

Report: The Norwegian Judges' Association's participation in Pen Internationals High Level Mission to Turkey on 22-28 of January 2017

I. Introductory

Freedom of expression in Turkey is under more pressure than ever before. The attempted coup on 15 July 2016 and the following state of emergency have accelerated the crackdown. Pen International (PEN) planned and carried out a high level mission to Turkey on January 22-28 2017.

The Norwegian Judges' Association (NJA) and The International Commission of Jurists (ICJ) were invited to participate. District Court Judge Heidi Heggdal represented NJA and ICJ was represented by jurists Mari Gjeffen and Grunde Almeland.

PEN's main objectives with the mission were the following:

- Showing strong support to the Turkish victims of the crackdown of freedom of expression, by the PEN international literary community;
- Establish personal contact with high level authorities in order to advocate rights for writers and journalists in prison, under trial, as well as closed publishers and media outlets;
- Demonstrate deep solidarity with the Kurdish community in this time of brutal massacres, persecution, destruction of cultural heritage and repression of Kurdish cultural and arts institutions.

NJA's and ICJ's focus were to investigate the conditions of lawyers and judges in the country. Many judges, lawyers and prosecutors are in pre-trial custody, and the working conditions for those who are not considered pro AKP and Erdogan are getting worse by the day. We planned to meet with various human rights organizations, lawyers, law-professors and a previous judge. We also participated in several activities arranged by PEN, including roundtables on writer's and journalist's freedom of expression and a visit to a Turkish newspaper. Several of the lawyers that we met represented judges in pre-trial detention.

NJA and ICJ also wanted to develop relations with local actors in order to investigate the possibility for a more active and long-term follow up on the situation for judges and other legal professionals in the judiciary.

2. Overview of the meetings

Ankara

PEN had arranged a meeting with a previous judge on 23 January.

The judge was very worried about the development, and said that we were currently facing one of the worst periods of modern Turkey. The rule of law in the country has been ruthlessly undermined, with increasing pressures on judges, lawyers, prosecutors and members of the press. The members of the judiciary are frequently subject to investigation themselves.

When we asked what kind of contribution he would like from us, the judge replied that it was important that we put pressure on our national government. Further we should put pressure on the

institutions like CoE and ECtHR. The international society's interest and engagement is important for the judges, lawyers, prosecutors, journalists and writers that are in pre-trial detention or otherwise under persecution.

After the meeting with the judge it was decided that PEN, NJA and ICJ should write a letter to CoE together, where we expressed our concern about the situation in Turkey. In addition, NJA and ICJ wrote a joint letter addressed to CoE Secretary General Torbjørn Jagland.

Öykü Didem Aydın

Our meeting with prof. Dr. Öykü Didem Aydın was planned to take place on 24 January. Aydın is head of Lawyers Without Borders (LWB) in Turkey. She is professor at Hacettepe University Law School in Ankara. She has been a member of CoE's Venice Commission. She is judge Murat Arslan's lawyer. Arslan was the leader of Yarsav, the only Turkish Judges Association that was recognized by IJA. Yarsav is dissolved by the Turkish Authorities. Aydın is also Yarsav's lawyer.

Unfortunately, Aydın had to cancel our meeting in Ankara, so we did not get to meet her face to face. We managed to arrange a skype-meeting with when we were in Istanbul. Aydın told us that Arslan has been in pre-trial detention since October 2016, suspected for membership of a terrorist organization. Furthermore, Aydın informed us that about 1/3 of all judges and prosecutors in Turkey are in pre-trial detention (about 4000 persons). Some are in overcrowded prisons, some are isolated, and conditions are generally bad. The defense lawyers experience difficulties with performing their duties. They do not get access to documents, the court hearings are brief and decisions are not reasoned. In addition, the indictments are vague and not individualized.

Under Aydın's supervision, LWB had received funding from the German Foreign Office to conduct trial monitoring of 20 court hearings, regular meeting with detainees in five different prisons and interviews with 150 detainees. The description of the project is enclosed. The case of Arslan and Yarsav, hereunder the cases of the other members of Yarsav, will be monitored. Aydın told us that she had applied for EUR 100 000 and gotten EUR 75 000, which she considered to be a good start.

Osman İşçi

Osman İşçi is an executive committee member of *Human Rights Association Turkey (HRA)*. We met with him on 24 January in place of the cancelled meeting with Aydın. İşçi is a research assistant in the Department of English Language and Literature at a public university based in the East of Turkey but was suspended from his job due to alleged alignment with an illegal organization. He was in pre-trial detention for 10 months in 2012-2013 period for another case. He considers himself lucky, as he is no longer in prison, unlike many others remaining in pre-trial detention for a much longer period and many have not been released. İşçi is trying to make a living as an interpreter.

Even if İşçi were released from prison, his case is still pending and he has not yet had a main hearing in court. This put him in sort of a limbo situation, as he is not allowed to leave the country or get his job back as long as his case is pending. He has no idea of when he can expect the trial to be conducted. This practice is also common in Turkey at the moment. We heard the same store from writers and journalists that had been released from prison.

İşçi also stressed the importance of the international society's constructive pressure on Turkey and that NGOs like *HRA* was in need for support in order to continue their work in a stronger way.

Istanbul

Önder Durdu

We met Önder Durdu in Istanbul on 25 January. Durdu is a lawyer and does, among others, defend judge Metin Özcelik, who was arrested in Istanbul the 30 April 2015, after he ruled on the release of police officers and journalists from custody. He has been in pre trial detention since the arrest. Durdu told us that the prison conditions were harsh. Özcelik is placed in a three person cell. There are four detainees in this cell, and as the latest to arrive, Özcelik had to make his own bed out of cases of water bottles. Özcelik has also been charged with abetting to the attempted coup, even though he had been in prison for more than 16 months when this occurred. During this period, he had no access to books, documents etc.

Durdu was very worried by the situation. As a defense lawyer, he finds it very difficult to do your job properly. In addition to challenges connected to getting access to case documents, court hearing being rescheduled on short notice, summary hearings, summary rulings and slow progress, the lawyers are being harassed in different ways. Durdu is worried that he himself will be arrested. The fact that the lawyers are defending persons charged with being associated with terrorist organizations makes them subject to the same suspicion. Durdu has been stopped by the police at Ankara airport on two different occasions. He was given no reason why they wanted to talk to him. After a while he could walk, but without any further explanation.

Özcelik is willing to release Durdu from his assignment as his defense lawyer, but Durdu is not willing to be released. He said: "*I'm a lawyer and I must do my job*". But he explained that it is increasingly difficult for detainees to get legal representation. Lawyers are afraid to defend persons suspected for alignment with the Gülen movement. They charge triple price because of the risk involved for themselves and their families. Durdu had a very pessimistic view on the development in Turkey.

In Durdu's opinion, continued international pressure on Turkey is important. For the detainees, it gives hope and strength to know that international and national NGOs support them.

Yaman Akdeniz

On 2 January we met Yaman Akdeniz, a lawyer and lecturer at Bilgi University in Istanbul. His specialty is freedom of speech. He has tried and won several cases in Turkey regarding internet restrictions and control of social media. He is also familiar with procedures for trying cases before ECtHR. He speaks excellent English due to practicing law in England for many years. Akdeniz has a "legal clinic" where he trains students and young legal professionals in legal procedure and trying cases before the ECtHR.

To us, it seemed like Akdeniz is working around the clock. He said it is "no time to sleep, no time to lose". He as well was very pessimistic when it comes to the future development in Turkey.

Encounter with Turkish Police and Military

PEN arranged a small demonstration outside the Silivri Prison in Istanbul, in which we attended. The plan was to gather at the parking lot outside the prison and show posters with the text "Freedom of Expression in Turkey" in English and Turkish, while PEN's president would read a text condemning pre-trial detention of journalists and writers. Shortly after we arrived, we were met by military police who lead us back in to our minibuses, confiscated mobile phones, deleted pictures and videos and collected our passports. After more than one hour we were allowed to leave, but were stopped by the police twice more before we reach Istanbul. We were also filmed by the police.

The Norwegian National Broadcasting's (NRK) correspondent Sidsel Wold and her photographer attended the demonstration together with local journalists.

3. Summary

The people we met, the talks we had and our own experience outside the prison, confirm our suspicion that the Turkish authorities is becoming increasingly authoritarian, at the expense of the independence of lawyers, judges and member of the press.

While with different words and from different angles, everyone we talked to had the same message, namely that the conditions for judges and lawyers in Turkey have become increasingly more difficult. Judges who rule out of line with the political will of the government run at risk of being degraded, relocated and imprisoned. The accusation is that they, like those charged in their rulings, have been involved in the coup and/or work in alignment with the Gülen movement. In other words, lawyers risk being identified with their client. Lawyers who are not imprisoned themselves, are being harassed by the police and live in uncertainty. We have heard stories of detainees' family members losing their jobs, even that their children have lost their place in kindergarten.

After the coup, detainees are experiencing tougher prison conditions than before. For instance, visiting hours have been shortened. The court hearings are regularly postponed, with the consequence that the lawyers sometimes are hindered from attending and thus give adequate legal representation to their clients.

After the attempted coup, Turkey has declared that it is under a state of emergency, and has temporarily derogated from its obligations under the European Convention on Human Rights (ECHR). Such derogation does however not absolve the nation from all its obligation under the Convention: protection from torture, prohibition from punishment without trial and the prohibition of the death penalty are basic rights that still must be protected even during a state of emergency. In addition, restrictions of the remaining rights cannot exceed measures necessary to restore the threat to the country's existence. From what we have seen, we are not convinced that the Turkish government act in line with these obligations.

An immediate consequence of the harassment judges and lawyers are subjected to is that we can no longer assume that the Turkish judiciary is independent. Furthermore, many of the more than 100 000 persons detained after the attempted coup do not have access to legal representation. Due to the massive pressure on Turkish media, the violations that occur are often not reported.

The extent of imprisonment and repression of opposition has reached a level that makes it hard to claim that Turkey has an independent judiciary. It is fair to say that the country is not under an effective rule of law today.

4. Proposals for further action

The professionals we met were very clear on the importance of a continuous pressure on Turkey from national governments.

ICJ has the following suggestions for follow-up:

- * Arrange a seminar on the situation of judges and lawyers in Turkey
- * Publish an article about the situation in Turkey
- * Publish an article about Turkey's human rights obligations under the ECHR
- * Evaluate options for trial observations in cooperation with local partners in Ankara
- * Participation in a study circle for ICJs student network

In addition, we need to have regular contact with lawyers we met in Istanbul and Ankara.

In my opinion should NJA should participate in several of ICJ's activities.

04/14/17

Heidi Heggdal

District Court Judge in the Oslo District Court