

16 February 2017 Hearing – Barkın Timtik IADL Trial Observation Report

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I. Political Context in Turkey

Since a State of Emergency was declared in Turkey new procedures have been implemented that severely restrict the rights of associations, lawyers and activists to operate. Hundreds of associations have been declared illegal. In order to challenge the designation of an organization or association as illegal one can make an appeal to the “State of Emergency Commission.” This Commission was formed in January 2017 after pressure from human rights groups because many courts had declared that they did not have the power to overturn political decisions that led to the firing of thousands of public employees and the declaration of many associations as illegal following the July 2016 coup attempt. However, the Commission is not regarded as independent, and most human rights and civil society groups do not have confidence in the impartiality of the Commission.

Previously in Turkey a lawyer could not easily be arrested while carrying out their duties as lawyer (for example when they were with a client, as Barkın Timtik was when she was arrested). In order to arrest a lawyer under those circumstances, a prosecutor/magistrate must have first ordered the arrest of the lawyer. Under new State of Emergency rules, police were given the power to arrest lawyers without waiting for a prosecutor signed arrest warrant.

In this context, at least 287 lawyers are currently detained in Turkey and in 2015-2016 at least 1000 lawyers were prosecuted in Istanbul.

The treatment of Alevis in Turkey is also relevant to this trial. Alevism is the designation for a number of heterodox Shi'ite communities whose adherents make up around 15-33% of Turkish society. Alevis have historically suffered marginalisation and discrimination and their religion still has no official recognition in Turkey. Alevis' tradition of leftism and political opposition has made them targets of the state and the far right. The defendants in this trial are mostly Alevi and were all arrested at Camavi, an Alevi prayer/community centre, in the middle of a memorial rite. Many defendants insisted the motivation behind the arrests wasn't to prevent terrorism but to stigmatise and intimidate Alevis.

On December 15, 2016, Barkın Timtik and 25 other individuals were attacked by police and arrested for attending a funeral dinner of a former client of Timtik's. All were brutally beaten and tear gas was thrown into the closed community centre where they were eating. All were charged with propaganda for a terrorist organization. The 16 February 2017 hearing was in order to determine whether the defendants should be released from jail while they waiting for a trial on the charges. This hearing was the first time all defendants were brought before a judge since being arrested.

Following are violations of fair process observed during the 16 February 2017 trial.

II. Trial Observations

1. Lack of Evidence to Justify Arrest and Detention

Evidence presented was weak circumstantial evidence that did not justify the detention of Barkın

Timtik and co-defendants for over two months. Following is the sole evidence discussed during the trial:

- A banner stating “Oğuz Meşe is immortal” was hung at the Camavi where a funeral dinner was being held to honor Oğuz Meşe, a former client of Barkın Timtik who had been killed by police. All those arrested were inside the community centre at the time. Although a designated terrorist organization had claimed after his death that Oğuz Meşe was a member of that organization, there was no other evidence that he was in fact a member of this organization. Furthermore, there was no evidence that Barkın Timtik or any of the defendants had made or hung the banner.
- Questioning at the trial indicated that the court intends to use the fact that Barkın Timtik and other defendants followed a twitter account as evidence of their affiliation with an organisation associated with the account.
- Questioning at the trial also indicated that the court will use the fact that Barkın Timtik and other defendants invoked their right to remain silent at the police station as an admission of guilt.

2. Non-Public, Non-Independent Trial

The trial was held in a small courtroom, from which family members of the defendants, law students, law graduates, press, and visitors were excluded. Only lawyers and police were allowed into the courtroom. Nearly half of the area reserved for the public was filled with military police and civilian police. The request from defendants’ counsel for a larger courtroom was denied.

Because the courtroom was overcrowded, many lawyers representing the 24 defendants were unable to hear the judge or defendants as they were being questioned and testifying.

During the trial the defendants' rights were further violated as police attempted to physically block the lawyers' access to their clients.

The three-judge panel presiding over the trial was led by Hulusi Pur, an appointee of Erdogan who was promoted after he prevented investigation of the Turkish government after the 2013 [corruption scandal](#).

3. Conditions of Confinement/Detention

Much evidence of torture and mistreatment of Barkın Timtik and the other defendants was presented during the trial. One positive outcome was that the court ordered the release of the complete police video which was shot during the police's attack on the Alevi community centre and arrest of Barkın Timtik and other defendants. The police video submitted to the court had been cut to exclude the most violent attack and torture of defendants, according to testimony from defendants.

In addition to torture, isolation and lack of access to lawyers during detention, Barkın Timtik was also transferred from an Istanbul prison to a prison near Izmir.

4. Use of State of Emergency Rules to Disadvantage Defendants

The judge used State of Emergency rules to restrict the number of lawyers each defendant was entitled to. Ordinarily there is no limit but in this trial each defendant was allowed no more than three lawyers. In advance of the hearing it was unclear if this rule would apply so many lawyers had travelled to Istanbul to represent the defendants.

The judge also invoked the State of Emergency to attempt to limit the time that lawyers and defendants were allowed to make representations in court. Lawyers were given five minutes to speak and were repeatedly interrupted if they spoke beyond that time limit.

5. Impact of Legal Observers' Presence in Court

Five legal observers from IADL and ELDH were present, Giacomo Gianolla (IT), Kerry McLean (US), Rose Wallop (UK), Lorraine Leete (US) and Gianfranco Castellotti (IT). In addition a Member of Turkish Parliament and members of the Antalya, Adana, Bursa, Diyarbakir, and Izmir bar associations were present. The judge made several references to the presence of legal observers, and stated that he “had to be careful” because of the presence of legal observers.

However, after the court ordered the release of all 24 defendants, the next day seven defendants remained in custody. Some were rearrested on newly formed charges immediately upon release, and others were not released because the jail claimed the court papers had not been received by the jail officials.

Furthermore, the court restricted the travel of 12 of the 24 defendants, preventing them from traveling freely out of Turkey until their criminal liability is determined in a later trial.

III. Recommendations

The prosecution of Barkın Timtik is unfortunately not an isolated event in the current context of Turkey. In order to support lawyers and other human rights defenders in Turkey, the following recommendations were made during a meeting with CHD members in Turkey:

1. Publish an English version of *Halkın Hukuk*, the “People's Law Office” so that international colleagues are informed in a timely way of the arrest and prosecution of lawyers in Turkey.
2. Create an email group to discuss and stay informed about attacks on lawyers, composed of a small group of interested IADL associated lawyers.
3. Set up a petition page and use a template that can be easily adapted to specific cases and shared with IADL member organizations, to be able to quickly put pressure on Turkish authorities in the case of attacks on lawyers.