



MISSION

REPORT TO

TURKEY

**OF THE INTERNATIONAL OBSERVATORY
FOR LAWYERS IN DANGER**

APRIL 2021

Table of contents:

1. Introduction	3
2. General context of the situation of lawyers in Turkey and background facts of the trials	5
2.1 Legislative context in Turkey.....	5
2.2 Background facts of the trials.....	6
3. Visit of inmate lawyers in prison	9
3.1 Interview with Barkin Timtik.....	11
3.2 Interview with Oya Aslan.....	12
3.3 Interview with Selçuk Kozağaçlı.....	13
3.4 Conclusions of the visits.....	14
4. Observation of hearings.....	15
4.1 Hearing April 6, 2021 - OHD Case.....	16
4.2 Hearing April 7, 2021 - CHD I and II	17
5. Conclusions and Recommendations.....	20

1. Introduction

This report was prepared jointly by the International Observatory for Lawyers in Danger, the Paris Bar Association, the General Council of Spanish Lawyers and the Geneva Bar Association, in the course of the joint judicial observation mission carried out in Istanbul from 4 to 8 April 2021.

Since the 2016 coup attempt in Turkey, lawyers across the country were targeted by a campaign of systematic arrest. In seventy-seven of Turkey's eighty-one provinces, lawyers have been arrested, prosecuted, and convicted for alleged terrorism-related crimes. According to a report published in January 2021 by the Arrested Lawyers organization¹, more than 1,600 lawyers have been prosecuted, 615 have been arrested and 450 lawyers have been sentenced to a total of 2,786 years in prison, on the ground of belonging to an armed terrorist organization or for spreading terrorist propaganda. In addition, 15 of the prosecuted lawyers are presidents or former presidents of provincial bar associations.

The lawyers prosecuted are accused of terrorism-related offences, mainly membership of a terrorist group and setting up and directing terrorist organisations. This is the case of the lawyers involved in the trials analysed in this report and which prompted the **judicial observation mission conducted by a European delegation from 4 to 8 April 2021 in Istanbul**.

The mission followed the cases of the members of the Lawyers for Freedom Association "OHD" (*Ozgurlukcu Hukukcular Dernegi* in Turkish) and the Progressive Lawyers Association "CHD" (*Çagdas Hukukçular Dernegi* in Turkish). The OHD hearing on 6 April 2021 took place before the 14th Chamber of the Caglayan Court in Istanbul, while the CHD I hearing took place on 7 April 2021 before the 18th Chamber of the same Court.

The foreign delegation was composed of several entities:

- [International Observatory for Lawyers in Danger](#) (IOLAD)

The OIAD is an initiative of the General Council of French Lawyers, the Paris Bar Association, the General Council of Spanish Lawyers and the General Council of Italian Lawyers. Launched in 2015, the OIAD aims to defend lawyers threatened in the exercise of their profession throughout the world, and to denounce situations that infringe rights of defence. The OIAD coordinated the observation mission that is the subject of this report, in which two representatives of the Observatory participated.

- [Paris Bar Association](#) (ODAP)

The Paris Bar Association is the largest bar association in France with nearly 30,000 lawyers out of the 70,000 in the profession. The ODAP is presided over by the President of the Bar, whose mission is to represent Parisian lawyers, to guarantee professional ethics, and to promote the actions of the Bar to the public authorities and fellow lawyers. Recognized for its dedicated commitment to the defence of human rights, ODAP has worked hand in hand with the OIAD since its creation.

¹ <https://arrestedlawyers.org/2021/01/18/report-update-mass-prosecution-of-lawyers-in-turkey-2016-2021/>

- [General Council of Spanish Lawyers](#) (CGAE)

The General Council of Spanish Lawyers is the representative, coordinating and executive body of the 83 Spanish Bar Associations. In particular, through the Spanish Lawyers' Foundation and as a member of the OIAD, the CGAE promotes the social function of a free and independent legal profession, understood as an essential element in the defence of rights and access to justice for all, without distinction of any kind.

- [Geneva Bar Association](#) (ODAGE)

The Geneva Bar Association is a renowned Swiss professional association of the Geneva canton, and an active member of the OIAD. It counts more than 1900 members in nearly 500 law firms, i.e., a very large majority of the lawyers and trainee lawyers, both Swiss and foreign, practising in the canton of Geneva. The ODAGE plays a fundamental role in access to justice, the respect of fundamental freedoms and the safeguarding of human rights, especially through the activity of its Human Rights Commission.

The mission carried out by the European delegation pursued the following **objectives**:

- ➔ Support our Turkish colleagues who are being prosecuted,
- ➔ Observe and report on their hearings,
- ➔ Defend the fundamental principles of the profession of lawyers.

While the observation of the trial hearings of 6 and 7 April 2021 before the Criminal Chambers of the Caglayan Court was the main purpose of this mission, the trip to Istanbul also allowed for:

- ➔ Meeting several of the imprisoned colleagues in Silivri prison, on the 5th of April which is the Lawyers' Day in Turkey.
- ➔ Interviewing third parties who are familiar with the current situation of the legal profession in Turkey.

2. General context of the situation of lawyers in Turkey and background facts of the trials

2.1 Legislative context in Turkey

The Turkish anti-terrorism law and the provisions of the Turkish Criminal Code relating to terrorism contain **provisions that are not sufficiently defined**, thus leading to an **arbitrary and extensive interpretation of the texts**. Therefore, the legal qualification of the charges, based on the law against terrorism, regularly exceeds by its nature and severity the reality of the facts. These provisions also make it possible to criminalize associations (of all kinds, including those with a purpose that cannot be classified as criminal) and opinions, and are consequently contrary to international legal standards.

According to Article 1 of the Turkish Anti-Terrorism Law, a terrorist act is described as:

"Any kind of act committed by one or more people belonging to an organization with the aim of changing the concept of the Republic specified in the Constitution, of its political, legal, social, secular or economic system, or to undermine the indivisible unity of the State of its territory or nation, to endanger the existence of the Turkish State and the Republic, to weaken or destroy the authority of the State or to seize it, to eliminate fundamental rights and freedoms, to undermine the internal or external security of the State, public health or public order through the use of force, violence, pressure, intimidation, repression or threats".

The definition of "terrorist acts" in Article 1 of the Turkish Anti-Terrorism Law is particularly vague and broad. It does not make it possible to determine precisely which acts fall within the scope of terrorist acts, thus leaving a wide margin of appreciation to the criminal authorities. The interpretation of Article 1 of the Turkish Anti-Terrorism Law often proves to be **contrary to the principle of legality** (and its corollary, that of the strict interpretation of criminal law), a principle which is enshrined in the Turkish Constitution (Article 38) and guaranteed by Article 7 of the European Convention on Human Rights and Article 15 of the United Nations International Covenant on Civil and Political Rights. These inaccuracies and weaknesses in Turkey's anti-terrorist legislation have also been denounced by the United Nations Special Rapporteur on the independence of judges and lawyers.²

The provisions of Article 1 of the Turkish Anti-Terrorism Law, applied in conjunction with Articles 220.614, 220.715, 220.816, 314.2 and 314.317 of the Turkish Criminal Code, would thus allow for the conviction of any person having a real or putative link with an illegal organisation. These provisions would also allow the conviction of people for their opinions as soon as these opinions are contrary to the official ideology of the Turkish state, in **total violation of the freedom of expression**, guaranteed in particular by Article 10 of the European Convention on Human Rights and by Article 19 of the United Nations International Covenant on Civil and Political Rights

² See e.g., the speech given by Mr. Diego García-Sayán at the CCBE Human Rights Award 2020, COUNCIL OF BARS AND LAW SOCIETIES OF EUROPE (CCBE), NOV. 27 2020: CCBE Info, newsletter of European lawyers, October - December 2020, #89, p.3 and accessible under the link: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Newsletter/CCBEINFO89/FR_newsletter_89.pdf

Under the Turkish Criminal Code, the offences of establishing and/or directing a terrorist organization and belonging to a terrorist organization are **punishable by 7.5 to 22.5 years of imprisonment.**³

The observer delegation was informed by reliable sources of a substantial increase over the last five years in the number of lawyers prosecuted for defending clients suspected of being members of terrorist organisations. This concerns not only lawyers of the People's Rights Office⁴, but also, for example, lawyers who defend people accused of being members of the Gülen movement. They are often accused of being members of such organizations themselves. Lawyers are thus prosecuted for representing their clients, a task which is inherent to their profession.

2.2 Background facts of the trials

Background of the OHD and CHD cases

These trials are taking place in the context of the repression that followed the victory of the "yes" vote in the referendum of April 16, 2017, that allowed President Erdogan to strengthen his powers and prerogatives.

Notably, the new Turkish Basic Law contains two articles that came into force in 2018 that allows the head of state to hold the office of "High Council of Judges and Prosecutors" and to have control over the nomination and removal of members of the judiciary.

The OHD trial

OHD (*Ozgurlukcu Hukukcular Dernegi*, "Association of Lawyers for Freedom") is an association of lawyers working for an independent justice and for the respect of freedoms and the rule of law. It denounces the violence and discrimination to which certain minorities, in particular the Kurdish people, are subjected. The OHD had close ties with a federation of associations formed by relatives of convicts or detainees, the THUAD-FED association. By a decree dated November 2016, these two associations were banned, along with 300 others, on the pretext of terrorist activity.

The case began in 2016 and involves members of the ASRIN defence team, including **Ramazan Demir and Ayse Acinikli** who were arrested in March 2016 and detained from 6 April to 7 September 2016. Numerous judicial police officers and magistrates who worked in this case have also been convicted of membership of a terrorist organisation.

In the end, some fifty lawyers are being prosecuted for participation in a terrorist organisation or suspected of complicity with the Kurdistan Workers' Party (PKK)⁵.

³ Report of the mission to Turkey of the International Observatory for Lawyers October 2011.
<https://protect-lawyers.org/wp-content/uploads/Rapport-de-mission-Turquie-2011-FR.pdf>

⁴ Halkin Hukuk Burosu (the People's Rights Office), the name of the law firm where Ebru Timtik practiced.

⁵ In particular, **Hüseyin Bogatekin**, a well-known criminal lawyer defending members of the Kurdish community.

Ramazan Demir has been accused of having posted on Facebook judgments of the European Court of Human Rights condemning Turkey, of having participated in a demonstration against the destruction of the GEZI park and of having protested against the curfew imposed in the south of Turkey (especially in the Kurdish region)⁶.

Various hearings have been held previously in this case, including on October 31, 2019, February 28, 2020, and January 12, 2021. During these hearings, various obstacles to fairness in the proceedings were observed, such as the use of conversations covered by professional secrecy or illegal evidence, indirect anonymous testimony, compliance with the *ne bis in idem* rule, etc. ⁷

The CHD I & II trials

The "CHD" Association (*Cagdas Hukukçular Dernegi*: Association of Progressive Lawyers) actively campaigns for the respect of freedoms and the rule of law. A first case (CHD I) was opened in 2013 and remained at the investigation stage until 2018, when, based on the same facts, the same charges and with the same evidence, a new case (CHD II) started, targeting most of the colleagues accused in the first case.

Indeed, in 2013, 22 lawyers were arrested and then prosecuted in 2014 for "incitement to terrorism" or "complicity", as a result of practising their profession, or their participation in the Association of Progressive Lawyers. Several of them were also part of the defence team in the "ASRIN" trial.⁸ The CHD was subsequently dissolved by a November 2016 decree and branded a terrorist association.

The defendants were released in April 2014, after 11 months of pre-trial detention, except for **Selçuk Kozağaçlı**, President of the CHD. In September 2017, they were all remanded in custody again and then released a year later, during the first week of the hearing. Nevertheless, upon the appeal of the Public Prosecutor's Office, 13 lawyers were returned to pre-trial detention in the CHD II proceedings (*Nota bene: in the CHD I proceedings, there was no detention of the defendants*).

While the CHD I proceedings were still pending before the 18th Chamber, the CHD II trial initiated in 2018 before the 37th Criminal Chamber, based on the same facts, charges and evidence. Eight defendants were then simultaneously indicted in both trials, including **Selçuk Kozağaçlı, Barkin Timtik, Ebru Timtik, Oya Aslan and Günay Dag**.

⁶ Recently, and by judgment of 9 February 2021, **Ramazan Demir** obtained the condemnation of Turkey by the European Court of Human Rights for violation of the freedom of expression. While in pre-trial detention, he complained that he was denied access to legal websites to prepare his defence, including the ECHR website.

⁷ These hearings have been the subject of previous observation reports.

⁸ Named after the ASRIN law firm, which defended [Abdullah Öcalan](#), leader of the Kurdistan Workers' Party (PKK) rebellion, several members of the firm have been prosecuted for allegedly supporting a terrorist movement.

The 37th Chamber of the Court sentenced the defendants in the CHD II proceedings on 20 March 2019 to sentences ranging from 2 years to 18 years in prison, sentences upheld on appeal on 8 October 2019 and then largely by the Turkish Court of Cassation.

The convictions handed down by the 37th Chamber prevent the 18th Chamber from sentencing the same defendants for the same facts, handing down lesser sentences, halting the proceedings or acquitting the defendants. A fact-finding commission conducted in October 2019 in Istanbul by 23 international lawyers' and bar organisations highlighted the unfairness of the trial in the two "CHD" proceedings.⁹

One of the lawyers involved in both trials, **Ms. Ebru Timtik**, died in August 2020 as a result of a hunger strike that she had started to demand that the defendants be given a fair trial. She was taken to the hospital, but the court refused to release her temporarily for treatment when her condition deteriorated sharply. Detained in the same conditions, **Mr. Aytac Ünsal**, who was detained under the same conditions, also went on hunger strike, and owes his salvation, perhaps, to the fact that the Court of Appeal could not avoid the many protests around the world¹⁰.

On 15th of September 2020 the Turkish Court of Cassation upheld the conviction of 14 lawyers, members of the CHD association, for membership of a terrorist organisation. However, the conviction of **Barkin Timtik** and **Selçuk Kozağaçlı** was overturned, and the case was sent back to the first instance. Moreover, the Court of Cassation explicitly stated the need to join the CHD II case of 2017 with the CHD I case of 2013.

⁹ 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.
<https://protect-lawyers.org/wp-content/uploads/final-report-fact-finding-mission-on-chds-trials-oct-2019.pdf>

¹⁰ See the document signed by several bar associations, international lawyers' organisations, trade unions and lawyers' associations: [Joint Statement in support of the Turkish lawyers in the CHD I trial](#) (entitled "The judicial scandal has to come to an end - the imprisoned lawyers must be released") dated 10 November 2020 and available on the CCBE website:
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Statements/2020/EN_HRP_202011_11_Statement-CHD-I-trial.pdf

3. Visit of inmate lawyers in prison

The lawyers of the delegation had the honour of meeting **Barkin Timtik**, **Oya Aslan**, and **Selçuk Kozağaçlı**, in Silivri prison. They met two by two with each of the three colleagues for a short hour. They were accompanied by a Turkish colleague who acted as an interpreter.

Recall that Silivri Prison or officially the "**Silivri Prison Campus**" (Turkish: *Silivri Ceza İnfaz Kurumları Kampüsü*) is a high-security prison complex, located in the Silivri district on the outskirts of Istanbul. It is one of the largest penitentiary centres in Europe, holding over 25,000 inmates.

This prison covers a considerable area, it is necessary to travel by minibus to reach the different detention blocks.



Arrival of the delegation at the *Silivri Ceza İnfaz Kurumları Kampüsü* prison campus



Entrance to Silivri Ceza İnfaz Kurumları Kampüsü



Satellite photograph of the Silivri Prison Campus.

The Turkish authorities' attraction to these gigantic prisons outside urban centres and the massive use of incarceration has only worsened under the current regime. As a matter of fact, a survey published on the 8th of August 2021, in the bimonthly *Foreign Policy*¹¹ reveals that at least 131 prisons have been built since the coup d'état of July 15, 2016, very often housing opponents of the government.

It takes more than two hours to reach this prison complex from the capital. And it must be added the hours of waiting to which the members of the delegation were subjected before any access to the visiting rooms (whose arrival had been announced and organised a long time ago). This journey is even more complicated for the family members of detainees, who do not necessarily have the means of transport or the financial means to get there.

3.1 Interview with Barkin Timtik

Barkin Timtik is a 39-year-old human rights lawyer. In 2020, she was awarded, jointly with her sister **Ebru Timtik**, the Ludovic Trarieux International Human Rights Prize in Geneva. This award was granted jointly by the Human Rights Institutes of the Bars of Bordeaux, Paris, Brussels and Rome and the Institute of Human Rights of European Lawyers (IDHAE). On March 20, 2019, she was sentenced to 18 years and 9 months in prison, on the ground that she belonged to a terrorist organization. Her sister, also imprisoned on charges of belonging to a terrorist organization, died in August 2020 at the age of 42, following a 238-day hunger strike she had started in order to obtain a fair trial.

¹¹ <https://foreignpolicy.com/2021/08/08/turkey-prison-complex-erdogan/>

At the time of the visit, the lawyer appeared **tired but willing to talk**. She did, however, ensure that her two to three hours per week of access to a computer that usually took place at that time could be moved to another time, which was confirmed to her by a prison guard.

She said that she was **full of hope**, not only for lawyers in Turkey but also for those suffering elsewhere in the world. She told us that during her university studies she had studied the principle of separation of powers and was shocked when she discovered the Turkish reality. In the People's Rights Office, she realized the need to act, and she made her wish to fight for justice.

Regarding her **conditions of detention**, she told us that the most difficult thing was the lack of interaction with the outside world, and that she only had access to the official media in prison. Although **Barkin Timtik** was able to borrow many books in prison, except during the Covid period, she did not have access to socialist political reading material corresponding to her orientation, nor to critical literature.

The **death of her sister Ebru Timtik** after a hunger strike in prison had a huge impact on **Barkin Timtik**, and she says it is a loss for her as well as for lawyers everywhere. **Barkin Timtik** recalls that while she herself wanted to be a lawyer from a young age, her sister wanted to be a journalist and do theatre at first, but her parents dissuaded her from doing so because of the risk of persecution of journalists.

Barkin Timtik acknowledges the **support** she receives from Turkish lawyers, including those who do not share her ideology, as the fight for the rule of law is shared by many of her colleagues. According to her, justice is still possible, and fighting is still worthwhile, but in a collective way.

3.2 Interview with Oya Aslan

Oya Aslan also worked for the People's Rights Office and was a member of the Progressive Lawyers Association. She has been in detention since her arrest on 27 December 2019. She claims she was **tortured**, which has been denounced by lawyers internationally.¹² Despite this, her complaint of torture to the court was dismissed and no action followed.

Oya Aslan, who has been a lawyer for seventeen years before her arrest, told us that she tries to **stay active**. For her, the days go on quickly, even if isolation remains a major issue. Indeed, prisoners are not only isolated from the outside world, but also from the other political prisoners, as the guards of the prison prevent any interaction between them. However, she still feels that there is great solidarity between prisoners. **Oya Aslan** is also touched by the international solidarity which she believes is essential and she regrets that the Turkish Bar Association does not make its voice heard enough.

She wants to continue her work as a lawyer after the end of her detention, since it is her way to fight for freedom. According to her, lawyers are the only ones who can take hold of the system, even if it is failing, to improve it.

¹²<https://iadllaw.org/2021/01/lawyers-associations-demand-immediate-release-of-turkish-lawyer-oya-aslan/>

Oya Aslan has access to her lawyer to prepare her defence. However, although the confidentiality of lawyer-client exchanges exists in Turkish law, she does not trust the mechanisms put in place to ensure it. Furthermore, she criticises the judges for taking into account anonymous testimonies and refusing to hear important witnesses and other requests from the defence.

Her **conditions of imprisonment are difficult** and are **exacerbated by the COVID-19 pandemic**. For example, due to quarantines, women prisoners are reluctant to seek medical attention outside the prison, in order not to be further isolated on return. Generally, they have to buy sanitary materials from a shop within the prison, including by talking with men (who hold the shop), which leads to misunderstandings and various difficulties. The list of available products is drawn up by men, which again can be problematic. In addition, the doctor treating the prisoners tends to prescribe a great deal of medication without thorough examinations to try to avoid any aggravation. **Oya Aslan**, who can read, is being cautious about this and makes sure to read the medical contraindications for example, but this is not the case for all the women prisoners.

3.3 Interview with Selçuk Kozağaçlı

Selçuk Kozağaçlı is a lawyer famous for his commitment to the defence of freedoms. He is also a member of the People's Rights Office, and President of the Progressive Lawyers Association (CHD).

He is known for defending the families of the 301 miners who died in the [Soma mine disaster](#). As a matter of fact, he received the 2019 *Lawyers for Lawyers* award for his unwavering independence and dedication to the defence of human rights.

During the CHD II trial, **Selçuk Kozağaçlı** was sentenced on 20 March 2019, along with **Barkin Timtik** and 16 other lawyers, to **10 years and 15 months in prison for membership of a terrorist organisation**. As previously mentioned, this trial was denounced by international observers for its lack of respect for the principles of the fair trial and for the absence of judicial protections normally guaranteed by international treaties, particularly the European Convention on Human Rights¹³.

During the visit, Selçuk Kozağaçlı was **extremely smiley**, despite having been imprisoned for three and a half years, plus a year in detention in 2013. He said that he was doing well in general, although there were difficult days, and that he had more energy to fight than before.

Selçuk Kozağaçlı doubted that he would be released at the next day's hearing, but he did not lose hope. **His greatest fear, in the event of a conviction, would be that he would no longer be able to exercise his profession as a lawyer and that he would be disbarred**. He declared that he would continue to fight even if this happened.

¹³ European observers of this trial have reported serious breaches of the principle of fair trial. See the testimony and the press conference made by Sibylle Gioe ([SibylleGioe- Return on the unfair trial against... | Facebook](#)).

Finally, he asked us to intervene with the Council of Europe, the Office of the United Nations High Commissioner for Human Rights (OHCHR), and above all to follow his case all the way to Strasbourg, including through affidavits if necessary.

On the eve of the trial, **Selçuk Kozagaçlı** was concerned about the small courtroom in which their trial was to take place; he had requested with his lawyers that his hearing be held in a larger room, but his lawyers had not yet received a response. **Selçuk Kozagaçlı** also feared tensions at the trial that could lead to interruptions of the hearing.

According to him, the judge had only had access to his file for 20 days. Finally, he asked the European lawyers who came to the hearing to come in robes, which could have an effect on the judge.

3.4 Conclusions of the visits

The detained lawyers kept hoping to continue to practice their profession and remained hopeful about their situation and that of other lawyers at risk. They remained committed to justice and believed that they could make a difference, collectively. Their conditions of detention were difficult; although they had access to the outside world through the borrowing of books and the possibility of using a computer, in particular to consult their files from time to time, this access was strictly limited and monitored, visits were rare or non-existent, books were controlled, access to computers was limited to 2 or 3 hours, and contact between prisoners was prevented by the prison guards. These restrictions were tightened in the light of the COVID-19 pandemic.

The observers were touched by their fellow lawyers who continue to fight and remain hopeful for the future. **One of them expressed his concern about the future of his clients**, a professional conscience that is even more moving when one is subjected to such detention and consequences in relation to one's professional practice as a lawyer. They also felt that these lawyers were counting on their support, for example by asking them to attend the next day's hearing in their robes or by asking them to defend their cases before the European authorities.

4. Observation of hearings



Exterior and interior views of the Çağlayan Court in Istanbul

4.1 Hearing April 6, 2021 - OHD Case

This hearing concerned lawyers **Ramazan Demir**, **Ayse Acinikli** and **Tamer Dogan**, who were charged in the OHD case. **Ramazan Demir** was not present at the hearing on 6 April 2021. Most of the lawyers in this case are of Kurdish origin.

Ramazan Demir is accused of being the head of a terrorist organisation, **Ayse Acinikli** is accused of advocating terrorism and **Tamer Dogan** is the subject of three criminal proceedings. The first is for visiting one of his clients, a PKK member, in prison. The second is for "insulting the president. A third, for Twitter posts.

The case was tried by the 14th Criminal Chamber of the Istanbul Court presided over by Judge Akin Gürlek. We were surprised by the youth of the judges and the silence of the prosecutor.

The only lawyer who was heard during this hearing is **Tamer Dogan**, was charged in particular for *tweets* published about the situation in Syria. One of his relatives was killed by Daesh, which is why he denounced the situation on social networks. He is particularly accused of having used certain hashtags, which would make him a terrorist.

The prosecutor did not find any prima facie violations. During the investigation, the police did not find any old publications that could be characterised as offences. However, the law has since changed in this regard, so the prosecutor sought to incriminate **Tamer Dogan** on the basis of the newly adopted law, even though at the time of publication these publications did not constitute offences.

Since 2016, a police force has been established to monitor social networks. The police meet regularly to analyse the various networks. They take advantage of this to provoke on social networks, seeking to lead their interlocutors to commit offences in this context.

According to article 58 of the Code of Criminal Procedure, the prosecutor must first apply to the competent judge for a search or a wiretap. If the person concerned is a lawyer, the prosecutor must notify the bar association to which the lawyer belongs before carrying out such investigative acts. This procedure was not followed in this case. The procedure is therefore flawed.

Tamer Dogan claims that the case was fabricated by the authorities. The police officers and the prosecutor involved in the case have already been convicted of producing false evidence. Thus, **Tamer Dogan's** lawyer asked the judge to verify that the investigation was properly conducted.

The question of the lifting of judicial supervision was then addressed. As a preliminary matter, an accused complained that the judicial review ordered against him had been lifted, but that this had not been notified in the computer system, so that the lifting was not really effective. He asked that this situation be remedied. The judge then pronounces the lifting of the judicial supervision against other defendants, but not all.

The defence then requests additional investigations, namely, the installation of FADET (geolocation). The request is granted. The Court grants the request to lift the ban on the defendants from leaving Turkey.

At the end of the hearing, the Tribunal announced that it would shortly refer the case to the Prosecutor, who would then serve his indictment. The conclusion of the case has been postponed to 22 June 2021.

The hearing was finally scheduled for **October 26 and 27, 2021**.

4.2 Hearing April 7, 2021 - CHD I and II

This hearing is linked to the "CHD I" and "CHD II" procedures detailed in section two of this report.

As explained above, the 2017 CHD II case concluded, for some colleagues, with a confirmation of their conviction by the Turkish Court of Cassation and, for others, such as those involved in the April 7, 2021, hearing, with a cassation and remand to the lower court, as well as an order of joinder with the 2013 case ("CHD I").

Initially, the same facts would thus have been charged against **Barkin Timtik**, **Selçuk Kozağaçlı** and **Oya Aslan**. While **Barkin Timtik** had been convicted in the 2017 case as the head of the alleged terrorist organization, the Court of Cassation overturned the decision on this point. In the 2013 case, only **Selçuk Kozağaçlı** is accused of being the head of the organization.

A total of **22 lawyers were involved in the proceedings before the 18th Chamber**. It should be noted that after the ruling of the Court of Cassation, a new panel of judges was appointed to take over the case. According to the defence lawyer at the trial, such a change of judges represents a great disadvantage since the latter may pretext a rapid resumption of the case and be all the more reluctant to release the accused.

Before the start of the trial, a member of the Istanbul Bar Council says that the judiciary is a **means of execution of the government police**, and that some lawyers do not understand the usefulness of the independence of the judiciary and/or the legal profession. According to him, more than half of the judges and prosecutors were changed after the coup to protect the government and not the citizens, many of them having been placed by the government. The lack of independence of the judiciary is in fact pre-existing the coup. Nevertheless, according to him **"if the system is not independent it is not a reason to be dependent on us"**.

The course of the hearing

The defence's request to hold the hearing in a larger room was rejected. As the public space in the small courtroom was extremely limited for the number of observers present, it was proposed that

only three of the international observers should remain in the room, but our Turkish colleagues quickly decided that it was important for all of us to return. So, some of the defence lawyers were following the trial from outside the courtroom with the doors open.

The hearing started about **two hours late**, which is exceptional. Finally, the main judge of the case was on sick leave, so a duty judge replaced him, a bad sign considering the reluctance of duty judges to take courageous decisions.

The main topic of the hearing on 7 April 2021 concerned the **pre-trial detention of the two lawyers in prison Barkin Timtik and Selçuk Kozağaçlı**. The 18th Chamber had decided to remand them in custody, so that **Selçuk Kozağaçlı** had been in pre-trial detention for 4 years and 7 months and **Barkin Timtik** for 4 years and 3 months while the legal limit for pre-trial detention is 5 years.

However, until the decision of the Court of Cassation **Selçuk Kozağaçlı** and **Barkin Timtik** had not been detained in the CHD I proceedings.

Barkin Timtik's lawyer reminds us that **Barkin Timtik** is not the head of CHD, and that justice knows that if she were released, she would not run away but would simply continue to practice her profession. He says, *"instead of flowers, we should put justice on Ebru's grave, and I therefore ask you to release Barkin"*.¹⁴

He argues that the 2013 and 2017 proceedings are 90% based on the same evidence, that nothing has changed in the 7 years the defendants have been appearing freely and that they should therefore be released, **especially as they have almost served the minimum sentences for the offences in question.**

Furthermore, it should be noted that in the CHD I proceedings (2013) the defendants had not been remanded in custody. Pre-trial detention was only ordered following the cassation decision.

Another lawyer insists that it is absolutely necessary to justify the decision on whether or not to continue to detain, regardless of the verdict, and asks that justice not be further delayed by bad decisions, as one life has already been lost.

Oya Aslan is heard from the prison and takes the trouble to greet the foreign delegation, as did **Selçuk Kozağaçlı** and **Barkin Timtik** previously, which attests to the importance of this presence.

Barkin Timtik says that she, for her part, is capable of defending the rights even of those who have tortured them and that everything they have done, they have done in the strict exercise of their profession. She refuses to allow their defence of human rights to be sullied within the association.

The lawyers present, as well as a prisoner, had the opportunity to speak freely, without appearing to be pressed for time. For some, their lawyers will also speak.

¹⁴ Barkin's deceased sister, imprisoned for the same reasons, see section 2.

Finally, according to our delegation's notes, the judge - after very brief deliberations following nearly four hours of hearings - reached the following verdict:

- Continued detention, **without any justification;**
- Announcement of a criminal complaint that will be filed against a member of the public who took a photo during the hearing;
- Convening, in the main hall this time, of the next hearing set for September 15, 2021;
- Access to prison files granted, including to **Oya Aslan** as she requested

5. Conclusions and Recommendations

At the end of this mission, the following observations and recommendations are in order:

- **The interviews in detention prior to the two hearings took place** in satisfactory conditions, allowing the observers time for a real interview with each of the imprisoned colleagues. However, it is regrettable that these interviews took place through a Plexiglas panel and that the delegation members had to wait more than two hours for their visit, which had been scheduled for a long time and was known to the prison authorities, before they could enter the visiting room.
- Regarding **the hearings**, the members of the mission can only express their disappointment at the refusal to release the colleagues, most of whom are already being held in pre-trial detention for an excessively long and unjustified period of time, which is in fact akin to the execution of a sentence during the proceedings, the length of the proceedings appearing to be incompatible with the requirements of reasonable time limits under European and international law
- **The issues at stake in the hearings are sometimes unclear, even to counsel for the prosecuted lawyers.** Thus, the defence, while obviously intending to plead the applications for release filed, never knows precisely whether a particular hearing will deal specifically with the merits of the case or will result in a rapid adjournment, leading the defence to speculate on the intentions of the prosecution authorities, which should in principle be explicit and clear. Thus, the first hearing gave the impression that it was rushed and was only a stage in the proceedings, while the second, which was fairly long and dense, began an hour late, with no certainty whatsoever as to whether it would continue, how long it would last, or what the composition of the court would be or where it would be held.

From the point of view of the **principle of equality of arms**, this information concerning the place and time of the hearing, the purpose of the hearing and the composition of the court seems to be the minimum necessary to ensure an effective defence, since the uncertainty in which the defence is constantly placed necessarily hinders the fairness of the trial.

- **It was** also noted that defendants complained that **the defence of the incarcerated lawyers was confronted with numerous anonymous testimonies or denied access and adversarial examination of evidence used as a basis for the charges and continued detention.**
- Finally, the members of the mission noted the **very young age of the judges in the criminal courts.** Because of the purge that has taken place in most administrative bodies or within the judicial staff, the judges on duty in Istanbul's main court appear inexperienced, overwhelmed by the scale of the sprawling proceedings they have to judge and owing their appointment to such posts at such a young age only to the effect of the purge on the number of judges. This gives rise to a feeling of implicit dependence on the authorities, which is hardly reassuring as to the outcome of such trials.

- In both proceedings, lawyers are mainly charged with representing persons who are themselves accused of acts described as terrorist. These lawyers are often **equated with their clients** and the exercise of their profession leads to a conviction for terrorism, complicity in terrorism, or even, in the case of the association representing such defendants, for founding or leading a terrorist organisation. This is in contradiction with the **Basic Principles on the role of the Bar**.
- Finally, the absence of any justification, even if erroneous, by the judge for the decision to maintain detention is particularly shocking and clearly constitutes a violation of the defendants' right to be heard.

With regard to the OHD and CHD I & II trials, the observer mission requests the Turkish authorities:

- The **immediate release** of the lawyers still detained in the OHD and CHD trials, and the respect of their right to judicial security and freedom;
- Respect for the **principle of *ne bis in idem*** ;
- **Respect for equality of arms** and the **right to a fair trial**, including access to independent judges;
- The **prohibition on the judge interpreting the criminal law extensively to the detriment** of defendants and the obligation on the legislator to adopt **clear and precise texts**, particularly in the area of terrorist legislation;
- **Respect for the guarantees of international treaties and conventions on human rights** to which Turkey is a signatory, in particular the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;
- **Compliance with 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, held in Havana, Cuba, from 27 August to 7 September 1990, in particular principles 16, 18, 21 and 23:

“16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (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.”

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

“21. 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.”

“23. 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.”