn and abandoned any policy of hearing during the general rush), and that if they were acting within the law, there wouldn't be any issues.

Aytac UNSAL, a defendant, then speaks to explain that the defendants did not come to fight with the gendarmes, but they came to explain their difficulties. But they were thrown to the ground and beaten up. *"Insecurity will reign as long as the gendarmes are in this room. We want the perpetrators of the assault to be identified"*.

He explains that the lawyers were trying to talk to their clients during the hearing suspension, but police forces prevented them from doing so. He requests that his comments shall be transcribed and entered into the proceedings.

Defence counsel then requested that an investigation about the gendarmes who have mistreated their Colleagues is open. "The gendarmes have more power than you, gentlemen of the court". The police is blamed for raising the pressure.

At that moment three police officers arrived in the court room and will remain present until the end of the trial.

Another lawyer speaks to thank journalist Canan COSKUN having attended a previous hearing and investigated their trial.

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She has published an article implicating a police officer who molested a lawyer, and has provided the identity of the police officer in question in his article. She was strongly sanctioned for that.

The lawyer greets all journalists who practise their profession with dignity. *"We also are in prison because we do our job with dignity".*

The lawyer then explains that the police investigate and refer cases before the courts without evidence because they would be in trouble if they did not do so because of a Policy of minimum number of ongoing business.

"The Counter-Terrorism Branch is obliged to conduct raids such as the one that targeted us. Police officers are indeed under pressure from their superiors who may be transferred if the number of operations decreases".

"Our crime is not to believe in the gods of the State. "(...) "We do not expect a saviour. We are soldiers in our own battle".

Ahmet MANDACI speaks to denounce the accusations of terrorism which are used excessively broadly. He gives an example: when he was arrested, the police had jackets with "Narcotic" (drugs) written in the back. His neighbours got worried and asked if he was a drug dealer. The police said no and that he was accused of terrorism. Neighbours have then be reassured (anyone can be arrested for terrorism).

"According to the Penal Code, the sentence must be individualized, but in practice the indictment with the sentences is the same for everyone.

There is no individualization of charges. In the file, it is simply written "X, criminal lawyer, member of the HHB and DHKP/C".

We don't have any problem with rule making, we have a problem with the application of standards. We have a problem with the system.

The state of emergency was supposed to bring peace according to the government, but in reality the unemployment rate has risen, the number of arrests has increased". (Ahmet MANDACI gives statistics under the state of emergency).

The President interrupts Ahmet MANDACI to tell him that his statement is not relating to the indictment and the case. **Ahmet MANDACI** replies that his statement is linked to his defence.

He then recounts the case of a former magistrate who refused to sentence to death 57 people despite of Government intervention. This magistrate was sent to Eastern Turkey as a sanction, but History finally gave him reason.

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"You will be judged by History" and continues his statement for nearly 2 hours.

A break is declared at 7.25pm, until the resumption of the debates the next day.

The debates then continued over 5 days (Monday 10 to Friday 14 September), during which the defendants followed one another to support the memoirs given to Court, each one on a different subject.

This defence, as Ebru Timtik said, was very organized, when the President asked her to think about the other defendants who wished to express themselves: *"we have an agenda Mr. President, only one colleague will be speaking after me (Tuesday, September 11) until 7:30 or 8:00pm"*.

They denounced the bullying and torture they suffered in prison, the conditions of confinement to destabilize them and get confessions, interviews with their lawyers filmed in breach of professional secrecy and confidentiality, the difficulty in receiving proper clothing to dress up...

The social situation, unemployment and drugs were also denounced as factors of crime, especially among young people...

"But I'm not a criminal", says Betric ASCI, "people ask me why I'm going to see my clients in jail, I'm just doing my job!".

I don't know why I was arrested in December 2017, two months after the others", said Yapraï Türkmen, "there is no evidence against me".

At the end of that week of hearings, the President of the Tribunal decided - at the general surprise - **to end the pre-trial detention of all lawyers and remand the case to 19 and 20 February 2019.**

However, **the following day**, Saturday, 15 September, following the appeal by the Prosecutor, **the President reversed his decision and decided to reschedule the detention of 12 prosecuted lawyers**, with the case of 5 others to be submitted to a different court room that finally confirmed the release.

Of the 12 colleagues released, 6 are incarcerated, 6 other were still free ... until when?

The courage of our colleagues in such a difficult and uncertain situation is remarkable.

We must support them.

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b. After the hearing

We were able to have a meeting with the Consul General and the Deputy Consul who, unable to attend the hearing, had wished to have a report.

This meeting allowed us to freely exchange views on the general situation and the situation of our colleagues in particular.

The support of the Consulate is precious for our missions.

* * *

Symposium and Workshop on the State of Emergency in Turkey **(September 7-9)**

The hearings in the OHD (6 September 2018) and CHD (10-14 September 2018) trials were the framework for a *workshop* and a *symposium* organized on 7, 8 and 9 September 2018 at the Istanbul Bar Association on the state of the emergency in Turkey.

Present at these hearings, the DFS-AS members followed one another during the 3 days of the symposium.

On Friday, September 7, 2018, 5 workshops were held for lawyers from 2 to 6pm on different themes (**prison and detention, workers' rights, rights of defence and attacks against Bar Associations, refugee law, case law of the ECHRt**)

The objective was for the confreres to meet, exchange views on the themes dealt with, and the experience of each other and think about solutions to be implemented to fight non-compliance with domestic and international laws. About twenty Turkish lawyers were registered and two international lawyers were able to join them, Hanno BOS, a member of Lawyers for Freedom and Christine Martineau, member of DFS-AS. They benefited from the translation into English of a colleague from Ankara.

Turkish lawyers feel isolated and deprived of the means to act effectively for the respect of rights. They would like to have contacts with NGOs or colleagues particularly involved in proceedings before the ECHRt.

In the workshop on immigration law, the EU/Turkey agreement of April 2016 is unanimously disputed, with some referring to "human trafficking", and of "intimidation of migrants" with serious consequences.

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Colleagues explain all the difficulties faced by these foreigners, for example the situation of Syrians returned from Greece to Turkey, who are in camps, without lawyer for one year most frequently.

An important point is made in understanding the dire situation of the refugees: Turkey has signed and ratified the Geneva Convention of 28 July 1951 and the New York Protocol of 1968 but with one important reservation: **"protection is limited to nationals of member states of the Council of Europe"**.

The number of refugees from other countries leads to serious problems because the Turkish Administration in charge of this issue is extremely negative.

For several years now, UNHCR has not been relocating these refugees to other countries, and, according to some colleagues, would like to remain on good terms with President Erdogan...

In conclusion, it appears that the rights of asylum seekers and migrants are widely trampled on, lawyers have rarely access to their clients or to the file, and being informed after the rendered decisions, which does not allow proper defense!

On September 8 and 9, 2018, the topics discussed at the symposium held at the House of the Istanbul Bar Association and introduced by the President of the Istanbul Bar Association, Mehmet DURAKOGLU, were the following:

- *Analyzing the state of emergency through international law* (moderated by Turkish lawyer Tugce Duygu Köksal - with the intervention in particular of Thomas Schmidt of the **ELDH**, Robert Sabata Gripekoven of the **EDA**, Patrick Henry of the **CCBE**, Natacha Bracq of the **IBAHRI**, Avi Sing of the **UIA-IROL** and of Dominique Attias of the **FBE**);
- *The state of emergency: a summary* (moderated by Gökmen Yesil of HHB);
- *The role of Bar associations in attacks on the right to defence and on the lawyers as the professionals* (moderated by the President of the Istanbul Bar Association, Mehmet Durakoglu);
- *State of emergency and mass media* (moderated by Prof. Yasemin Giritli Inceoglu);
- *ECHR and constitutional court under State of emergency in Turkey* (moderated by Ramazan Demir, with the participation of the former Turkish judge at the European Human Rights Court, Riza Türmen);
- *The independency of Judiciary* (moderated by Mustafa Karadag).

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This symposium was organised with the support of the Bars Associations of Adana, Ankara, Antalya, Bursa, Diyarbakir, Gaziantep, Mersin, Sakarya, Sirnak, Tekirdag, Trabzon and Van.

The following organizations participated in the organization of the symposium: *Association of Democratic Judiciary, Judges' Syndicate, European Democratic Lawyers (EAD), European Association of Lawyers for Democracy and World Human Rights (ELDH), Foundation The Day of the Endangered Lawyer, International Democratic Lawyers Association and Consiglio Nazionale Forense,*

Interventions were very critical about the state of emergency still in place and pessimistic about any improvement in the situation in Turkey.

The symposium was held in a serene manner, no doubt thanks to the presence of numerous international participants including Mr. BUCHWALTER, Consul General of France in Istanbul, who came on Saturday.

If the Turkish forces authorities did not intervene in the course of the symposium, they were, however, very present all along Istikal Avenue, immediately close to the House of the Bar Association where the symposium was held.

This strong police presence was intended to disperse the weekly gatherings of mothers denouncing the disappearance of their relatives (imputed to the State) in the years 1980-1990. Turkish forces had dispersed the last "Saturday mothers" gathering with water cannons and tear gas.

Made on 5 October 2018.

Dominique ATTIAS

Matthieu BAGARD

Ghislaine SEZE

Chargés de mission DSF-AS

DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

List of Professional Institutions and French Bars Associations represented

Hearing of September 10, 2018 - C.H.D. Trial

Conférence Nationale des Bâtonniers	Represented by DSF-AS
Observatoire International des Avocats en Danger (OIAD)	Represented by Dominique ATTIAS (former co-President of the Paris Bar)
Paris Bar	Maître Dominique ATTIAS Paris Bar
Défense Sans Frontière – Avocats Solidaires (DSF-AS)	Maître Dominique ATTIAS Paris Bar Maître Ghislaine SEZE Bordeaux Bar Maître Matthieu BAGARD Paris Bar
Maître Jennifer HALTER	Paris Bar

Bar Associations represented by DSF-AS :

AIX EN PROVENCE Bar

BORDEAUX Bar

BRIVE Bar

CLERMONT-FERRAND Bar

HAUTS de SEINE Bar

LYON Bar

RENNES Bar

TOULOUSE Bar



RAPPORT DE MISSION DSF-AF ISTANBUL 24 OCTOBRE 2018

PROCES CHD
Audience devant la 18^{ème} Chambre Criminelle
Chargés de mission : Claire BOULLERY, Daniel LOSQ

Objectif :

- Soutenir nos confrères injustement accusés de terrorisme
- Etre témoins du déroulement de l'audience
- Défendre les principes fondamentaux de la profession d'avocat, notamment la liberté de la défense, et le respect du procès équitable.

Le contexte :

Depuis plusieurs années maintenant, et notamment depuis le coup d'état manqué du 15 juillet 2016, des mesures draconiennes ont été mises en place, qui portent atteinte aux libertés fondamentales, et aux droits de la défense : interpellation des membres d'associations de protection des personnes, gardes à vue de trente jours sans avocat, privation de passeports,...

L'association DSF-AS suit depuis plusieurs années maintenant les procès de confrères turcs poursuivis en raison de l'exercice de leur activité ou de leur participation à un mouvement ou un groupement professionnel progressiste.

L'audience prévue le 24 octobre fait suite à une audience précédente, qui s'est tenue le 23 mai 2018.

Cette affaire concerne 22 personnes, tous avocats membres du CHD, association progressiste.

La procédure :

La défense rappelle à chaque audience :

- que la procédure suivie ne respecte pas les règles du procès équitable,
- que les griefs invoqués sont formellement contestés,
- que les prétendues preuves versées aux dossiers ne sont pas recevables.

**défense sans frontière
avocats solidaires**

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contact@
defensesansfrontiere.org



Déroulement de la mission :

Nous nous sommes retrouvés comme habituellement à l'hôtel Pera Hill d'Istanbul mercredi matin vers 9 h 15 pour rejoindre ensemble le Tribunal de CAGLAYAN.

Nous avons rendez-vous avec l'une de nos consœurs Turques devant l'entrée principale du Tribunal vers 10 heures.

Celle-ci nous a accueillis et nous a accompagnés jusqu'aux locaux de l'Ordre, au premier étage.

Là, nous avons pu avoir un excellent « briefing » concernant le procès en cours par un confrère turc, qui assiste l'un des accusés. Notre jeune confrère interprète a lui aussi apporté sa contribution puisqu'il s'intéresse maintenant directement depuis plusieurs mois aux procès. Il nous est expliqué que les avocats concernés par ce dossier avaient mis en place un système d'aide contre les agissements de la Police, et de conseil en matière de droits de la défense.

Le Consul Général Adjoint et sa collaboratrice nous ont rejoints et ont participé à notre entretien.

A 10 h 30, nous nous sommes tous rendus dans la salle d'audience.

Le dossier a été appelé. Les accusés présents étaient huit, sur vingt-deux accusés, tous membres du CHD, association d'avocats progressistes. Neuf d'entre eux ont été détenus. Un l'est encore aujourd'hui, mais dans le cadre d'une autre affaire similaire.

La consœur turque qui nous accueille a, comme à l'accoutumé, remis au Président, la liste des avocats étrangers présents et des Barreaux représentés. Avec nos deux confrères du Barreau de LYON, le Bâtonnier Farid HAMEL et Laurence JUNOD-FANGET, ancienne Bâtonnière, ainsi qu'Etienne LESAGE, membre de l'OIAD (Organisation Internationale des Avocats en Danger), nous étions seuls présents, Claire BOULLERY et moi-même.

Le Président était le même que lors de l'audience précédente de ce dossier, ce qui n'était pas le cas des assesseurs.

Le Président a procédé à l'appel des accusés. Ensuite, il a demandé aux présents s'ils souhaitaient prendre la parole.

L'accusé détenu, Selçük KOSAGACLI, Président du CHD, a alors longuement parlé.

Il a tout d'abord remercié les avocats étrangers de leur présence et de leur soutien.

Il a rappelé que, en septembre dernier, il avait été remis en liberté, mais que le procureur avait interjeté appel, et qu'il s'était lui-même rendu à la Police. Il a indiqué que les policiers eux-mêmes avaient honte du fonctionnement du système judiciaire actuel.



Il raconte avoir été renvoyé devant une autre composition de juges, qui n'étaient pas au courant de son dossier. Il n'a pas eu le droit d'être assisté par un avocat. Il a largement insisté sur une procédure qui n'a plus aucun sens, non fondée sur des règles de droit et dont ils sont tous victimes, y compris les magistrats eux-mêmes : il n'y a aucune pièce crédible dans le dossier ; le Tribunal ne prend pas de décision car s'il en prend, ou bien elle est basée sur un dossier vide, ou bien, s'ils sont ou remis en liberté ou acquittés, les juges eux-mêmes sont mutés, voire placés en détention.

Le Président l'a laissé s'exprimer sans intervenir. Le Procureur n'a pris la parole à aucun moment.

La question est abordée aussi d'une éventuelle jonction du présent dossier avec un autre dossier duquel ont été tirées de nombreuses pièces. Le Tribunal a demandé précédemment cette jonction à la Chambre chargée de cette autre affaire, qui a refusé. La Cour Suprême a été saisie de l'incident et a rejeté la demande de jonction. Les accusés soutenaient pourtant cette demande, puisque beaucoup de pièces auxquelles il est fait référence sont identiques, et ne peuvent être utilisées deux fois par l'accusation.

Puis, plusieurs accusés sont venus à la barre, et ont précisé qu'ils avaient déjà apporté les éléments qu'ils estimaient nécessaires à leur défense.

Ensuite un avocat a souhaité intervenir. Il a précisé que, dans la mesure où les juges changent en permanence, ils ne peuvent avoir une connaissance approfondie du dossier, qui contient 45 volumes, et dans lequel seul un volume contient ou plutôt semble contenir les éléments que le parquet considère comme des preuves : les deux échanges d'e-mails, et notamment des pièces qui auraient été saisies en Belgique et aux Pays-Bas. Ces messages datent en réalité de 1998 et de 2003, et n'ont donc strictement rien à voir avec l'affaire en cours.

Cet avocat poursuit en affirmant que, en septembre, les magistrats qui ont prononcé la remise en liberté de plusieurs accusés étaient déjà remplacés avant d'être officiellement démis de leurs fonctions et mutés !

Un autre avocat affirme haut et fort que les avocats qui sont accusés dans cette salle ne le sont pas parce qu'ils ont commis des faits répréhensibles, mais parce qu'ils ont pris des positions qui n'ont pas plu au pouvoir en place.

Vers 12 heures 15, le Président suspend les débats. Il indique aux avocats qu'ils peuvent présenter ultérieurement toutes Requêtes qu'ils souhaitent voir examinées, concernant des actes de procédure ou la remise en liberté. L'affaire est renvoyée au 6 mars prochain à 9 h 30.

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Conclusion

Nous avons été une nouvelle fois chaleureusement remerciés du soutien ainsi apporté aux accusés et du témoignage dont nous pouvons être les auteurs dans notre pays.

Nous ne pouvons malheureusement que rapporter les souvenirs d'un système qui n'a plus de justice que le nom, alors que, il faut le rappeler, la Turquie est signataire de la Convention Européenne des Droits de l'Homme.

Fait le 30 octobre 2018.

Pour Défenses sans Frontières – Avocats Solidaires

Maître Daniel LOSQ,
Avocat au Barreau de COUTANCES (50)

Maître Claire BOULLERY
Avocat au Barreau de NANTERRE (92)

PJ : Liste des organisations et Barreaux français représentés

**Organisations professionnelles et Barreaux français présents ou représentés
à l'audience de la 18^{ème} chambre de la Cour de CAGLAYAN**

le 24 octobre 2018

Conférence des Bâtonniers de France et d'Outre-Mer Bâtonnier HAMEL

Observatoire International des Avocats en Danger Me Etienne LESAGE

Conseil National des Barreaux " "

Barreau de PARIS " "

**Barreau de LYON Bâtonnier HAMEL et
Bâtonnier JUNOD-FANGET**

**Défense Sans Frontière-Avocats Solidaires (DSF-AS) Me Claire BOULLERY
et Me Daniel LOSQ**

Représentant également :

Barreau d'AIX en PROVENCE

Barreau de BAYONNE

Barreau de BORDEAUX

Barreau de BRIVE

Barreau de CLERMONT-FERRAND

Barreau des HAUTS DE SEINE

Barreau de RENNES

Barreau de TOULOUSE



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**DSF-AS MISSION REPORT– ISTANBUL – CHD TRIAL
HEARING BEFORE THE 37th CRIMINAL CHAMBER OF THE
HIGH CRIMINAL COURT OF SILIVIRI
December 03rd to 05th, 2018**

Objectives of the mission:

- Support our colleagues;
- Witness the conduct of the hearing;
- Defend the fundamental principles of the profession, including the liberty of the defence and the right to a fair trial.

As part of the trials of the lawyers of the CHD (Progressive Lawyers Associations) and the HHB (People's Law Office).

This case was first brought before the 37th criminal chamber of the High Criminal Court of BAKIRKÖY at the hearing of September 10, 2018.

On September 14, 2018, at the end of the first week of hearing, the High Criminal Court of BAKIRKÖY ordered the release of all the detained lawyers and postponed the case to the hearing of February 19-20, 2019.

The day after, however, upon appeal of the Prosecutor, the same chamber of the Court, presided by another judge, rule again on the pretrial detention and ordered to arrest 6 of the released lawyers:

- Behiç AŞÇI Selçuk
- KOZAĞAÇLI Ahmet
- MANDACI Aycan
- ÇİÇEK Aytaç
- ÜNSAL Engin
- GÖKOĞLU

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6 other lawyers did appear free before the Court:

- Ayşegül ÇAĞATAY
- Didem BAYDAR
- ÖZDEMİR Yağmur
- EREREN EVİN Ezgi
- ÇAKIR Yaprak
- TÜRKMEN

Other lawyers were still under arrest warrant.

The list of Bars and Organizations represented is attached.

International representation was assured by Sibylle GIOÉ, a Belgian lawyer, and me. The representative of the OIAD, whose visit was announced, and the representative of the AED could not be present.

It should be noted that this absence is due to the precipitation with which the hearing has been scheduled.

At the end of the hearing in September 2018, the continuation of the hearing had been announced for 19 and 20 February 2019. It was only fifteen days before the expected hearing date that the parties were notified of the advancement of the date.

The September hearing held at the BAKIRKÖY Court was moved to SILIVRI for security reasons. SILIVRI is located 75 km from Istanbul, the hearing is held in a Court, located inside a military camp.

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a) First day of hearing

1. Context

The Istanbul Bar provided a bus for the travel of Turkish and international lawyers. We were welcomed and guided by a colleague who also acted as our interpreter, and I sincerely thank him.

At the entrance to the Court, we obtained a Lawyer badge and then we have been able to enter with all our possessions.

Defending colleagues were in the Lawyers' Office, located within the Court.

The hearing was scheduled for 10 a.m. and was to begin with the interview of various witnesses.

We entered the room after waiting a few minutes outside.

Indeed, a scramble occurred inside the room and the Gendarmerie closed the doors of the room in order to stop people entering in the room.

We then have been informed that the reasons of the scramble were related to the impressive security measures that impede communication between the detainees and their lawyers or the detainees and their family, friend members.

After a few minutes, we were able to enter the courtroom on the public benches.

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2. Conduct of the hearing

- The defense, composed of more than a hundred Turkish lawyers, was seated in the first rank of the public benches.
- The Bar President of Istanbul and the Bar President of Izmir were present.
- **The hearing began with an intervention of Ezgi CAKIR**, accused lawyer appearing under judicial supervision. She underlined the subjectivity of the definition of a terrorist who can also be considered as a freedom fighter.
- **Intervention of the Bar Presidents:** they intervened to remind the procedural conditions in which this trial have to be conducted and to request that the witnesses have to be present in person, and not by visioconference at the hearing, when they are heard. This request was immediately rejected.
- **Intervention of Defense lawyer:** he requests that the documents on which the witnesses base their charges (e.g. electronic documents) have to be produced. This request was immediately rejected too.
- **Intervention of The Prosecutor:** he requests that witnesses were not interrogated directly by the defendants but only by their Counsel, resulting in an outcry from the defense.
- The first witness has to be heard by videoconference: at the last moment, he asks to not appear on the screen because his safety could be compromised. The President granted his request.

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- The defense objects because the witness does not have the status of an anonymous witness, hence, he has to appear before the camera. This request is immediately rejected. We will therefore assist to a witness testimony without a witness present at the hearing and in front of a blank screen.
- **The first witness interrogated is a DHKCP repentant** who had access to the organization's computers. His testimony is very general, he doesn't cite facts where he might be directly a witness, which could constitute offences. The President asks various questions trying to clarify the facts he might have noticed or the reasons why he is convinced of the guilt of the accused.
- The question of the guilt of Hamed MANDACI, an intern who had been working for 9 months after obtaining his lawyer's diploma at the time of his arrest is addressed. The main documents on which the charge is based date from 2013, it was clear that Hamed MANDACI could not have committed the acts alleged against all the defendants.
- After the break, the second witness was heard who has the status of an anonymous witness: his image is blurred, and his voice distorted. He was interrogated about the membership of some lawyers in the terrorist organization. This witness is a repentant person who benefits, in return for his testimony, from immunity or a remission of sentence. The defense questions him about the presence of several people when he makes his statement. It seems that when it makes his statement, there were three people present, including the Prosecutor.

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- The **third witness**, also heard as an **anonymous witness**, has been in prison at SILIVRI. He indicates that he knows that there are terrorist lawyers, but he cannot remember their names. He states that he is ill, thus he does not remember the names of the lawyers concerned. The defense asks him if his health problems are psychological problems. The witness replied in the affirmative.
- A courtroom incident occurs: the defense points out the fact that the President uses polite forms to address the witnesses, but he not uses polite forms to address the Defense. After this incident, a scramble and shouts from the public made the audience totally inaudible.
- The President brings out the accused Lawyers prisoners of the Courtroom who leave chanting revolutionary slogans to the applause from the public.
- The President asks to evacuate the public; we refuse to go out.
- After a rather tense few minutes face-off with the Security forces, we exit through the rear door reserved for the public, we come back via the side door and sit down on the defense bench.
- Then the Security forces try to kick us out, but our Turkish Confreres direct them to ask for the Court's opinion, which allows us to stay on the defense bench.
- Our Turkish Confreres will not remain a long time at our side: as a matter of fact, the President will continue the hearing without the imprisoned accused lawyers.
- In protest, the defense leaves the Courtroom.

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- **We remain, single observers**, along with our interpreters for the 5th witness audition whose testimony, still under the status of anonymous witness, is as vague and imprecise as the previous ones.
- After the witness has been heard, **the President issues quite a few decisions** and in particular to reduce the number of Lawyers down to 3 per accused person.

Hearing is suspended until **tomorrow**.

Hearing Day 2:

- **We are experiencing issues before entering the Court:** indeed, the security forces do not provide our Barrister pass like the day before but only passes for the Public and ask us to leave our mobile phones at the reception desk.
- We firmly refuse.
- We go out of the Court, present our mobile phones to our Turkish Confreres and come back in with them.
- Due to the **decision taken the day before**, in the Courtroom, the number of lawyers is less; **therefore, the other Confreres sit down** with us along with the public.
- The witness who will be seen via videoconference is ready. We see his image on screen.

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- Before the start of his audition, **the defense submits an application asking the disqualification of the judges** for the following grounds:
- Absence of respect of the defense and of the Equality of the arms, the defense being constantly interrupted by the President who issues many warnings in order to intimidate the Lawyers, is not informed of all of the witnesses...
- The witness who was not granted the status of anonymous witness could not be seen during the hearing, nor by videoconference.
- Some objections from the defense have not been transcribed. When the defense underlined that, the Judge has not accepted to write it down on the minutes of the Court,
- A question also arise about the publicity of the hearing as the public is not authorized to enter in the Courtroom.
- Lawyers who submit this request and who speak up, one after another, are all interrupted by the President who beg them to end quickly, and he issues a warning against one Lawyer considering that the recusation request would be a contempt of Court
- One of the Confreres then asks that the warning issued against one Lawyer is issued against all of them.
- Tension is **again tangible**

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- A Lawyer mentions to the President that the witness during the videoconference can hear the whole discussions contrary to the rules applicable on this matter.
- Acting in haste, the President orders to cut off the sound.
- The defense also underlines that the audition of this witness was not scheduled and therefore the defense is not prepared for the latter's hearing.
- Suddenly, four men dressed up in civil burst into the Courtroom, wearing Press pass and sit down on the Benches full with the security forces.
- **The Lawyers immediately stand up and mention to the Court that these four men are not journalists but policemen** whose presence in the audience room is an attempt to intimidate the Court, the defense and the witnesses.
- Without interruption, the four men leave right away.
- The Defense starts again building up her reasoning for its application for recusation: she adds that Judges are not independent and the way the discussions are conducted demonstrate their belief.
- **The Lawyer speaking at that moment is interrupted, a big hubbub starts, the President, without even going out and discussing with his assessors, dismisses the application, orders to take out the accused detained lawyers and explains that the trial will carry on notwithstanding the appeal which would submit the Defense.**

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- **General outcry, the hearing is suspended.**
- Starting again, the Court orders to call back the accused but free persons who did not come back on the benches: they will not come back, in solidarity with their jailed Confreres and denied the hearing.
- The witness is here via videoconference, the President is concerned about his lunch break, which brings laughs from the Defense in front of such deference.
- One of our fellows Hassan FEMIR DEMIT starts talking and advises he is leaving the hearing for the following reasons:
 - the absence of the accused detained lawyer
 - the decision of the Court to carry on the discussions notwithstanding the appeal from the Defense against the refusal of examining the submission for recusation.
- We decide to stay in the courtroom in order to observe the progress without the accused persons and without the defense.
- The witness, Ismet ORDEMIR is detained.
- He specifies that he has asked to make declarations in this trial, hence his surprise-audition. This witness will testify in several trials, he cannot recall who are the accused people in the current one and the President must recall them for him.
- He was an Intelligence services member and a member of the DHKPC.

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- He explains that he has climbed the ladder of this organization and held a leading role.
- This witness' declarations were obviously known by the defense. As a matter of fact, he had been interviewed during a trial held in 2013, and evidence against his false statements were brought in during the previous hearing.
- **Hearing is suspended at 12:30 PM and should restart on Wednesday morning.**
- On my end, I will leave Istanbul on Wednesday morning and I will not be able to observe the end of the trial.
- Please note that after the hearing, **Ahmed MANDATI** arrested 9 months only after being qualified as a Lawyer, whose case was described in one and a half section of a 500-page indictment from the Prosecutor, and still a student at the time of the testimonies, has **been released under judicial supervision**
- The detention has been confirmed for the other jailed Confreres.
- **The third and last part of the trial is scheduled during the week of 18 March 2019.**

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We still must support our Turkish fellow Lawyers and show it by coming in force numerous to this especially important hearing as we will be able to listen at the Prosecutor requisitions and the Defense pleadings.

Toulouse, 14 February 2018

Isabelle DURAND

Professional Organizations and French Bars represented

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At 3-5 December 2018 Hearing

SILIVRI, Turkey

Conférence des Bâtonniers de France et d'Outre-Mer.
Défense Sans Frontière-Avocats Solidaires (DSF-AS)

Me Isabelle DURAND
Me Isabelle DURAND

Representing as well:

Aix en PROVENCE Bar

BAYONNE Bar

BORDEAUX Bar

BRIVE Bar

CLERMONT-FERRAND Bar

EPINAL Bar

RENNES Bar

TOULOUSE Bar II

Maître Sibylle GIOE representing:

Liège Bar, Belgium

OBF, Ordre des Barreaux Francophones et Germanophone de Belgique

CCBE : European Bar Council (Conseil des barreaux européens)

UIA, Union Internationale des Avocats

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Rapport de Mission DSF-AS

Procès dit « CHD 1 »

Audience du 6 mars 2019 devant la 18^{ème} chambre De la Cour de CAGLAYAN, Istanbul

Cette mission avait pour objet d'assurer une présence d'avocats internationaux, dans le cadre d'un procès d'avocats turcs accusés depuis plusieurs années d'avoir participé à une entreprise terroriste au seul regard de leur lien avec leur client et de l'exercice de leur profession. La procédure diligentée à leur encontre l'a été en violation des règles tant turques qu'internationales relatives à la mise en cause d'un avocat et au droit à un procès équitable. Une assimilation manifeste de l'avocat à son client apparaît dans ce dossier comme dans les autres.

I. Le contexte

- Depuis plusieurs années maintenant, et notamment depuis le coup d'Etat manqué du 15 juillet 2016, des mesures draconiennes ont été mises en place, qui portent atteinte aux libertés fondamentales et aux droits de la défense : interpellation des membres d'associations de protection des personnes, gardes à vue de 30 jours sans avocat, privations de passeports, etc.
- La présente affaire vise 22 confrères turcs poursuivis en raison de l'exercice de leur activité ou de leur participation à un mouvement ou un groupement professionnel progressiste.



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II. L'affaire

Au mois de janvier 2013, ces 22 avocats, tous membres du CHD, une association progressiste, et faisant partie de l'équipe de défense du procès « ASRIN », ont été interpellés et placés en détention provisoire.

Leur procès devait être jugé par la Cour Spéciale de SILIVRI en 2014, au moment où cette Cour a été abrogée par la loi.

Le dossier, tout comme celui du procès « ASRIN », a donc lui aussi été renvoyé devant la Cour d'ISTANBUL, mais devant la 18^{ème} Chambre.

Tous les prévenus ont finalement été libérés en 2014.

L'audience du 6 mars 2019 fait suite à treize autres audiences dans la même affaire.

La défense rappelle à chaque audience (i) que la procédure diligentée ne respecte pas les règles du procès équitable, (ii) que les griefs invoqués sont formellement contestés, et (iii) que les preuves versées au dossier ne sont pas recevables.

III. L'audience du 6 mars 2019

A. Préparation à l'audience

Une réunion a été organisée pour les délégations étrangères dans les locaux de l'Ordre des avocats du Palais de Justice pour faire un point.

Un confrère franco-kurde y assure la traduction.

L'affaire « CHD » est une affaire criminelle (le droit turc n'opère pas de distinction entre crime et délit).

- Elle vise 22 avocats, tous membres d'une association progressiste-communiste, le CHD, qualifiée d'association terroriste. Dix-huit d'entre eux ont été arrêtés en 2013 puis remis en liberté après 5 jours de détention en raison d'un dossier vide. Toutefois, le procureur fit appel



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de la décision de remise en liberté. 6 heures à peine après leurs remises en liberté, alors que les avocats libérés se rendaient à un repas du barreau d'Istanbul, ils furent arrêtés sur la base d'un nouveau mandat d'arrêt. A l'heure actuelle, le seul avocat détenu est le président du CHD, Selçuk KOSAGACLI.

- Selçuk KOSAGACLI poursuit actuellement et depuis plus de 40 jours une grève de la faim (il se nourrit exclusivement de sucre, de sel et de vitamine B12).
- Les premiers juges, procureurs et officiers de police étant intervenus en 2013 et 2014 dans l'affaire sont actuellement en prison ou en fuite, en raison de leur lien supposé avec le mouvement ayant organisé le coup d'Etat güleniste du 15 juillet 2016.

Comme dans d'autres affaires similaires, nos confrères se retrouvent confrontés à des difficultés récurrentes.

- Quant aux pièces : nos confrères souhaitent pouvoir déposer des pièces établissant des preuves contraires lors de l'audience alors que (i) les chefs d'accusation se baseraient sur les dires de 3 témoins anonymes, qui seraient en lien avec les officiers gülenistes ; (ii) des pièces auraient été cherchées en Europe, sans mandat, par des officiers de police gülenistes actuellement en fuite et (iii) des écoutes illégales auraient été pratiquées.
- Accès au dossier : malgré une décision du tribunal en ce sens, Selçuk KOSAGACLI n'a toujours pas eu accès à son dossier.
- Jonction: une jonction de cette affaire, pendante devant la Cour d'assises d'Istanbul, avec une autre affaire, pendante devant le Tribunal de Silivri qui sera évoquée du 18 au 20 mars prochains, a été demandée. Les juges d'Istanbul ont accepté la jonction des deux rôles, alors que les juges de Silivri l'ont refusée. La Cour d'appel est désormais chargée de trancher le conflit.

B. Présence lors de l'audience

L'audience s'est tenue devant la Cour Criminelle d'Istanbul le 6 mars 2019.

De nombreux observateurs internationaux étaient présents : sept français, dont 3 anciens Bâtonniers, porteurs de nombreux mandats, ainsi que Monsieur le Bâtonnier de Rotterdam et deux de ses confrères néerlandais.

Les déplacements de délégations sont compliqués par la multiplication des procédures ouvertes à l'encontre des avocats en Turquie, mais une continuité de présence s'organise.

Nos confrères turcs étaient, quant à eux, presque une vingtaine en robe dans la salle d'audience.



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C. Audience

1. Déroulement

L'audience commence à 10h30 dans une salle permettant un public de 20 personnes et autant de mis en examen. La salle est pleine et une partie des personnes venant assister aux audiences devra rester debout.

Trois magistrats siègent, les mêmes que lors de la dernière audience du 24 octobre 2018. Si de nombreux présidents se sont succédé depuis 2013, il convient de rappeler que le magistrat ayant été initialement chargé, tant de l'instruction que de la présidence de la première formation de jugement, est actuellement en détention, accusé de falsification de preuves, tout comme les policiers ayant enquêté dans ce dossier.

Sept confrères membres du CHD sont présents à l'audience. Dix-neuf confrères sont présents pour assurer leur défense.

La liste des délégations internationales présentes ou représentées est transmise au Président qui la joint au dossier par procès-verbal.

2. Débats

- Le président prend la parole en début d'audience : il demande à un avocat de la défense de bien vouloir montrer un pouvoir établi devant notaire attestant qu'il représente certains inculpés conformément aux règles de procédure turques.
- Prise de parole des inculpés et de leurs avocats :
 - (i) La première demande concerne la communication des pièces et l'octroi d'un temps nécessaire pour les analyser, alors que Selçuk KOSAGACLI n'a toujours pas pu y avoir accès, malgré une décision intervenue en ce sens.



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- (ii) Les avocats de la défense souhaitent déposer des pièces permettant d'établir que les témoins du procureur travaillaient pour le MIT et étaient liés aux gülenistes.
 - (iii) Selçük KOSAGACLI prend ensuite la parole. Il évoque la grève de la faim qu'il poursuit depuis 42 jours, les mandats d'arrêts arbitraires, l'impossibilité pour les juges de prononcer des mises en liberté sans risquer de représailles. Il précise que le gouvernement a peur de donner aux juges le pouvoir de juger, alors même que ce pouvoir leur est constitutionnellement garanti. Il précise également qu'il est plus facile de parler devant cette Cour que ce n'était le cas par le passé devant la 37^{ème} chambre. Selon lui, devant la 37^{ème} chambre il était possible pour chacun de se retrouver en détention, alors que la simple participation à une manifestation était retenue comme preuve suffisante d'appartenance à une organisation terroriste.
- Le procureur : précise qu'il n'a rien à ajouter.

Après un délibéré, **l'affaire est renvoyée au 10 juillet 2019 à 9h** et le juge ordonne que son dossier soit communiqué à Selçük KOSAGACLI.

L'audience est levée à 12h30.

Fait le 12 mars 2019

Pour DSF-AS :

Laure DESFORGES et Caroline MANGOLD



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IV. Liste des organisations représentées à l'audience du 5 mars 2019

Conférence des bâtonniers

Maître Maryvonne Lozach'meur, ancien bâtonnier de Rennes

Maître Stéphane Campana, ancien bâtonnier de Bobigny

Conseil national des barreaux – Observatoire international des avocats en danger

Maître Rachel Saada

Défense Sans Frontière – Avocats Solidaires (DSF-AS)

Maître Laure Desforges

Maître Caroline Mangold

Barreau de Lyon

Maître Laurence Junod-Fanget, ancien bâtonnier de Lyon

Maître Franck Heurtrey

Barreau de Rennes et Conférence régionale des barreaux de l'Ouest (Rennes, Nantes, Angers, Brest, Quimper, Vannes, Lorient, St-Malo, St-Brieux, St-Nazaire, Le Mans, Laval, Saumur)

Maître Maryvonne Lozach'meur

Barreau de Paris

Maître Rachel Saada

Barreaux et organismes représentés par DSF-AS

Barreau d'Aix-en-Provence

Barreau de Bayonne

Barreau de Bordeaux

Barreau de Brive

Barreau de Clermont-Ferrand

Barreau de Dijon

Barreau d'Épinal

Barreau de Grenoble

Barreau des Hauts-de-Seine

Barreau de Toulouse



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Autres délégations d'avocats européens
Barreau de Rotterdam

JOINT STATEMENT OF THE INTERNATIONAL OBSERVERS OF THE TRIAL AGAINST ÇHD LAWYERS

Silivri, March the 20th 2019

We, international observers, lawyers from Italy, France, Belgium, Germany, Greece and the Netherlands, representing :

- International Lawyers Association (UIA)
- Council of Bars and Law Societies in Europe (CCBE)
- International Association of Democratic Lawyers
- European Association of Lawyers for Democracy and World Human Rights
- Italian Democratic Lawyers
- Italian Association of Criminal Lawyers
- European Democratic Lawyers
- Legal Team Italia
- International Observatory of Endangered Lawyers (OIAD)
- Lawyers without borders France (DSF-AS)
- Association of French and German speaking Bars of Belgium (OBFG)
- Brussels Bar (Belgium)
- Liege Bar (Belgium)
- Central Committee of French Lawyers (CNB)
- Paris Bar (France)
- Aix-en-Provence Bar (France)
- Bayonne Bar (France)
- Bordeaux Bar (France)
- Brive Bar (France)
- Clermont-Ferrand Bar (France)
- Dijon Bar (France)
- Epinal Bar (France)
- Grenoble Bar (France)
- Hauts-de-Seine Bar (France)
- Lyon Bar (France)
- Rennes Bar (France)
- Tarn-et-Garonne Bar (France)
- Toulouse Bar (France)

have observed the trial against the Progressive Lawyers Association ÇHD, starting with the first hearing in September 2018.

We have been witness to flagrant and shocking violations of fundamental principles of the rule of law such as the independence of the judiciary, the right to a fair trial and the rights of the defense.

The climax was reached yesterday when the President of the Court abruptly excluded all the lawyers from the possibility to assist to the hearing.

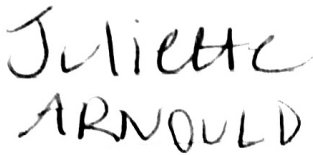
We are convinced that at this point this trial is completely null and void.

Protesting against the heavy prison terms inflicted, we insist on the immediate acquittal of all defendants, to be attained through all possible judicial and legal means.

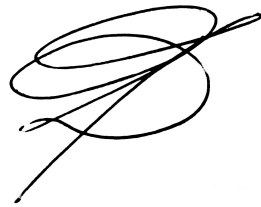
We express our solidarity to the defendants in the name of the common struggle for upholding justice and rule of law.

Silivri, March the 20th 2019

Juliette ARNOULD



Katrien DESIMPELAERE



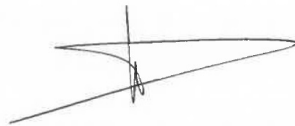
Christine MARTINEAU



Michela ARRICALE



Isabelle DURAND



Dario ROSSI



Robin BRONLET



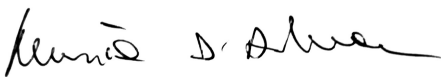
Sibylle GIOE



Paolo SOLIMENO



Margherita D'ANDREA



Nicola GIUDICE



Juliette VANDERSTRAETEN



Fabio MARCELLI



Jean-Philippe de WIND



Noémi DESGUIN

de l'année



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**DSF-AS MISSION REPORT- ISTANBUL – CHD 2 TRIAL
HEARING BEFORE THE 37th CRIMINAL CHAMBER OF THE HIGH CRIMINAL
COURT OF BAKIRKÖY IN ISTANBUL
March 18 to 20, 2019**

Objectives of the mission:

- Support our colleagues;
- Witness the conduct of the hearing;
- Defend the fundamental principles of the profession, including the liberty of the defence and the right to a fair trial.

As part of this trial, 20 lawyers, all members of the CHD (and for 8 of them, also prosecuted in the “CHD 1” case), arrested between September and December 2017, and all detained since then, but for 3 lawyers who have been released.

The 20 prosecuted lawyers were accused of membership and leadership of a terrorist organization. These facts are punished by 7 to 20 years of criminal imprisonment.

This case was first brought before the 37th criminal chamber of the High Criminal Court of BAKIRKÖY at the hearing of September 10, 2018.

On September 14, 2018, at the end of the first week of hearing, the High Criminal Court of BAKIRKÖY ordered the release of all the detained lawyers and postponed the case to the hearing of February 19-20, 2019.

The day after, however, upon appeal of the Prosecutor, the same chamber of the Court, presided by another judge, rule again on the pretrial detention and ordered to arrest 6 of the released lawyers:

- Behiç ASCI
- Selcuk KOZAGACLI
- Ahmet MANDACI
- Aycan CICEK
- Aytac UNSAL
- Engin GÖKOGLU

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6 other lawyers did appear free before the Court:

- Aysegül CAGATAY
- Didem BAYDAR UNSAL
- Zehra OZDEMIR
- Yagmur EREREN EVIN
- Ezgi ÇAKIR
- Yaprak TÜRKMEN

Other lawyers were still under arrest warrant.

The judges having ruled on the release of the accused lawyers have since been moved and it is now the judge **Akin GÜRLEK** who is presiding this case. He is particularly well-known for having previously sentenced Selahattin DEMIRTAS, president of the Kurdish political party "HDP".

While the continuation of the hearing had been announced for February 19-20, 2019, the hearing was finally brought forward to December 3-5, 2018. Three days of hearing which have allowed to proceed to the hearing of all witnesses.

For security reasons, the hearing was held at SILIVRI Courthouse, at approximately 75 km from Istanbul, inside the military camp.

At the end of this hearing, Ahmet MANDACI, arrested only after having exercised during 9 months as a lawyer, and still student at the time of the testimonies, was released under judicial supervision.

The detention was confirmed for all other detained lawyers.

The third and last part of this trial was held on March 18-20, 2019 at the SILIVRI Courthouse.

a) First day of hearing (March 18, 2019)

➤ **Context**

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The Istanbul Bar made a bus available for the international lawyers attending the hearing.

We were welcomed by three Turkish colleagues who warmly accompanied us during these three days of hearings. We thank them sincerely.

Belgian, German, Italian and Spanish delegations were also attending the hearing.

At the entrance of the military camp, while we were still sitting in the bus, a police officer came to control our professional cards.

Before entering within the courtroom, two Turkish colleagues gather all mobile phones from international lawyers, as we are not allowed to bring them as “visitors”. We will indeed only be granted a “visitor” badge.

The hearing started at around 10am. We are sitting among the public, at the back of the courtroom, very far from the presiding judge and his assessors, and we are not even able to see their faces from the place where we stand.

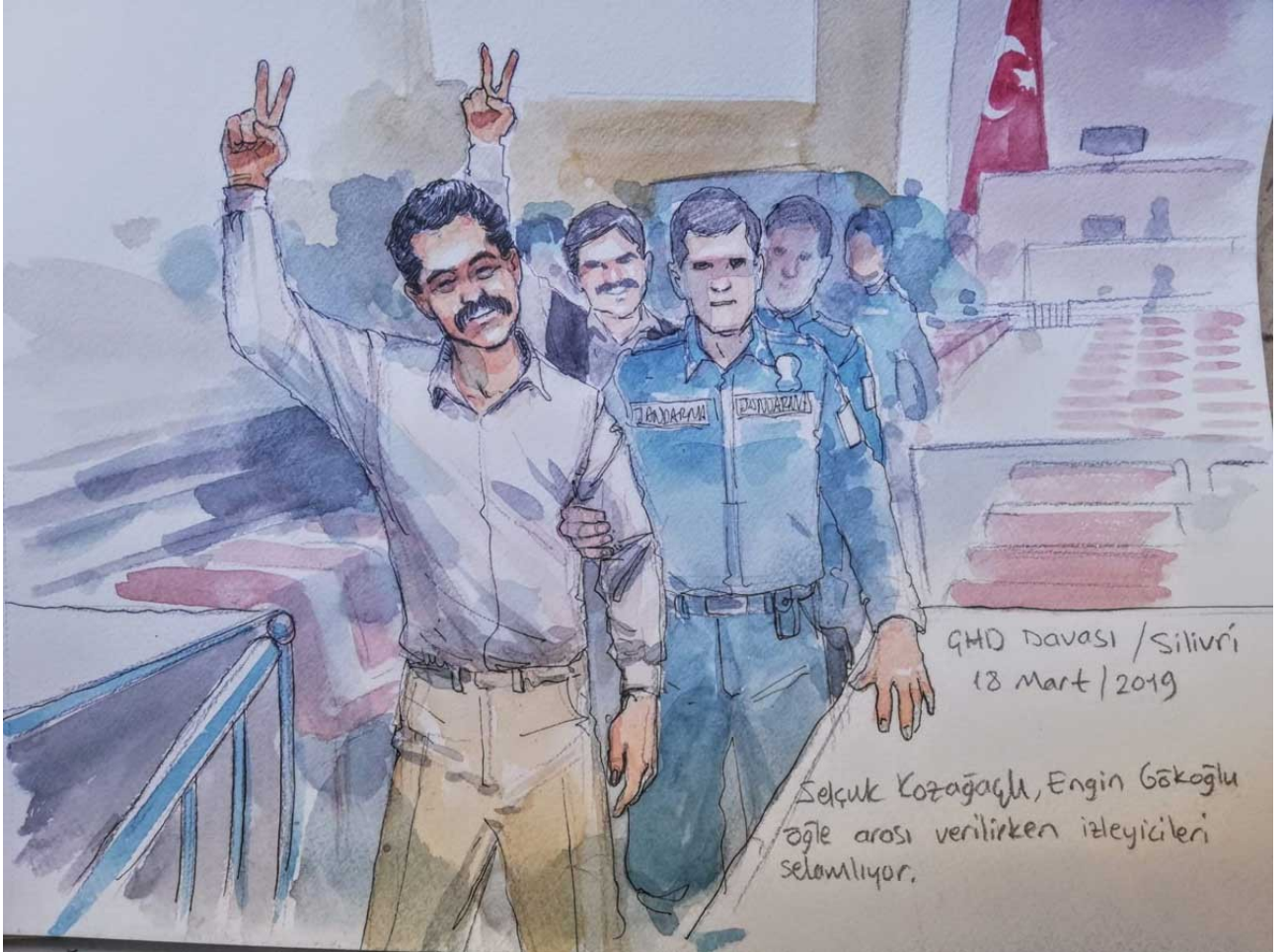


A large number of defence lawyers were present. They were separated from their clients by a double row of gendarmes and anti-terrorist police officers encircling the accused lawyers.

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The Court was composed by 3 magistrates, among whom is the newly appointed President of the Court, Akin GÜRLEK, aged of approximately 40 years old, and his 2 assessors.

The accused lawyers enter the Courtroom with their fists raised in the air and are greeted with applause and cheers from the public.



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The gendarmes sit right behind the accused, however, after strong protests from the accused lawyers and their defence lawyers, the President of the Court ordered that the gendarmes sit a little further from the accused.

The Court room was gigantic but the sound from the microphones was low and the screens did not allow to distinguish the different protagonists.

The defence team was composed of more than one thousand Turkish lawyers.

Several Turkish Bar Presidents, including the President of the ISTANBUL Bar, were part for the defence team.

➤ Conduct of the hearing

- The President of the Court requested that the defence lawyers only plead on the request for supplementary information.
- The defence team first requested that the attending Bar Presidents express themselves.
- The Representative of the Union of Turkish Bars indicated that only two members from the Union will plead for the accused.
- **Intervention of the President of the ISTANBUL Bar:** The President of the ISTANBUL Bar spoke about the transfer of judges after the release of the accused lawyers at the hearing of September 2018, and described this trial as a play, a shame for the judicial system and a terrible injustice. He called for the respect of the right to a fair trial.

(Applause – Our translator outlined to us that he had rarely seen the President of the Istanbul Bar speak with the same vehemence)

- **The President of the Court intervened** by noting that the President of the ISTANBUL Bar was making a judgement on the Court.
- **Intervention of the President of the MERSIN Bar:** The President of the MESRIN Bar pointed that he had hope that this judgement will be a judgement worthy of the 21st century; if the judges do not respect the right to a fair trial, the trial will not be worth anything.

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- **Intervention of the President of the AYDIN Bar:** It is the first time that the President of the AYDIN Bar is attending a hearing in this trial. He indicated that there would not be so many lawyers attending the hearing if the approach of the Court was not so bad. He added: *“I am a lawyer for 22 years and it is the first time that I see gendarmes encircling the accused. The accused only ask for a fair trial and they are forced to go on hunger strike to have their voice heard. It is a catastrophe for the judicial system. Over 22 years, I have never seen a President of a Court forcing a Prosecutor to submit his closing arguments from the very start of a hearing just to finish it as soon as possible.”*
- **Intervention of the President of the ADANA Bar:** *“The approach of the President of the Court consisting in forcing the Prosecutor to submit his closing arguments shows that the President of the Court has already reached his decision and that the rest is nothing but a staging. It is a shame for the judicial system. Does Turkey is still a State of law? The decision which will be taken by the Court could still be an example of fair judgement, and our foreign colleagues attending the hearing are here to report on your behaviour.”*
- **Intervention of the President of the Court:** The President indicates that he will reach his decision on the requests made by the defence lawyers and on the objections pertaining to the presented evidence.
- **Intervention of Defence Lawyer No 1:** Injustice began before entering within the courtroom because the Court is located within a penitentiary centre.

The indictment is turned into a judgment by the judge who will sign it without changing a line.

This is not a judgment because we are not dealing with evidence.

The established case law from the Turkish Supreme Court states that digital evidence alone cannot constitute evidence because digital documents can be modified.

This is what is happening here since false evidence are used by the judge.

- **President of the Court:** The President is trying to silence the lawyer because he would not present his requests and indicates that he will decide on the defence's requests.

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After consulting the assessors (for 30 seconds), the President decided to reject all the requests.

- **Intervention of the CHP deputy Mahmut TANAL**, former lawyer, member of the Republican People's Party (Cumhuriyet Halk Partisi – CHP), who protests vehemently.
- **President of the Court:** The President is trying to justify himself and accuses the defence of having delaying tactics to make the trial last. He points out that the defence has had more than enough time to submit its requests.

The hearing is suspended for 15 minutes.

[The defendants go out under the cheers of the public who sing "Revolutionary lawyers are our honour."]

- **Intervention of the President of the IZMIR Bar:** The President of the IZMIR Bar indicates that the time that should have been granted to the defence to make its claims should have extended to today since the court had not set a time limit in its interim decision.

He requests the agreement of the President of the Court to let the necessary time for the defence to make its requests. The lawyers' speaking time cannot be cut.

- **The President of the Court** rejects the request from the President of the IZMIR Bar.
- **Intervention of Defence Lawyer No 2:** The refusal decision is not compliant with the Law. The evidence analysis is a legal requirement which will allow to establish the truth.
- **Intervention of Defence Lawyer No 3:** He mentions witnesses who were listened at, without the accused being present, nor the defence, in addition to the Court refusal to hear them for a second time.

Some witnesses have even been listened at by the Police and by the Prosecutor but not by the judge himself.

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Legally, witnesses' declarations given without the Defence Lawyers' presence cannot constitute evidence. Once more, this is a total ignorance of the Code of Criminal Procedure.

The Defence Lawyer gives an example of a testimony kept in the President's file, whereas the witness has mentioned that he had no information on the matter since 2006. He is a former Intelligence member who has not been working there since 2006 but who, anyway, testifies about facts dated 2013.

This is another example which demonstrates that the judgement has already been reached, and that all this is a stage production. The Lawyer also notices that the President of the Court behaves like a Prosecutor.

He quotes an ECHR jurisprudence regarding anonymous witnesses which stated that the aim of witness's anonymity is to protect them, and that it cannot have as unique purpose to dissimulate the witness's identity in order to provide false statements.

He quotes a High Court jurisprudence: a single testimony cannot constitute a reliable evidence and must be reinforced by concordant elements.

The Lawyer reads out the questions asked by the President to the witnesses and finds out that every question is suggestive. It is not the witnesses who list the names of the accused persons but the judge himself.

The defence does not have the testimonies in original, although it had made a request to the Court, which the Court has rejected, following the anti-terrorist Section's refusal.

It is always the same expert who has processed the digital materials. One can question the reliability of this expert. Digital evidence were never communicated to the defence, who was not able to analyse it and carry out a counter-expertise.

- **Intervention of the President of the Court:** He decides that for each accused person, only one lawyer will be pleading.
- **Intervention of Defence Lawyer No 4:** During 15 minutes, the Defence Lawyer reads out the Code of Criminal Procedure. To our amazement, the President does not interrupt her, either because he does not bother listening, either because he is totally unaware of the procedure.

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The Defence strategy is to speak as long as possible in order to save time and delay the sentence.

Regarding the witness (the former Intelligence Services' member), she clarifies that he was banned from the Intelligence Services due to dangerous behaviour. He would have also been a member of the accused organisation. She is wondering why this witness should be better considered as a member of the Intelligence Services rather than as a member from the organisation.

[Reactions from the accused lawyers who learn about these elements and object.]

- **Intervention of the President of the Court** who instructs the accused lawyers to keep quiet and suspends the hearing for one hour.
- **Intervention of Defence Lawyer No 5:** He mentions, from reading the 56-page Testimony report, that only four questions had been asked to the witness. The witness is telling a story he knows by heart.

It is a Report which has been drafted by the policemen and then signed by the witness.

A witness certifies that one of the accused persons had done a military training in Greece while no element from the file could assert this alleged military training in Greece.

- **Intervention of the President of the Court:** He asks the accused persons who are not detained (they are three) to step forward along the detained accused persons.
- **Intervention of Defence Lawyer No 6:** He tells the President that his judgement will be overturned by the High Court considering the lack of respect of the inherent principles of a criminal hearing and of the right to a fair trial.

He puts forward the fact that testimonies are signed by the Prosecutor, which is against the rules of Criminal Procedure. Adding that one witness has made declarations twice the same day whereas the defence has only one testimony. What happened to the second testimony?

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He demands the witness to be present to the hearing

[End of Hearing Day 1 a 7:30 PM]

➤ **Summary of first day**

The President of the Court has refused the Defence Lawyers to plead and has decided after a few-minutes deliberation to reject all requests. He decides in the aftermath to send the file to the Prosecutor for his indictment.

It was only after strong protests from the Defence Lawyers that the President suddenly changed his mind and agreed to listen at the Defence pleadings about the additional investigation requested.

It was a historical hearing which evidenced the lack of respect of the rule of Law and the endless violations of the fundamental right to a fair trial.

b) Second day of hearing (March 19, 2019)

There are significantly less Turkish lawyers and less public for the second day of the hearing.

➤ **Running of the Court Hearing**

- **Pleading of Mr. Behiç ASCI, accused:** He requests the recusal of the judge considering the terms employed which demonstrate an obvious partiality.

He mentions that the judges who were presiding the September 2018 hearing and who had decided to end their temporary custody were removed.

The grounds indicated by the President for rejecting the Defence's requests demonstrate how meaningless is the case.

He raises the testimonies' inconsistencies:

- Experts and witnesses gave different names for the leader when they were questioned to find out for which leader the information was transmitted;
- Fictional conflict while no conflict happened in this area for years;
- Contradictory statements from one witness who states that one lawyer would have fetched in 15 minutes a petrol bomb (cocktail molotov) in a place located

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20 kms away from his law firm. He mentions that the defence lawyers are not using delaying tactics, despite what the President asserts. On the contrary, during several months, the lawyers have been requesting to be provided the indictment in order to launch the trial.

It does not even have the colour of fairness.

- **Pleading of Mrs. Barken TIMTIK, accused:** She also requests the judge to be removed.

She states that all of them advocate for sick prisoners, for fighting lawyers when soldiers charge their homes at dawn, for the victims of soldiers, and tells that they are lawyers who have defended the people in the aftermath of the coup, or advocated for professors in hunger strike...

She reads out a declaration about the fundamental right to a fair trial and denounces the panel of magistrates which do not observe any of those principles.

There are not anymore free judges in Turkey; the sentence is then inevitable.

- **Pleading of Mr. Aytac UNSALTZ, accused:** He depicts the tortures he has endured and those he has witnessed.

This trial is a stitch up/a plot. The witness statements are stories signed by the police officers themselves.

He gives a full story of the situation, reminding the persecution of the Turkish Communist Party so that it could justify the setting up of special courts and of tougher measures against the people. He quotes as an example a Turkish poet who was sent to jail on the grounds of a single testimony from a witness he had never met. An unfairness known by everyone.

This is exactly what is happening again today.

- **Intervention from the President** who asks the accused lawyer to summarize and begs the Court's clerk to write down that Mahmut TANAL, MP here in the room, has talked with his mobile phone.

The MP intervenes vehemently, accuses the President to be a liar and tells he was not talking with his phone. The MP stands up and walks towards the President in order to show him his mobile.

Ultimately, the judge indicates to the Court's clerk to amend and to delete this element.

- **Restart of Mr. Aytac UNSALTZ's pleading:**

The Security forces tried to find ways to legitimate lies. They found witnesses who have accepted (sometimes as a result of coercion) to proceed with fake testimonies.

It is always the same witness who is mentioned, however:

- he states to have seen nothing and only heard things;
- he states that he never met Aytac UNSALTZ: « *How can he hold so many information about myself and still pretend not knowing me?* ».

He evokes torture: threats to never see his child again, being beaten up with sticks over his head, being wet and positioned in front of a cool air-conditioning and in the same time being beaten up.

He mentions that the tactics of the Government which consist to prevent them from doing their duty is useless as their trainees, their friends and their colleagues have taken over their files and will carry on their work.

They are heirs of fighting lawyers and they represent a tradition of resistance.

- **Pleading of Mr. Engin GÖKOGLU, accused:** This case has ended before it has properly started. He accuses the President of having guided the witnesses, this is the reason why I am requesting the disqualification of the President and of his assessors.
- **Pleading of Mr. Aycan CICEK, accused:** He is appearing free.

The judge behaves like an enemy more than a magistrate, anyway, it looks like he knows nothing of the procedure.

« *It is not because a witness knows me that it makes me a criminal.* »

He demands the disqualification of the President and as well of his assessors.

- **Pleading of Mr. Selcuk KOZAGACLI, accused:** He is the President of the Law firm.

« I have been a lawyer for 25 years and I would have never thought that what has happened during the hearing yesterday could be real. I have never seen a judge who shares his sentence in an intermediate decision. The judge is even lacking the courage to act up as a judge in this trial. »

Addressing to the President: *« You are committing a crime and the absence of reaction from your assessors also allows to call them criminals ».*

Most of the documents supporting the accusation come from witnesses who have been sentenced for plotting against the Government. The question is to find out if they have obtained a reduced sentence or any benefit by witnessing in the context of this trial.

He accuses the President to be directly involved in the creation of false testimonies and tells him directly *« You are a member of a terrorist organisation ».*

- **Interruption from the President of the Court:** *“Do not accuse us!”*
- **Restart of Selcuk KOZAGACLI's pleading:** “I accuse you and, before the Prosecutor, I denounce you! I have been asking for more than 6 months to be granted access to my file, but in vain. I have asked for it six times. You have to grant me access to my file; it is not possible to release yourself from this obligation.

I have never seen a President of a court forcing a Prosecutor to submit his closing arguments before the defence has had a chance to express itself. There is no similar example of what is currently happening since the beginning of the Republic of Turkey. You threaten both sides to reach a guilty verdict as fast as possible. This is no longer any judgment.

You commit offences and the Court of Appeal will surely prove you right, but your decision will necessarily be overturned by the Supreme Court.

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This is a punishment, not a judgment. You do not even bother to hide your partiality.”

In witness statements, they always speak in the fourth person ("we") and not in the first person ("I").

No details are provided on the conditions under which the USB key, which contained the documents on which the charges were based, was found.

[ACCLAMATION of the defence lawyers and of the public]

- **Intervention of the President of the Court** who orders the accused as well as the defence lawyers to leave the courtroom.

[They will no longer be allowed to return. We remain in the courtroom.]

- **Pleading of the accused trainee lawyer Ahmed MANDACI:** He appears free.

The only evidence against him is a statement from a witness who states that he never participated in the activities.

[Members of the public (family) scream, "We do not accept the fascist legal system" and leave the room.]

- **Pleadings of an accused lawyer:** She appears free.

She remained in prison for 1 year and is now under judicial supervision. She is requesting the termination of her judicial supervision as she is forced to come twice a week at the police station. She is very tired and cannot any longer practice as a lawyer. The UYAP system (electronic system) still mentions her as "detained" and she therefore cannot access her professional files.

She does not want to plead today because she is not ready.

- **Intervention of the President of the Court** who notes the absence of an accused lawyer, Yapak TURKMEN, appearing free, who did not appear before the Court.

DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

[Suspension of the hearing for one hour. Prohibition on the families and the defence lawyers from entering in the courtroom. The President of the Court reached his interim decision alone. International observer lawyers are the only ones still present in the room.]

[The hearing ends around 3:00 pm]

- **Press conference**

Several journalists are present, and our Turkish colleagues are asking international observers to speak out.

We meet in front of the Court (Belgian, French and Italian lawyers). Four people will speak to testify and denounce the lack of respect of the principles of a fair trial and request the acquittal of the accused.

It will be the last day for Isabelle DURAND, Amélie VILLAGEON and Gaëlle GIRARDON, as we will leave the next morning.

c) Third day of the hearing (March 20, 2019)

- **Procedure**

Christine MARTINEAU is the only one present at this hearing to represent DFS.

At the end of a hearing lasting a few minutes, without the presence of the accused, the defence and the public, the judgment is rendered.

- **Decision**

On Wednesday, March 20, 2019, the 37th Chamber of the Istanbul Special Criminal Court at the SILIVRI Palace of Justice sentenced 18 lawyers to sentences of up to 18 years and 9 months' imprisonment for "founding and directing a terrorist organization", "belonging to a terrorist organization" and "supporting a terrorist organization".

DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

The convicted lawyers (members of the CHD and HHB respectively) are as follows:

For "founding and directing a terrorist organisation":

- Barken TIMTIK: 18 years and 9 months

For "belonging to a terrorist organization":

- Ebru TIMTIK and Özgür YILMAZ: 13 years and 6 months;
- Behiç ASÇI and Sükriye ERDEN: 12 years;
- Selçuk KOZAGACLI (President of ÇHD): 11 years and 3 months;
- Engin GÖKOGLU, Aytac ÜNSAL and Süleyman GÖKTEN: 10 years and 6 months;
- Aycan ÇIÇEK and Naciye DEMİR: 9 years; and
- Ezgi ÇAKIR: 8 years.

For "wilfully and knowingly supporting a terrorist organization":

- Aysegül CAGATAY, Yagmur EREREN, Didem Baydar ÜNSAL and Yaprak TÜRKMEN: 3 years and 9 months; and
- Zehra ÖZDEMİR and Ahmet MANDACI: 3 years, 1 month and 15 days (reduced sentence due to their presence at the hearing on 20 March unlike the other accused).

This conviction was handed down after more than a year of pre-trial detention for 6 of the 18 lawyers, and only three hearings, offering the spectacle of a travesty of justice and serious and repeated violations of the rights of the defence.

Intense emotion and indignation were expressed by all the lawyers.

Defence Without Borders - Solidarity Lawyers (DSF-AS), which is following several trials against Turkish lawyers, is outraged by this instrumentalization of justice against lawyers prosecuted for the mere fact of having exercised their profession and expresses its solidarity with the convicted lawyers.

DSF-AS calls for:

- The immediate acquittal of the 18 convicted lawyers and the release of the detained lawyers;

DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

- The respect for the "Basic Principles on the Role of Lawyers" adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1990, in particular article 16, which provides that the public authorities shall ensure that lawyers "may perform all their professional duties without hindrance, intimidation, harassment or undue interference" and article 18, which provides that "lawyers shall not be considered as their clients or the cause of their clients as a result of the performance of their duties."; and
- The respect for Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights, which guarantee the right to a fair trial.



April 8, 2019

Christine MARTINEAU, Isabelle DURAND, Amélie VILLAGEON, and Gaëlle GIRARDON

**List of Professional Institutions and French Bars represented at the hearing of
March 19-21, 2019 - "CHD 2" trial**

Members of DSF

Maître Christine MARTINEAU
Paris Bar

Maître Isabelle DURAND
Toulouse Bar

Maître Amélie VILLAGEON
Tarn et Garonne Bar

Maître Gaëlle GIRARDON
Paris Bar

Professional institutions represented by DSF-AS

National Bar Association Conference
National Bar Council (CNB)
International Observatory of Lawyers in Danger (OIAD)

French Bars represented by DSF-AS

PARIS
BORDEAUX
BRIVE
CLERMONT-FERRAND
HAUTS DE SEINE
LYON
RENNES
TOULOUSE
TARN ET GARONNE

BY EMAIL

Quick Response Desk

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Date: 20 May 2019

FOR THE ATTENTION OF:

- **Special Rapporteur on the independence of judges and lawyers**
- **Special Rapporteur on the situation of human rights defenders**
- **Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression**
- **Special Rapporteur on the promotion and protection of human rights while countering terrorism**

Dear Madam/Sir:

URGENT ACTION: The arbitrary detention and long-term imprisonment of 18 lawyers from Halkın Hukuk Bürosu (HHB, the Peoples' Law Office) and Çağdaş Hukukçular Derneği (ÇHD, the Progressive Lawyers Association) in violation of fair trial principles and of their rights to freedom of expression.

BACKGROUND

1. On 15 July 2016, a faction of Turkey's armed forces staged a violent coup attempt which resulted in the deaths of over 200 and injuries to over 2,000 people.¹ Following the attempted coup, the Government of Turkey (Government) declared a three-month state of emergency to commence on 21 July 2016. The state of emergency was later extended seven times (by three month increments each time) and eventually ended on 19 July 2018.² The state of emergency exacerbated the "purge" of State organs and civil society of those allegedly connected to the "Gülen movement"³ (who were blamed by the Government for the coup attempt) and supporters of the opposition critical of the Government. Mass dismissals of public servants took place without due process amounting to hundreds of thousands including judges, prosecutors, police, military personnel and academics as well as forced closures of media outlets, civil society organisations, universities and trade unions.⁴ Human rights defenders (including lawyers), journalists and NGO members who had sought to expose rights violations have been persecuted and often arbitrarily detained and imprisoned.⁵ The common thread is, under the guise of national security arguments, the suppression and criminalization of all expression or association of those who are perceived to *potentially* express, inspire or support criticism of state action or expose state wrongdoing.
2. The independence and impartiality of the judiciary has been substantially undermined by legislative and constitutional amendments (both pre and post-coup) which have increased executive influence over the judiciary. The judiciary now lacks the capacity to ensure a robust system of justice and uphold the rule of law, especially with reference to remedies

¹Amnesty International, *No End in Sight, Purged Public Sector Workers Denied a Future in Turkey*, 2017, <https://www.amnesty.org/en/documents/eur44/6272/2017/en/>, accessed 29 March 2019.

² On 9 August 2018, the lifting of the state of emergency and end of the derogation period was notified by the Turkish Government to the Secretary General of the UN, <https://treaties.un.org/doc/Publication/CN/2018/CN.378.2018-Eng.pdf>, accessed 29 March 2019.

³This movement is a collective term for those followers of the now US-based Islamic cleric Fethullah Gulen who the Turkish Government blamed for orchestrating the 2016 coup attempt.

⁴Human Rights Joint Platform, *Updated Situation Report- State of Emergency in Turkey*, 21 July 2016 – 20 March 2018, http://www.ihop.org.tr/en/wp-content/uploads/2018/04/SoE_17042018.pdf, accessed 29 March 2019.

⁵ Amnesty International, *Turkey: NGOs unite to defend civil society from destruction*, 27 February 2019, <https://www.amnesty.org/en/latest/news/2019/02/turkey-ngos-unite-to-defend-civil-society-from-destruction/>, accessed 29 March 2019.

for human rights violations by state actors flowing from the state of emergency measures.⁶

3. Further eroding the rule of law and justice, the Government has adopted a sustained practice of targeting members of the legal profession and interfering with their ability to perform their roles as a key part of the justice system.⁷ The Government has prevented lawyers from performing their legitimate duties as lawyers by restricting access to case files and indictments, limiting clients' access to their lawyers and committing breaches of legal professional confidences including by observing and recording confidential meetings with clients.⁸ Lawyer/client visits have also been restricted.
4. The rights of individuals accused of terrorist crimes to retain legal counsel while in pre-trial detention and to prepare their defence have been largely restricted since the coup attempt, including the right to privileged communication with their lawyer. As stated recently by a lawyer interviewed for a report on the situation of lawyers in Turkey, "[a]s a lawyer you meet your client in prison, and you have no possibility of confidential communication since there's a prison guard present, a microphone and a camera."⁹ Concerns have also been raised regarding the principle of equality of arms between the prosecution and the defendant as the defendant's lawyers' role is significantly subverted and almost reduced to the simple formality of appearing at the court proceeding.
5. The Government has also interfered with the legal profession through the persecution of lawyers, both by way of intimidation but also through arbitrary arrests, detention,

⁶ See. International Commission of Jurists, *Turkey: the Judicial System in Peril : A briefing paper*, <https://www.icj.org/wp-content/uploads/2016/07/Turkey-Judiciary-in-Peril-Publications-Reports-Fact-Findings-Mission-Reports-2016-ENG.pdf>; Council of Europe Group of State Against Corruption (GRECO), *Fourth Evaluation Round Turkey: Corruption Prevention In Respect of Members of Parliament, Judges and Prosecutors*, 15 March 2018, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680792de8>; Parliamentary Assembly of the Council of Europe, *The worsening situation of opposition politicians in Turkey: what can be done to protect their fundamental rights in a Council of Europe member State?*, Resolution 2260 (2019), 24 January 2019, <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=25425&lang=en>, accessed 29 March 2019.

⁷ Human Rights Watch, *World Report 2019*, <https://www.hrw.org/world-report/2019/country-chapters/turkey>, accessed 5 April 2019.

⁸ The Law Society of England and Wales, Bar Human Rights Committee of England and Wales, International Bar Association Human Rights Institute, *Joint Submission to the Special Rapporteur on the Independence of Judges and Lawyers concerning International Law Breaches Concerning the Independence of Legal Profession in Turkey*, 18 September 2018, p.18-30, <http://www.barhumanrights.org.uk/wp-content/uploads/2018/09/bhrc-ibahri-lsew-joint-submission-turkey-final2.pdf>, accessed on 5 April 2019.

⁹ Human Rights Watch, *Lawyers on Trials; Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey*, April 2019, p.6 and 8, https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf, accessed 18 April 2019.

imprisonments and ill-treatment.¹⁰ Several lawyers interviewed for the report mentioned above reported threatening remarks from police officers when they visited detainees in police station such as: *“Watch out. Representing these suspects could be bad for you”* and *“It’ll be your turn next”*.¹¹

6. Targeted lawyers (and many other members of civil society) have been charged with terror related offences such as membership in a terrorist organisation, forming and leading a terrorist organisation and aiding and abetting a terrorist organisation under Articles 314 and 220 of the Turkish Penal Code. The overly broad language and criteria used in these Articles has led to arbitrary convictions and arbitrarily imposed terms of imprisonment preventing the lawyers from carrying out their role effectively as one of the main pillars of the justice system.¹²
7. The Office of the High Commissioner for Human Rights (OHCHR), among other bodies, has “identified a pattern of persecution of lawyers representing individuals accused of terrorism offences”.¹³ The principle of non-identification of lawyers with their clients and their causes required by the UN Basic Principle on the Role of Lawyers¹⁴ has been undermined by the Turkish authorities. A lawyer described this situation by stating that *“If a lawyer defends a Kurd these days that makes him a Kurdish nationalist. If he defends a FETÖ suspect, he is a FETÖ member”*.¹⁵
8. The UN Special Rapporteur for the Promotion and Protection of Human Rights while Countering Terrorism, following a 2006 visit in Turkey, had criticized the vague definition of terrorist crimes for not being in line with international norms and standards and warned that *“only full clarity with regards to the definition of acts that constitute a*

¹⁰ *Ibid.*

¹¹ Human Rights Watch, *Lawyers on Trials; Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey*, April 2019, p.7, https://www.hrw.org/sites/default/files/report_pdf/turkey0419_web.pdf, accessed 18 April 2019.

¹² European Commission for Democracy Through Law, *Opinion on Articles 216, 299, 301 and 314 of the Penal Code of Turkey*, Adopted at 106th Plenary Session, Venice, 11-12 March 2016, Opinion No. 831/2015, 15 March 2016, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)002-e), accessed 29 March 2019; Council of Europe Commissioner for Human Rights, Third party intervention by the Council of Europe Commissioner for Human Rights, 10 October 2017, <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>, accessed 29 March 2019.

¹³ UN Office of the High Commissioner for Human Rights (OHCHR), *Report on the Impact of the State of Emergency on Human Rights in Turkey, Including an Update on the South-East*, March 2018, <https://www.refworld.org/docid/5ab146c14.html>, accessed 29 March 2019.

¹⁴ *UN Basic Principles on the Role of Lawyers*, 1990, principle 18, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>, accessed 5 April 2019.

¹⁵ Human Rights Watch, fn no. 11, p.6.

terrorist crime can ensure that the crime of membership, aiding and abetting and what certain authorities refer to as 'crime of opinion' are not abused for purpose other than fighting terrorism."¹⁶ Since the 2016 coup attempt, these overly broad and vague laws have been used to illegitimately investigate, prosecute and/or convict upwards of 402,000 individuals as of January 2019.¹⁷ Among those individuals, lawyers were specifically targeted: 1,546 lawyers have been prosecuted under these provisions, 598 arrested and 274 convicted and sentenced to long term prison sentences ranging from 2 to 18 years.¹⁸ There have been recent reports that this persecution of lawyers has now been extended to covert State investigations into those lawyers' families, including their children and spouses.¹⁹ Lawyers in Turkey are being persecuted for simply performing their constitutionally protected roles peacefully and lawfully. They are prosecuted, and often convicted, based on vague definitions of terrorism and related acts. The arbitrary application of these laws to silence and intimidate human rights defenders and lawyers lawfully exercising their right to freedom of expression, among other fundamental human rights, has been vividly present.²⁰ Following the declaration of the state of emergency, 1,719 human rights, humanitarian, and lawyers' associations, foundations and NGOs were permanently closed by the Government.²¹ This threatening and harassing climate has subsequently compelled human rights NGOs to exercise self-censorship.²²

CASE STUDY

9. In 2016, ÇHD, which was a lawyers' organization well known for speaking out against State repression, practices of torture and other human rights violations,²³ was forced to close

¹⁶Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Turkey (April 16-23, 2006), November 16, 2006, §90, <https://documents-ddsny.un.org/doc/UNDOC/GEN/G06/149/42/PDF/G0614942.pdf?OpenElement>, accessed 1 April 2019.

¹⁷ The Arrested Lawyers Initiative, *New Report: Incarceration of Turkish Lawyers: Unjust Arrests and Convictions (2016-2018)*, 1 April 2019, p.33, <https://arrestedlawyers.files.wordpress.com/2019/04/report9.pdf>, accessed 10 April 2019.

¹⁸ Ibid., p.1.

¹⁹ Ibid, p. 31.

²⁰ OHCHR, Report on the impact of the state of emergency on human rights in Turkey, fn no. 13.

²¹ Ibid, p. 3, §13

²² Ibid. p. 22, §92.

²³ Stockholm Center for Freedom, *Lawyers association: Imprisoned Gülen followers subject to rape, nail extraction, object insertion*, January 18, 2017, <https://stockholmcf.org/lawyers-association-imprisoned-gulen-followers-subject-to-rape-nail-extraction-object-insertion/>, accessed 1 April 2019.

by virtue of a state of emergency decree (Statutory Decree No. 677). On 12 September 2017, sixteen lawyers from HHB and ÇHD, Didem Baydar Ünsal, Şükriye Erden, Ayşegül Çağatay, Ebru Timtik, Aytaç Ünsal, Zehra Özdemir, Yağmur Eren, Engin Gökoğlu, Süleyman Gökten, Aycan Çiçek, Naciye Demir, Behiç Aşçı, Barkın Timtik, Özgür Yılmaz, Ahmet Mandacı and Ezgi Gökten were taken into custody on the basis of allegations that they were members of or leading members of the Revolutionary People's Liberation Party-Front (DHKP-C), a Turkish Marxist-Leninist Party which Turkey considers an armed terrorist organization.²⁴ All sixteen lawyers were representing Nuriye Gülmen and Semih Özakça, an academic and a teacher respectively, who had engaged in public protests and went on a hunger strike objecting to dismissals from their jobs facilitated by a state of emergency decree. The defence lawyers were arrested two days before Gülmen and Özakça's trial started. Fifteen out of the sixteen lawyers were remanded in custody on 21 September 2017. The chair of ÇHD, Selçuk Kozagaçlı, was arrested on 8 November 2017 and remanded in custody on 13 November 2017.²⁵ Yaprak Türkmen was taken into custody on 18 December 2017 under the same investigation file; she was kept in custody for 2 days and her pre-trial detention was ordered on 20 December 2017 by an Istanbul Criminal Judgeship of Peace.²⁶

10. In total, twenty lawyers were accused of being members or leaders of DHKP-C and the pre-trial detention of 17 was ordered. An indictment was then prepared by the Istanbul Public Prosecutor and issued on 22 March 2018. On 14 September 2018, the Istanbul 37th Heavy Penal Court ordered the release of all 17 detained lawyers, Ahmet Mandacı, Aycan Çiçek, Ayşegül Çağatay, Aytaç Ünsal, Barkın Timtik, Behiç Aşçı, Didem Baydar Ünsal, Ebru Timtik, Engin Gökoğlu, Naciye Demir, Özgür Yılmaz, Selçuk Kozagaçlı, Süleyman Gökten, Şükriye Erden, Yağmur Eren, Yaprak Türkmen and Zehra Özdemir. However, less than 24 hours after their release, the Prosecutor's Office objected to the release of the lawyers.²⁷ The court panel issued a new arrest warrant for 12 of the 17 lawyers who were

²⁴ Bianet, *14 Detained Attorneys of Gülmen, Özakça on Hunger Strike Arrested*, 21 September 2017, <https://bianet.org/english/law/190006-14-detained-attorneys-of-gulmen-ozakca-on-hunger-strike-arrested>.

²⁵ Bianet, *Progressive Legist Association Chair Kozagacli Arrested*, 14 November 2017, <http://bianet.org/english/law/191498-progressive-legists-association-chair-kozagacli-arrested>.

²⁶ European Association of Lawyers for Democracy & World Human Rights (ELDH), *Summary of Trial Against 20 Lawyers*, <https://eldh.eu/wp-content/uploads/2019/03/SUMMARY-OF-TRIAL-AGAI%CC%87NST-20-LAWYERS.pdf>, accessed 3 April 2019.

²⁷ A similar example was seen in a case where 29 journalists were tried for being members of a terrorist organization aftermath of attempted coup d'état. Journalists were rearrested after courts had ordered their

previously released. By the second week of December, six of them were arrested again.²⁸ On 19 September 2018, two judges of the court that had ordered pre-trial release on 14 September 2018, including the presiding judge, were replaced by two new judges.

11. The “trial” of the lawyers, six of whom had been held in pre-trial detention, occurred in three hearings. The third and final hearing was held between 18 March and 20 March 2019 at the Istanbul 37th Heavy Penal Court in Silivri Courthouse. The lawyers were convicted of terrorism offences linked to DHKP-C and sentenced to prison terms. The court reaffirmed the Public Prosecutor’s conclusion, that by providing legal representation to individuals charged with links to the outlawed DHKP-C, the lawyers became themselves members of the illegal group.²⁹

12. The names of the lawyers, the charges they faced and the subsequent sentences they received are as follows:

- For "willingly and knowingly aiding a terrorist organization," under Articles 314(3) and 227(2) of the Turkish Penal Code: Ayşegül Çağatay, Yağmur Ereren, Didem Baydar Ünsal, Yaprak Türkmen: 3 years 9 months; Ahmet Mandacı, Zehra Özdemir: 2 years 13 months, and 15 days imprisonment.
- For "membership of a terrorist organization" under Article 314(2) of the Turkish Penal Code: Ebru Timtik, Özgür Yılmaz 13.5 years; Behiç Aşçı, Sukriye Erden: 12 years; Selçuk Kozagaçlı (ÇHD President): 11 years and 3 months; Suleyman Gokten, Aytaç Ünsal, Engin Gökoğlu: 10.5 years; Aycan Çiçek, Naciye Demir: 9 years; Ezgi Cakir: 8 years imprisonment.
- For "founding and managing a terrorist organization" under Article 314(1) of the Turkish Penal Code: Barkın Timtik: 18 years and 9 months imprisonment.

13. The trial was plagued by a distortion of procedural process and lack of respect for universally accepted elements of a fair trial which have been criticised by Amnesty International as “a travesty of justice [that] demonstrate yet again the inability of courts

release and the judges and a prosecutor of the case were suspended by the Supreme Board of Judges and Prosecutors (HSYK), <http://www.hurriyetdailynews.com/turkeys-board-of-judges-prosecutors-temporarily-suspends-four-for-ordering-release-of-gulen-suspects-111576>.

²⁸ Bianet, *18 Lawyers Sentenced to Prison for 159 Years, 1 Month, 30 Days in Total*, 20 March 2019, <https://bianet.org/english/law/206630-18-lawyers-sentenced-to-prison-for-159-years-1-month-30-days-in-total>, accessed 16 April 2019.

²⁹ Human Rights Watch, fn no. 11, p.34.

crippled under political pressure to deliver a fair trial”.³⁰ Such concerns included arguments by the prosecution based on digital records which were not in the case file and not made available to the defence, and the judge not allowing the defence to speak or to engage in any effective manner to challenge evidence and refusing a request to facilitate the collection of further evidence and investigation.³¹ The judges also interrupted a request by the defence for the recusal of the presiding judge, they did not allow them to finish their submission and then had all the defendants and their lawyers removed from the court. The sentences were issued the following day without the defendants and their lawyers being allowed to return to court to submit their final defence statements and participate further in the proceedings.³²

14. Representatives of bar associations in Turkey, as well as a number of international lawyers’ organisations, attended the final hearing.³³ Subsequently, a statement formulated by 39 bar associations across Turkey condemned what they referred as “repeated violations of the right to a fair trial, of the criminal procedure code and of principles of the law by the court.”³⁴ The international monitors drafted reports similarly criticizing the way the trial had been conducted by the court.³⁵

TURKEY’S OBLIGATION UNDER DOMESTIC AND INTERNATIONAL LAW

Right to Liberty and Security and Right to a Fair Trial

15. Domestic law: The right to liberty and security, protecting an individual’s right not to be arbitrarily deprived of liberty, is recognised under the Constitution of Turkey (Constitution).³⁶ Article 19 of the Constitution protects everyone’s right to liberty and security: according to paragraph 3, *conditio sine qua non* for a lawful arrest is the presence

³⁰ ELDH, *18 Turkish lawyers sentenced to long prison terms*, March 20 2019, <https://eldh.eu/2019/03/21/18-turkish-lawyers-sentenced-to-long-prison-terms/>, accessed 3 April 2019.

³¹ ELDH, *Summary of Trial Against 20 Lawyers*, fn no. 23.

³² Ibid.

³³ Human Rights Watch, fn no. 11, p.34; Statement by the Paris Bar Association calling for the release of the lawyers, <http://www.avocatparis.org/turquie-18-avocats-condamnes-jusqua-18-ans-de-prison-le-barreau-de-paris-appelle-leurliberation>, accessed 18 April 2019.

³⁴ Statement to the media on the trial of ÇHD members by the heads of 39 bar associations, <http://www.diyarbakirbarosu.org.tr/39barodanchduyesimeslektaslarimizinyargilanmasinailiskinortakbasinaciklamasi-/1564>, accessed 18 April 2019.

³⁵ See for example, <https://eldh.eu/en/2019/03/21/18-turkish-lawyers-sentenced-to-long-prison-terms/>; https://eldh.eu/wp-content/uploads/2019/03/CCBE-EN_HRL_20190326_Turkey_Sentencing-of-18-human-rights-lawyers.pdf.

³⁶ Constitution of Turkey, http://www.hri.org/docs/turkey/part_ii_2.html, accessed 3 April 2019.

of strong evidence of the commission of a crime. Article 90 of the Constitution provides that international agreements concerning fundamental rights and freedoms, such as the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR), “duly put into effect carry the force of law.”

- 16.** Moreover, under Article 100 of the Turkish Code of Criminal Procedure,³⁷ a pre-trial detention can be carried out only if facts show the existence of a strong suspicion of a crime and one of the listed grounds for arrest is present. Such grounds are as follows: specific facts supporting the suspicion that the suspect or accused is going to flee; suspicion that the suspect or the accused will attempt to destroy, hide or alter the evidence, or will attempt to put pressure on witnesses, victims or other individuals.
- 17. International law:** The right to liberty and security is protected under existing human rights law instruments, both at an international and at a regional level. Article 9 of the Universal Declaration of Human Rights (UDHR),³⁸ Articles 9 and 14 of the ICCPR,³⁹ and Article 5 of the ECHR⁴⁰ guarantee everyone’s right to liberty and security and prohibit any arbitrary violation of such rights, with Article 14 of the ICCPR laying out fair trial standards.
- 18.** The main aim of the abovementioned provisions is to protect individuals from arbitrary deprivation of liberty. Thus, any substantive grounds for arrest or detention must be “prescribed by law” with sufficient precision to prevent arbitrariness. Even if an arrest or detention has legal basis and is administered following the procedures established by domestic law, it may still be arbitrary unless it is reasonable, necessary and proportionate. The notion of “arbitrariness” therefore is a broader concept which includes “elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”⁴¹ The UN Human Rights

³⁷Turkish Code of Criminal Procedure,

<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwi5kovg44vMAhUHBoKHS00BwMQFggdMAA&url=http%3A%2F%2Fwww.legislationline.org%2Fdocuments%2Fid%2F17788&usg=AFQjCNH0fibE4WxXgabmlwqOjukpyOXObA&sig2=gCxh2lWoP9XMjelh0cdrWQ&cad=rja>, accessed 4 April 2019.

³⁸UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948,

<http://www.refworld.org/docid/3ae6b3712c.html>, accessed 3 April 2019.

³⁹UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, 999 UNTS 171, <http://www.refworld.org/docid/3ae6b3aa0.html>, accessed 19 April 2016). Turkey ratified the ICCPR on 23 September 2003 with one reservation and ratified the *Optional Protocol to the International Covenant on Civil and Political Rights* on 24 November 2006 and the *Second Optional Protocol to the International Covenant on Civil and Political Rights* on 2 March 2006. Both Optional Protocols entered into force on 24 February 2007.

⁴⁰Council of Europe, *European Convention on Human Rights*, 4 November 1950,, accessed 4 April 2019.

⁴¹ CCPR Human Rights Committee General comment no.35 on Article 9 concerning liberty and security of a person, adopted on 16 December 2014, para.12.

Committee notes that detention as punishment for the legitimate exercise of the rights of freedom of opinion and expression, freedom of assembly or freedom of association is considered to be arbitrary. Similarly, deprivation of liberty pursuing an aim of intimidation or reprisal against a person is also arbitrary.⁴²

19. Application of the law: The arrest and subsequent detentions of the lawyers detailed above are unlawful both under Turkey's domestic laws and the State's international human rights obligations. In light of the State rhetoric⁴³ surrounding the lawyers' defence of Nuriye Gülmen and Semih Özakça and other work criticising the Government's human rights violations, this trial and resulting imprisonments seem to be a tool to harass lawyers, as they are being prosecuted and punished merely for carrying out their professional obligations. In addition, their arrests, detention and sentencing constitute an unlawful interference with the rights of their clients to petition the ECtHR under the ECHR. The lawyers are being charged and have been imprisoned for their legal activities as members of their respective associations; these are legitimate activities carried out in the course of discharging their professional duties. Moreover, legal representation cannot be used as a tool to identify lawyers with their clients or their clients' causes.⁴⁴ To allow lawyers to be identified with their clients' alleged causes is certain to discourage lawyers from defending many accused persons, thereby depriving many accused individuals of their fundamental right to a proper legal defence. The lawyers in this case have been impermissibly identified with their clients and consequently prosecuted.

20. The absence of due process rights and fair trial standards in the procedure followed against the lawyers amounts to violations under Article 14 of the ICCPR, and, regarding arbitrary detention, under Article 9 of the ICCPR. Such fair trial deficiencies include the failure to allow the defence to examine prosecution evidence and witnesses and the refusal by the judge to even hear certain defence arguments (including a request that the judge be recused).⁴⁵ Under Article 14 (1) of the ICCPR, there must be equality of arms between the parties in a proceeding.⁴⁶ This principle was undermined significantly in the

⁴² Ibid, paras.17 and 53.

⁴³ Platform Peace & Justice, *Right to Defence is Abolished under the State of Emergency in Turkey*, 14 September 2017, <http://www.platformpj.org/opinion-right-defence-abolished-state-emergency-turkey/>, accessed 10 May 2019.

⁴⁴ UN Basic Principles, fn o. 14, principles 16-18.

⁴⁵ ELDH, fn no. 23.

⁴⁶ UN Human Rights Committee (HRC), *General comment no. 32, Article 14, Right to equality before courts and*

trial as the lawyers' defence teams were prevented from cross-examining witnesses, as provide for under Article 14 (3)(e) of the ICCPR,⁴⁷ from accessing and actioning investigations into prosecution evidence (contrary to Article 14 (3)(b) of the ICCPR) and by the court refusing to hear defence legal arguments and then later expelling them from proceedings.⁴⁸ Article 14 3(d) of the ICCPR ensures that the accused be present during their trial and be able to defend themselves through legal representation of their choosing. The court, by removing all defendants and their legal representation towards the end of the trial and from the sentencing portion has violated this right without any objective and reasonable basis.⁴⁹ There are therefore violations of Articles 9, 14 and 19 of the ICCPR in relation to the detention and prosecution of the 18 lawyers.

Rights of Lawyers and Rule of Law

- 21. International Law:** At an international level, the rights of lawyers, including their right to liberty and security, are protected by a number of instruments including the 1990 United Nations Basic Principles on the Role of Lawyers,⁵⁰ the Draft Universal Declaration on the Independence of Justice, paragraph 7 of UN Resolution No. 2004/33/19, and Recommendation No. 21 of the Committee of Ministers to Member States on the freedom of exercise of profession of lawyer adopted by the European Council in 2000. These instruments clearly recognise the fundamental role of the legal profession in the administration of justice and maintenance of the rule of law.
- 22.** The Basic Principles on the Role of Lawyers state that lawyers' enjoyment of the rights and freedoms recognised under international human rights instruments and relevant to their professional conduct must be respected. Accordingly, States are obliged to recognise

tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32, para 13, <https://www.refworld.org/docid/478b2b2f2.html>, accessed 10 May 2019.

⁴⁷Avocats Barreau Paris, *Turkey: 18 lawyers sentenced to 18 years in prison, the Paris Bar calls for their release*, 21 March 2019, <http://www.avocatparis.org/turquie-18-avocats-condamnes-jusqua-18-ans-de-prison-le-barreau-de-paris-appelle-leur-liberation>, accessed 10 April 2018.

⁴⁸ Diyarbakir Barosu, *39 Joint Press Release Regarding the Trial of ÇHD Member Colleagues*, 21 March 2019, <http://www.diyarbakirbarosu.org.tr/39barodanchduyesimeslektaslarimizinyargilanmasinailiskinortakbasinaciklamasi-/1564>, accessed 10 April 2019.

⁴⁹ Human Rights Watch, *Case Against 20 Lawyers for Membership of the Revolutionary People's Liberation Party-Front*, 10 April 2019, <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>, accessed 10 April 2019.

⁵⁰UN Basic Principles, fn no. 14.

and uphold the independence of lawyers. Principle 16 states that Governments are under obligation to ensure that no restrictions, influences, inducements, pressures, threats or interference are to be imposed on lawyers while they are discharging their professional duties. States must enable lawyers to carry out their professional activities freely, diligently and fearlessly, without any inhibition or pressure. Lawyers shall enjoy the right to take full and active part in the political, social and cultural life of their country. According to Principle 23, lawyers are entitled to freedom of expression, opinion and association. Moreover, lawyers have the right to take part in public discussions of matters concerning the upholding of international human rights “without suffering professional restrictions”.⁵¹ Due to the increased incidents of harassment, threats and attacks against lawyers in a number of Council of Europe countries, including Turkey, and undue interference with their legitimate activities, the Parliamentary Assembly of the Council of Europe has recommended the drafting of a binding Convention for the protection of lawyers in member states,⁵² taking its previous recommendation a step forward.⁵³

23. Furthermore, Article 9 of the United Nations Declaration on Human Rights Defenders states that “everyone has the right [...] to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms”;⁵⁴ and Article 11 imposes an obligation on States to ensure everyone’s right “to the lawful exercise of his or her occupation or profession”.⁵⁵ Lastly, according to Principle 18 of the UN Basic Principles on the Role of Lawyers, “lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions”.⁵⁶

24. Application of the law: The apprehension and detention of the 18 Turkish lawyers constitutes a serious interference with their rights and freedoms, as stipulated under the above-mentioned international instruments. By arresting and sentencing these lawyers, the Government not only prevents them from exercising their professional duties but also

⁵¹UN Basic Principles, fn no. 14, Principle 23.

⁵² <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24296&lang=en>.

⁵³ Council of Europe, *PACE Recommendation no (2000) 21 of the Committee of Ministers of member states on the freedom of exercise of the profession of lawyer*, 25 October 2000, https://www.asianajaliitto.fi/files/19/R2000-21_Freedom_of_exercise_of_the_profession_of_lawyer.pdf.

⁵⁴UN General Assembly, *Resolution No. A/RES/53/144*, 8 March 1999

<<http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx>> accessed 4 April 2019

⁵⁵Ibid.

⁵⁶UN Basic Principles, fn no. 14, Principle 23.

denies prospective or actual clients the right to be represented by a lawyer of their choice. These acts constitute a violation under both Article 6(2) of the ECHR and Article 14 of the ICCPR, as well as the above-mentioned principles stipulated under the UN Basic Principles on the Role of Lawyers including Principle 1 stating that *“all persons are entitled to call upon the assistance of a lawyer of their choice”*.

25. This case raises issues in relation to a number of other rights and freedoms including the right to freedom of expression, association and peaceful assembly, and the right to respect for private life and correspondence of lawyers. In this submission, however, the focus has been on the above-mentioned aspects of the violations resulting from unlawful detention and prosecution of the 18 lawyers.
26. Turkish State authorities are using arrests and detentions as tools to prosecute lawyers and other human rights activists for working on cases that shed light on possible human rights violations perpetrated by the Government. Such conduct by the Turkish State constitutes a breach of Turkey’s international obligation to ensure that lawyers are not being prevented from performing their professional functions freely.

ACTIONS REQUESTED

27. We request the Special Rapporteurs urge the Turkish authorities to facilitate the immediate acquittal of lawyers Ayşegül Çağatay, Yağmur Ereren, Didem Baydar Ünsal, Yaprak Türkmen, Ahmet Mandacı, Zehra Özdemir, Ebru Timtik, Özgür Yılmaz, Behiç Aşçı, Sukriye Erden, Selçuk Kozağaçlı, Suleyman Gokten, Aytaç Ünsal, Engin Gökoğlu, Aycan Çiçek, Naciye Demir, Ezgi Cakir and Barkın Timtik; and the urgent release of those in detention pending appeal.
28. We further request the Special Rapporteurs urge the Turkish authorities to stop all forms of harassment, including judicial harassment, against these individuals as well as other lawyers and human rights defenders in Turkey, and allow them to perform their professional and lawful functions without intimidation or improper interference.
29. We request the Special Rapporteurs intervene in these serious matters and raise these issues, as a matter of priority, with the Turkish authorities. In particular, the Special Rapporteurs are requested to communicate – if possible, jointly - the concerns outlined in relation to the detention of the 18 lawyers.

- 30.** We request the Special Rapporteurs urge the Turkish authorities to immediately stop using oppressive methods against individuals, particularly lawyers and other human rights defenders, who are critical of the human rights violations perpetrated by the State authorities including the security forces.
- 31.** We request the Special Rapporteurs urge the Turkish authorities to ensure the independence of the judiciary by law and practice and to prevent judges, prosecutors and lawyers from undue interferences.
- 32.** We request the Special Rapporteurs call on the Government of Turkey to comply with the provisions of the ICCPR, the UN Basic Principles on the Role of Lawyers, the UN Declaration on Human Rights Defenders and other international instruments on the protection and promotion of fundamental rights and freedoms.
- 33.** We would be grateful if you would kindly confirm what action you will be taking and to inform us of any response received from the Turkish authorities.
- 34.** Finally, we would be grateful for your acknowledgement of receipt of this letter.

Yours faithfully,

Ayşe Bingöl Demir, Turkey Human Rights Litigation Support Project, London

Jérôme GAVAUDAN, President, Conférence des Bâtonniers de France et d'Outre-Mer

Andrea Mascherin, President, Consiglio Nazionale Forense, Italy

José de Freitas, President, The Council of Bars and Law Societies of Europe

Martine JACQUIN, Présidente, Défense Sans Frontière-Avocats Solidaires

Thomas Schmidt, Secretary General, European Association of Lawyers for Democracy and World Human Rights

Robert Sabata Gripekoven, President, European Democratic Lawyers - Avocats Européens Démocrates

Newal Ciftci, President, Fair Trial Watch

Hans And Symone Gaasbeek, Secretary, The Foundation Day of The Endangered Lawyer

Bill Bowring, Joint International Secretary, Haldane Society of Socialist Lawyers

Evelyn Dürmayer, representative at the UN Vienna, International Association of Democratic Lawyers

Tony Fisher, Chair Human Rights Committee, The Law Society of England & Wales

Phon van den Biesen, President, Lawyers for Lawyers

Gail Davidson, Director, Lawyers' Rights Watch Canada

Saniye Karakas, London Legal Group

Edre Olalia, Secretary General, National Union of Peoples' Lawyers, Philippines

Maria Hessen Jacobsen, HRC, Norwegian Bar Association

Jerôme DIROU, Bâtonnier, Ordre des Avocats au Barreau de Bordeaux

Alain Cockenpot, Bâtonnier, Ordre des Avocats au Barreau de Douai

Farid Hamel, Bâtonnier, Ordre des Avocats au Barreau de Lyon

Jean-Marie CHABAUD, Bâtonnier, Ordre des Avocats au Barreau de Nimes

Basile Ader, Vice Bâtonnier, Ordre des Avocats au Barreau de Paris

Franziska Nedelmann, Board Member, Republikanischer Anwältinnen- und Anwälteverein

Hein Vogel, Chariman, Vereniging Sociale Advocatuur, Nederland

Rapport synthétique du procès des avocats «ÇHD 2»

Le procès des avocats turcs «ÇHD 2» s'est déroulé entre le mois de septembre 2018 et le mois de mars 2019.

L'Union internationale des avocats, le Conseil des Barreaux Européens, Avocats.be, le Barreau de Liège, le Barreau de Bruxelles et le Barreau de Nivelles ont assuré une mission d'observation à ces audiences, par la présence des avocats Juliette ARNOULD, Robin BRONLET, Noémi DESGUIN, Katrien DESIMPELAERE, Ives DETILLOUX, Sibylle GIOE et Juliette VANDERSTRAETEN.

Ce rapport synthétique a pour objet de résumer les observations faites dans le cadre de cette mission.

1. Avocats concernés par le procès «ÇHD 2»

Les avocats du ÇHD (Association des avocats progressistes) et du HHB (Bureau du droit du peuple) sont investis dans la défense des droits humains en Turquie. En particulier, ils ont défendu les victimes de l'effondrement de la mine de Soma, des personnes torturées, les enseignants Nuriye GÜLMEN et Semih ÖZAKÇA¹, les victimes de Cizre, les militants du parc Gezi etc.

L'association ÇHD a été dissoute par décret présidentiel, suite à la déclaration de l'état d'urgence instauré après la tentative de putsch du 15/07/2016.

Les avocats suivants ont été poursuivis :

- Ahmet MANDAÇI
- Zehra ÖZDEMİR
- Didem BAYDAR ÜNSAL
- Aysegül ÇAĞATAY
- Yagmur EREREN EVIN
- Yaprak TÜRKMEN
- Ezgi ÇAKIR
- Aycan ÇİÇEK
- Naciye DEMİR
- Engin GÖKOĞLU
- Aytaç ÜNSAL
- Süleyman GÖKTEN
- Selçuk KOZAĞAÇLI
- Behiç ASÇI
- Sükriye ERDEN
- Özgür YILMAZ
- Ebru TIMTIK
- Barkin TIMTIK
- Günay DAĞ (dossier séparé)
- Oya ASLAN (dossier séparé)

¹ Le Vif, « En Turquie, le procès de deux enseignants insoumis », 13 septembre 2017, accessible ici : <https://www.levif.be/actualite/international/en-turquie-le-proces-de-deux-enseignants-insoumis/article-normal-721643.html>

2. Contexte des poursuites

Dès 2013, certains avocats du ÇHD et du HHB sont poursuivis par les autorités en raison de leur relation avec leurs clients accusés de terrorisme, principalement des militants du DHKP-C.

Une instruction sera ouverte en 2013-2014, basée sur des informations obtenues auprès des autorités belges et néerlandaises, ainsi que sur des témoignages. La première audience de ce dossier, dit «ÇHD 1», est fixé à l'audience du 10 juillet 2019.

Huit des avocats concernés par le dossier «ÇHD 1» sont également concernés par le dossier «ÇHD 2». La plupart des éléments de preuve (commission rogatoire et témoignages) sont identiques.

3. Arrestations des 12 et 21 septembre, 13 novembre et 20 décembre 2017

Des mandats d'arrêt ont été délivrés contre 20 avocats du ÇHD à la fin de l'année 2017. Deux d'entre eux verront leur dossier séparés (Günay DAĞ et Oya ASLAN) et deux d'entre eux seront libérés provisoirement (Ezgi ÇAKIR et Ahmet MANDAÇI).

Les premières arrestations sont intervenues la veille du procès des enseignants Nuriye GÜLMEN et Semih ÖZAKÇA, représentés par des avocats du ÇHD.

Dix-sept d'entre eux seront détenus, dispersés dans des prisons différentes, certains à l'isolement, jusqu'à l'ouverture de leur procès le 10 septembre 2018.

4. Accusations et éléments de preuve

Il est reproché aux avocats concernés « d'agir en union ou de communiquer avec une organisation qualifiée de terroriste », via le bureau d'avocats HHB et l'association ÇHD, qui ne seraient que des structures de « façade légale » du DHKP-C.

Il leur est reproché, entre autres, de faire passer des messages entre les membres du DHKP-C détenus et les membres du DHKP-C en liberté. Pour appuyer cette accusation, le Procureur a considéré les indices suivants : ces avocats ont participé à des manifestations anti-torture ou se sont rendus à l'enterrement de clients, ils ont invité leurs clients à faire usage de leur droit au silence, etc.

Le réquisitoire de 513 pages s'appuie essentiellement sur des témoignages anonymes ou de repentis (ou les deux), ainsi que sur des pièces informatiques obtenues dans le cadre d'une commission rogatoire en Belgique et aux Pays-Bas, dont l'authenticité n'a pu être confirmée.

5. Audiences du 10 au 14 septembre 2018² (Istanbul, Silivri)

5.1. Audiences

Ces audiences avaient pour objet de trancher la détention préventive des avocats accusés. Les avocats ont dû lutter pour qu'ils puissent comparaître en personne et non par le système de vidéoconférence SEGBIS.

2 Les rédacteurs n'ont pu assister qu'au premier jour de la semaine d'audience

Les observations suivantes ont notamment pu être faites, lors de la première journée :

- la présence des gendarmes était excessive, tout autour des accusés, ce qui ne permettait pas aux avocats de la défense et aux avocats accusés d'échanger durant l'audience ;
- une avocate a été menacée de torture par un des policiers anti-terroriste pendant qu'elle plaidait pour qu'ils quittent la salle d'audience dès lors qu'ils avaient torturé certains avocats accusés ;
- lors d'une pause, des coups ont été donnés aux avocats par les gendarmes, parce que les avocats essayaient de communiquer entre eux ;

L'audience a été déplacée, le dernier jour, de Istanbul vers les salles d'audiences attenantes à la prison de Silivri.

5.2. Libération et ré-arrestation

Le vendredi 14 septembre 2018, la Cour a libéré les dix-sept avocats.

Cependant, le Procureur a interjeté appel dans les 24 heures. Les chambres de la Cour saisies en appel, avec une composition de siège inhabituelle, ont émis des « mandats de ré-arrestation », dont la légalité est incertaine.

Six avocats ont été ré-arrestés et six autres étaient recherchés. L'avocat Selçuk KOZAĞAÇLI s'est rendu de lui-même devant la Cour.

6. Audiences du 3 au 5 décembre 2018 (Silivri)

Les audiences du 3 au 5 décembre 2018 avaient pour objet d'auditionner les témoins (à charge).

Le Procureur et la composition de la Cour ont changé depuis les audiences du mois de septembre. Les juges qui avaient ordonné la libération ont été mutés. Les audiences sont dirigées par le Président Akın GÜRLEK (magistrat réputé pour être particulièrement répressif s'étant illustré dans des procès de journalistes, d'écrivains, et de politiciens d'opposition comme Selahattin Demirtas, président du parti HDP).

6.1. Audition des témoins

La plupart des témoins étaient anonymes et repentis. Ils témoignaient via le système de vidéoconférence SEGBIS, suite à des déclarations écrites très longues, qui avaient bien souvent été rédigées depuis les prisons où ils sont incarcérés, parfois même après avoir consulté certains éléments du dossier du Procureur...

Les faits que relataient les témoins étaient, par exemple, que tel avocat avait conseillé son client sur son attitude à adopter dans un tribunal, que tel avocat avait invité son client à garder le silence, que tel avocat aurait tel nom de code dans l'organisation, que tel avocat se serait rendu à telle conférence juridique, que tel avocat avait confirmé à son client qu'il n'y avait rien dans le dossier et qu'il serait libéré, que tel avocat défendait telle personne... Beaucoup de témoignages étaient d'ouïe-dire.

Les faits de transmission de messages ou de participation aux activités du DHKP-C ne semblaient jamais être corroborés par d'autres éléments de preuves que des déclarations de témoins.

De manière générale, la crédibilité de ces témoins était défailante :

- Ils ignoraient bien souvent pour quel procès ils comparaissaient (dès lors qu'ils témoignent dans de très nombreux procès...) ;
- Leurs déclarations étaient ostensiblement orientées par le juge ;
- L'un des témoins a même confirmé connaître un avocat, dont le nom venait d'être inventé par un avocat de la défense en contre-interrogatoire ;
- Il leur était souvent demandé s'ils confirmaient leurs déclarations, alors même qu'ils étaient souvent dans l'incapacité de résumer leurs contenus ;
- Il était difficile de vérifier la liberté de témoigner via le système de vidéoconférence, notamment dès lors qu'un des témoins dont le nom est connu a pu témoigner le visage flouté à sa demande...

6.2. Incidents

De nombreux incidents ont émaillé ces audiences. Nous avons observé les événements suivants :

- le Bâtonnier du Barreau d'Izmir a été frappé au visage avant l'entrée du public dans la salle d'audience le premier jour;
- la demande de récusation des trois juges a été rejetée après une courte pause, et le Président a poursuivi l'audience, malgré que les avocats ont manifesté leur intention d'interjeter appel ;
- des policiers qui n'ont pas de juridiction à Silivri sont entrés dans la salle d'audience déguisés en journalistes (avec un badge de presse) ; ils en sont ressortis aussitôt que la défense les a démasqués... ;
- le Président était particulièrement agressif avec les avocats de la défense, en criant sur eux, en les interrompant, en n'écoutant jamais l'avis des deux autres juges, en leur adressant des avertissements, en les tutoyant... ;
- dans le courant de la semaine, le Président a subitement décidé de limiter le nombre d'avocats de la défense à deux par accusés ;
- le Président a exclu de la salle d'audience les avocats accusés – qui manifestaient leur désapprobation suite à la décision du Président d'empêcher un avocat de la défense de contre-interroger un témoin... - et le public qui a manifesté son soutien aux avocats accusés en applaudissant. Les avocats de la défense ont souhaité ne pas poursuivre l'audience et leur travail de défense sans la présence de leurs clients et du public. Le Président a donc procédé à l'audition d'un témoin dans une salle vide (à l'exception des deux observateurs internationaux) ;

- le Président a accordé au Procureur sa demande de ne pas entendre deux autres témoins à charge, sans demander leurs observations à ce sujet aux avocats de la défense ;

6.3. Libération

Ces audiences ont conduit à la libération de Ahmet MANDAÇI , qui était stagiaire depuis six mois lors de son arrestation le 12 septembre 2017. Il n'est visé que par un paragraphe du réquisitoire de 513 pages. Les éléments de preuves du dossier concernaient essentiellement des périodes où il était enfant, adolescent ou étudiant.

7. Audiences du 18 au 21 mars 2019 (Silivri)

Ces audiences avaient pour objet de présenter des requêtes de devoirs complémentaires, entendre le réquisitoire et plaider. Elles intervenaient dans un contexte où les avocats de la défense étaient en grève de la faim depuis des dizaines de jours.

Les avocats de la défense ont formulé plusieurs requêtes de devoirs complémentaires, toutes rejetées après quinze minutes de pause (récusation du siège de la Cour, audition de témoins complémentaires, devoirs complémentaires, délai supplémentaire pour préparer les plaidoiries,...).

Ils étaient de nouveau régulièrement interrompu. La lecture du réquisitoire par le Procureur n'a pas eu lieu et les avocats de la défense n'ont pas eu l'occasion de plaider (voir ci-dessous). Seuls des avocats comparissant libres ont plaidé pour eux-mêmes, en l'absence de leurs avocats de la défense.

Nous avons notamment observé les incidents suivants :

- une attitude hostile du Président vis-à-vis des avocats de la défense (voir ci-dessus) ;
- une présence de gendarmes excessive (plus de 50 gendarmes pour 5 détenus...) ;
- le Président a de nouveau exclu les avocats accusés, le public et les avocats de la défense de la salle d'audience ; les avocats de la défense ont tenté de rejoindre les bancs de la défense mais en ont été empêchée par les gendarmes qui gardaient la porte de la salle d'audience ; un corps à corps de foule s'en est suivi ;
- une délibération d'une heure pour prononcer des peines de 3 à 18 ans d'emprisonnement pour 18 avocats ;
- un nombre impressionnant de gendarmes qui ont avancé en rangs serrés pour bouter hors de la salle d'audience et de la salle des pas perdus le public, les avocats de la défense et les observateurs.

Les peines prononcées sont les suivantes :

- Ahmet MANDAÇI et Zehra ÖZDEMİR (comparaissant volontairement) : 2 ans, 13 mois et 15 jours de prison, levée du contrôle judiciaire, car ils ont comparu jusqu'au verdict ;

- Didem BAYDAR ÜNSAL, Aysegül ÇAGATAY, Yagmur EREREN EVIN, Yaprak TÜRKMEN (refusant toutes de comparaître) : 3 ans et 9 mois de prison. Leur détention était levée depuis septembre, mais elles n'ont pas comparu le dernier jour d'audience.
- Ezgi ÇAKIR (absente) : 7 ans et 12 mois de prison, sous le bénéfice de la surveillance électronique, puisqu'elle s'occupe seule de sa fille en bas-âge, en l'absence de son époux, également emprisonné.
- Aycan ÇIÇEK (détenu) et Naciye DEMIR (absente) : 9 ans de prison.
- Engin GÖKOGLU (absente), Aytaç ÜNSAL (détenu), Süleyman GÖKTEN (absent), : 10 ans et 6 mois de prison.
- Selçuk KOZAGAÇLI (détenu) : 10 ans et 15 mois de prison.
- Behiç ASÇI (détenu) et Sükriye ERDEN (absente): 12 ans de prison.
- Özgür YILMAZ (absent) et Ebru TIMTIK (absente): 13 ans et 6 mois de prison.
- Barkin TIMTIK (détenue) : 18 ans et 9 mois de prison, considérée comme étant la dirigeante de l'organisation.

8. Conclusion

Les observations conduisent aux conclusions que le procès n'a pas été équitable, à tout le moins pour les raisons suivantes :

- absence d'indépendance et d'impartialité de la magistrature ;
- atteintes aux droits de la défense ;
- atteintes à la publicité des débats ;
- violation potentielle du principe *non bis in idem* ;
- absence de garanties entourant les déclarations des témoins anonymes et repentis ;
- violations *prima facie* des règles de procédures pénales ;

Rapport synthétique rédigé le 4 juillet 2019

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Press release: European Fact-finding mission to clarify the circumstances leading to the conviction of 18 Turkish lawyers

A group of 15 lawyers from 7 European countries met in Istanbul from 13 till 15 October 2019 for a fact-finding mission to clarify the legal circumstances that led to the conviction of 18 Turkish lawyers by the 37th High Criminal Court in March of this year, resulting in long prison sentences.

There are currently two mass trials in Turkey against members of the Turkish lawyers' organisation ÇHD Çagdas Hukukçular Derneği (Progressive Lawyers Association). In the first trial, which opened in 2013, 22 lawyers are accused (CHD I proceedings). In the second, which was opened in autumn 2018, 20 lawyers have been accused (CHD II proceedings). Eight of the lawyers accused in both cases are identical, with the same accusation of being a member of a terrorist group. In the second trial in March 2019, 18 defendants were sentenced to between 3 and 18 years and 9 month imprisonment. The chairman of the ÇHD was sentenced to 11 years and 3 months. All lawyers were convicted for activities connected with their professional functions and were identified with their clients' causes. Istanbul Regional Court has rejected the appeal without an oral hearing. All of them will seize the Supreme Court.

The European lawyers come from Belgium, Catalonia/Spain, Greece, Germany, France, UK, Italy and Austria. They represent, among others, one international association of lawyers, two European lawyers' organisations, the European umbrella association of bar associations, various national and regional bar associations and lawyers' organisations.

Most of the European lawyers have already participated as observers in the mass trials of lawyers in Turkey and other politically motivated proceedings. Their main focus was on the question of whether Turkish and European law was violated in the proceedings. The results of these observations were recorded in reports.

The observations of the two CHD trials as well as numerous other politically motivated trials in Turkey, raised serious concerns about the respect for the rights of the accused and the defence lawyers. This was particularly the case with the 37th Heavy Criminal Court in Istanbul. Among other cases, it was in charge of the proceedings against Selahattin Demirtaş (one of the two HDP presidents), Canan Kaftancıoğlu (the Istanbul CHP president), Ahmet Altan (writer and journalist), Şebnem Korur Fincancı (the president of the Human Rights Foundation of Turkey and one of the academics for peace), İhsan Eliaçık (theologian and author).

During their stay in Istanbul, the European lawyers held talks with the defence lawyers of the 18 Turkish lawyers convicted, with 4 lawyers imprisoned in Silivri, including the chairman of the Turkish lawyers' organisation CHD, Selçuk KOZAGAÇLI, with defence lawyers from other politically motivated trials before the 37th High Criminal Court (see above), with the President of the Istanbul Bar Association, and with members of the Turkish Parliament.

They have also examined the question, taking into account the reasons for the judgement,

- the extent to which the independence of the court was respected in the proceedings
- whether the principle that no one should be tried twice for the same offence has been respected (*ne bis in idem*)
- whether the principles of a fair trial applicable under Turkish and European law have been respected
- whether the evidence satisfied the legal requirements

Following their visit, the observers will record the results of their visit in a report, draw the necessary legal conclusions and ask the Turkish Minister of Justice for an interview to present the results of their visit and their conclusions.

Represented organisations:

- ELDH - European Association of Lawyers for Democracy and World Human Rights
- AED-EDL - European Democratic Lawyers
- The foundation The Day of the Endangered Lawyer
- IADL - International Association of Democratic Lawyers
- Progress Lawyers Network
- Giuristi Democratici
- CCBE The Council of Bars and Law Societies of Europe
- French National Bar Council
- OIAD - Observatoire International des Avocats (The International Observatory of Endangered Lawyers)
- Unione Camere Penali Italiane
- Consiglio Nazionale Forense (Italian National Bar Association) .
- DSF AS - Défense Sans frontière - Avocats Solidaires
- UIA (International Association of Lawyers);
- OBF/Avocats.be (Association of French speaking Bars of Belgium)
- Paris Bar Association
- Athens Bar Association
- Barcelona Bar Association
- Berlin Bar Association
- Brussels (French-speaking) Bar Association
- Brussels (Dutch-speaking) Bar Association (NAOB)
- Liège Bar Association
- Vienna Bar Association