

20 February 2017

STATEMENT

BHRC trial observers call on Turkish authorities to ensure the fair trial rights of Taraf journalists

BHRC continues to express grave concern about potential violations of international human rights law, following the second hearing in Istanbul in the ongoing trial of five former journalists from the daily newspaper *Taraf*.

Background

Taraf was one of 150 media outlets closed down by the Turkish government in July 2016, following the declaration of a nationwide State of Emergency, during which at least 80 journalists have been detained.

Former editor Ahmet Altan, former deputy editor Yasemin Çongar, two *Taraf* journalists (Mehmet Baransu and Yıldırım Oğur) and a fifth journalist (Tuncay Opçin) are currently on trial for offences of “*acquiring and divulging documents concerning the security of the state and its political interests*” contrary to articles 326-327 and 329 of the Turkish Criminal Code. This carries a maximum sentence 50 years’ imprisonment.

Mehmet Baransu and Yıldırım Oğur are further charged with ‘*membership and administration of a terrorist organisation*’, contrary to article 220 of the Turkish Criminal Code. This carries a maximum sentence 75 years imprisonment.

While the charges in this case pre-date the 15 July 2016 coup attempt, this is the first high profile trial of journalists since the declaration of the State of Emergency in Turkey. On 27 July 2016 *Taraf* was shut down pursuant to a statutory decree issued as a result of the State of Emergency.

The State of Emergency Decree laws provide for individual detention without charge for up to 30 days and provision for individuals to access a lawyer only after a period of five days in detention. There is widespread concern that emergency laws are being used to silence critical voices within the country.

BHRC previously attended the first hearing in the case at the High Criminal Court in Istanbul as independent trial monitors. An interim report from that hearing is available on BHRC’s website.¹

The second hearing

The second hearing took place as fixed at the High Criminal Court in Istanbul on the morning of 23 November 2016.²

Mr Baransu’s lawyer was unable to attend the hearing. The court therefore appointed Özge Kartal, a lawyer from the Turkish Bar Association. Mr Baransu insisted on representing himself at this stage. He applied for, and was granted, an adjournment on

¹ <http://www.barhumanrights.org.uk/wp-content/uploads/2016/11/BHRC-Interim-Taraf-Report.pdf>

² The hearing was attended by civil society organisations Article 19, PEN International and Platform 24. Relevant consulates were also in attendance including representatives from the Danish, Norwegian and Swedish Embassies.

the grounds that he had insufficient opportunity to prepare his case (for reasons detailed below).³

The Court then heard applications to join the case on behalf of military officers alleged to be implicated in the case.⁴ Judgment was reserved to the next hearing on 15 February 2017.

Concerns

BHRC raised a number of concerns in its interim report, in relation to the ongoing failure of the Turkish authorities to ensure compliance with minimum standards of procedural fairness. BHRC reminds Turkey of its obligations under international and domestic law to ensure a fair trial.

In particular, BHRC notes the following concerns:

- **Independence of Judiciary and Integrity of Judicial system:**

Two of the three judges (including the Presiding Judge) were removed from the case and substituted by alternative Judges. The reasons are unclear. However BHRC notes that in the wake of 15 July coup attempt, thousands of judges and prosecutors were removed.

- **The Indictment:**

The prosecution was ordered to clarify the charges on the indictment at the first hearing. The Prosecution has failed to comply with the judicial order. The Defence therefore still do not know on what basis the case is put or the case

³ The other Defendants were not present at the hearing and were represented by separate lawyers: Yıldırım Oğur's lawyer Gülçin Avşar, Ahmet Altan's lawyer Ergin Cinmen, and Yasemin Çongar's lawyer Veysel Ok. Mr. Opcin was not represented in proceedings but it is understood that he has not received explicit confirmation that the trial against him is proceeding in his absence.

⁴ Complainant Halil İbrahim Fırtına was represented by attorney Kazım Yiğit Akalın, complainant Ahmet Yavuz was represented by attorney Mehmet Selim Yavuz and complainant Dursun Çiçek was represented by attorney İrem Çiçek. Complainants Bilgin Balanlı, Ayhan Daş, Nejet Bek, Yüksel Gamsız, Osman Fevzi Güneş, Hasan Nurgören, Behçet Alper Güney were represented by attorney İlkey Sezer, Complainants Faruk Doğan and others were represented by attorney Ekin Dereboy.

against them. Serious concerns relating to the adequacy and clarity of the 276-page indictment in this case have been detailed by BHRC⁵ and PEN International.⁶

- **Failure to disclose case:**

The Prosecution has not served the evidence upon which it relies. The Defendants are unable to properly understand and challenge the case against them in breach of their right to a fair trial as guaranteed by Articles 5 and 6 of the ECHR and Article 14 of the International Covenant on Civil and Political Rights (ICCPR) to which Turkey is a party.

- **Pre-trial detention:**

Mr. Baransu has been held in pre-trial detention since his arrest on 2 March 2015. Fifteen of these 23 months were pre-charge. On 23 November 2016 an application for release from custody was refused. Also, no reasons were given. The evidence to date suggests that the initial and continuing detention of Mr Baransu is arbitrary, and likely therefore to be unlawful and in violation of Article 5 (3) and 6(1) ECHR and Article 9 ICCPR.

- **Access to effective legal advice:**

Mr. Baransu continues to have inadequate time and facilities to prepare his defence in detention. Although the amount of time he has been permitted to communicate with his lawyer has, following the hearing on 23 September 2016, increased from 20 minutes to 60 minutes per week, this is insufficient. There are 25 cases pending against him.

- **Failure to provide adequate facilities to prepare a defence / Failure to provide private and confidential conferences with lawyers:**

⁵ <http://www.barhumanrights.org.uk/wp-content/uploads/2016/11/BHRC-Interim-Taraf-Report.pdf>

⁶ <http://www.pen-international.org/newsitems/turkey-charges-against-five-journalists-must-be-dropped/>

The authorities continue to deny Mr. Baransu access to a computer for the purposes of preparing his defence. Legal conferences in prison are video recorded and supervised by prison guards.

BHRC reiterates fundamental principles of the right to legal assistance and the right to adequate time and facilities to prepare a defence pursuant to Articles 14 (3) (b) and (d) of the ICCPR and Article 6 ECHR. BHRC calls upon the authorities to ensure compliance with their obligations under international and domestic law.

Ahmet Altan and Mehmet Altan

The issues outlined above are not limited to the “Taraf” defendants’ case, but evidence ongoing, targeted persecution of journalists and the media and systemic failings in the Turkish criminal justice system.

On 10 September 2016, Ahmet Altan and his brother Mehmet Altan were detained on further allegations concerning alleged expression of support for the attempted coup of 15 July 2016.

Both men were charged with offences related to “*membership of a terrorist organisation*” and “*attempting to overthrow the government and obstruct its duties.*” They remain in pre-trial detention in Istanbul’s Silivri high-security prison, where they are subject to significant restrictions including a prohibition on sending or receiving mail.

They are only permitted one hour-long conference per week with their legal team, which, critically, is supervised and recorded. Their detention has received severe criticism from a range of civil society organisations and prominent individuals.⁷ There remain grave concerns about both the necessity and legality of these detentions.

⁷ <https://www.theguardian.com/commentisfree/2016/sep/11/turkey-coup-ahmet-altan-mehmet>

BHRC continues to monitor the legality of arrests, prosecution and detention of journalists and lawyers in Turkey.

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