



The Law Society of
Upper Canada

Barreau
du Haut-Canada

July 31, 2017

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Your Excellency:

**Re: Arrest and Detention of lawyers Gnal Kurşun and Nalan Erkem,
trainee lawyer Şeyhmuz zbekli and other human rights defenders**

I write on behalf of the Law Society of Upper Canada* to voice our grave concern over the arrest and detention of Lawyers Gnal Kurşun and Nalan Erkem, trainee lawyer Şeyhmuz zbekli and other human rights defenders. When serious issues of apparent injustice to lawyers and the judiciary come to our attention, we speak out.

Gnal Kurşun is a lawyer, academic and activist with Amnesty International Turkey. He also works for the Human Rights Agenda Association, monitoring human rights violations throughout Turkey. According to reports, he was the first Turkish lawyer working on the International Criminal Court in Turkey. Until recently, he was a lecturer at the Faculty of Law at Bařkent University in Ankara.

Nalan Erkem is a lawyer with the Citizen's Assembly, an organization that promotes peace democracy and civil society through Europe. She is a campaigner against torture and violence against women. According to reports, Nalan Erkem was also a member of the board of directors of the Izmir Bar Association from 2002-2004.

Şeyhmuz zbekli works with the Helsinki Citizen's Assembly. He is a newly qualified lawyer who has been actively involved in human rights for the last four years. According to reports, he is a member of the Rights Initiative and works in the Human Rights Unit of the Diyarbakir Bar Association.

It is the Law Society's understanding that on July 5, 2017, Günel Kurşun, Nalan Erkem and Şeyhmuz Özbekli were arrested along with human rights defenders Idil Eser (Director of Amnesty International Turkey), Özlem Dalkıran (Citizens' Assembly), Veli Acu (Human Rights Agenda Association) Ali Gharavi (IT strategy consultant), Peter Steudtner (non-violence and wellbeing trainer), İlknur Üstün (Women's Coalition) and Nejat Taştan (Equal Rights Watch Association). The arrests took place during a digital security and information management workshop that had been organized by the Citizens Assembly in Istanbul.

Reports indicate that for at least 24 hours, the lawyers and other human rights defenders were not provided with access to their lawyers and family members.

On July 10, 2017 and July 11, 2017, the lawyers and human rights defenders' houses were raided and searched by the police. Police seized electronic equipment. No search warrants were provided to the lawyers of the detained defenders. Additionally, some of the searches took place without the presence of lawyers.

On July 18, 2017, the lawyers and other human rights defenders were charged with "committing a crime in the name of a terrorist organization without being a member." According to reports, "neither the Prosecutor nor the Judge have referred to any specific organisation nor to any criminal provision. Moreover, the investigation remains confidential and lawyers cannot access their clients' files."

The court released Nalan Erkem, Şeyhmuz Özbekli and two other human rights defenders on judicial control; however, reports indicate that on July 21, 2017, the Public Prosecutor at Çağlayan Court House ordered the re-arrest of Nalan Erkem, Şeyhmuz Özbekli and two other human rights defenders. Nalan Erkem was arrested at her house on July 21, 2017. She is currently being detained at the Bakırköy prison for women.

On July 25, 2017, Şeyhmuz Özbekli appeared at the Diyarbakır Court House. The judge ordered his release on judicial control. He must go to the police station twice a week and he is under a travel ban.

Günel Kurşun remains in detention.

Human rights organizations note that these recent arrests are the latest in a series of human rights defenders, journalists, academics and activists detained in

Turkey. Recently, the Law Society wrote to you regarding the arrest and detention of Taner Kiliç and 22 additional lawyers. The media has reported that since July 2016, authorities in Turkey have arrested approximately 50,000 people and fired or suspended 150,000 people.

The Law Society of Upper Canada urges Your Excellency to comply with Turkey's obligations under international human rights laws, including the United Nations' (UN) *Basic Principles on the Role of Lawyers*.

Article 16 of the *Basic Principles on the Role of Lawyers* states:

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.

Article 18 states:

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

Article 23 provides:

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.

Furthermore, as a party to the *International Covenant on Civil and Political Rights* (ICCPR) the *Optional Protocol to the International Covenant on Civil and Political Rights*, the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD) and the *European Convention on Human Rights*

(ECHR), Turkey is legally obligated to ensure that individuals within its territory enjoy, without discrimination, rights to: be presumed innocent, freedom from arbitrary arrest or detention, pre-trial release and to trial within a reasonable time and the right to obtain a remedy in relation to any violation of these rights. As Turkey is a member of the Council of Europe, the relevant recommendations of the Committee of Ministers on pre-trial detention and release also apply.

Arrests and detentions by Turkish authorities must comply strictly with the requirements of the ICCPR and the ECHR. The European Court of Human Rights has held in relation to the lawfulness of arrest and detention, that “lawful” and “in accordance with a procedure prescribed by law” in Article 5(1) of the ECHR requires,

not only full compliance with the procedural and substantive rules of national law, but also that any deprivation of liberty be consistent with the purpose of Article 5 and not arbitrary... In addition, given the importance of personal liberty, it is essential that the applicable national law meet the standard of “lawfulness” set by the Convention, which requires that all law, whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail...

Similarly, the UN Human Rights Committee has clarified that “remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances” and that “[p]re-trial detention should be an exception and as short as possible” and must be lawful, reasonable and necessary in all the circumstances, “for example, to prevent flight, interference with evidence or the recurrence of crime”. The Human Rights Committee, affirmed that pre-trial detention should remain the exception and that bail should be granted,

except in situations where the likelihood exists that the accused would abscond or tamper with evidence, influence witnesses or flee from the jurisdiction of the State party”... The mere assumption by a State party that the author would interfere with the investigations or abscond if released on bail does not justify an exception to the rule in article 9, paragraph 3, of the Covenant.

The Law Society urges the Government of Turkey to:

- a. immediately and unconditionally withdraw all charges against Gnal Kurşun, Nalan Erkem, Şeyhmuz zbekli and other human rights defenders;
- b. immediately and unconditionally release Gnal Kurşun, Nalan Erkem and other human rights defenders who are in pre-trial detention or remain in police custody;
- c. guarantee all of the procedural rights that should be accorded to Gnal Kurşun, Nalan Erkem, Şeyhmuz zbekli and other human rights defenders in accordance with their right to a fair trial;
- d. ensure that Gnal Kurşun, Nalan Erkem, Şeyhmuz zbekli and other human rights defenders are afforded regular access to their lawyers and family;
- e. put an end to all acts of harassment against Gnal Kurşun, Nalan Erkem, Şeyhmuz zbekli and other human rights defenders in Turkey;
- f. guarantee in all circumstances the physical and psychological integrity of Gnal Kurşun, Nalan Erkem, Şeyhmuz zbekli and other human rights defenders;;
- g. ensure that all lawyers in Turkey can carry out their professional duties and activities without fear of reprisals, physical violence or other human rights violations; and
- h. ensure in all circumstances respect for human rights and fundamental freedoms in accordance with international human rights standards and international instruments, including the ICCPR and the ECHR.

Yours truly,

Paul B. Schabas
Treasurer

**The Law Society of Upper Canada is the governing body for more than 50,000 lawyers and 8,000 paralegals in the province of Ontario, Canada. The Treasurer is the head of the Law Society.*

The mandate of the Law Society is to govern the legal profession in the public interest by upholding the independence, integrity and honour of the legal profession for the purpose of advancing the cause of justice and the rule of law.

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