



DEFENSE SANS FRONTIERE - AVOCATS SOLIDAIRES

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DSF-AS MISSION REPORT- ISTANBUL – CHD 2 TRIAL HEARING BEFORE THE 37th CRIMINAL CHAMBER OF THE HIGH CRIMINAL COURT OF BAKIRKÖY IN ISTANBUL March 18 to 20, 2019

Objectives of the mission:

- Support our colleagues;
- Witness the conduct of the hearing;
- Defend the fundamental principles of the profession, including the liberty of the defence and the right to a fair trial.

As part of this trial, 20 lawyers, all members of the CHD (and for 8 of them, also prosecuted in the “CHD 1” case), arrested between September and December 2017, and all detained since then, but for 3 lawyers who have been released.

The 20 prosecuted lawyers were accused of membership and leadership of a terrorist organization. These facts are punished by 7 to 20 years of criminal imprisonment.

This case was first brought before the 37th criminal chamber of the High Criminal Court of BAKIRKÖY at the hearing of September 10, 2018.

On September 14, 2018, at the end of the first week of hearing, the High Criminal Court of BAKIRKÖY ordered the release of all the detained lawyers and postponed the case to the hearing of February 19-20, 2019.

The day after, however, upon appeal of the Prosecutor, the same chamber of the Court, presided by another judge, rule again on the pretrial detention and ordered to arrest 6 of the released lawyers:

- Behiç ASCI
- Selcuk KOZAGACLI
- Ahmet MANDACI
- Aycan CICEK
- Aytac UNSAL
- Engin GÖKOGLU

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6 other lawyers did appear free before the Court:

- Aysegül CAGATAY
- Didem BAYDAR UNSAL
- Zehra OZDEMIR
- Yagmur EREREN EVIN
- Ezgi ÇAKIR
- Yaprak TÜRKMEN

Other lawyers were still under arrest warrant.

The judges having ruled on the release of the accused lawyers have since been moved and it is now the judge **Akin GÜRLEK** who is presiding this case. He is particularly well-known for having previously sentenced Selahattin DEMIRTAS, president of the Kurdish political party "HDP".

While the continuation of the hearing had been announced for February 19-20, 2019, the hearing was finally brought forward to December 3-5, 2018. Three days of hearing which have allowed to proceed to the hearing of all witnesses.

For security reasons, the hearing was held at SILIVRI Courthouse, at approximately 75 km from Istanbul, inside the military camp.

At the end of this hearing, Ahmet MANDACI, arrested only after having exercised during 9 months as a lawyer, and still student at the time of the testimonies, was released under judicial supervision.

The detention was confirmed for all other detained lawyers.

The third and last part of this trial was held on March 18-20, 2019 at the SILIVRI Courthouse.

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a) First day of hearing (March 18, 2019)

➤ **Context**

The Istanbul Bar made a bus available for the international lawyers attending the hearing.

We were welcomed by three Turkish colleagues who warmly accompanied us during these three days of hearings. We thank them sincerely.

Belgian, German, Italian and Spanish delegations were also attending the hearing.

At the entrance of the military camp, while we were still sitting in the bus, a police officer came to control our professional cards.

Before entering within the courtroom, two Turkish colleagues gather all mobile phones from international lawyers, as we are not allowed to bring them as “visitors”. We will indeed only be granted a “visitor” badge.

The hearing started at around 10am. We are sitting among the public, at the back of the courtroom, very far from the presiding judge and his assessors, and we are not even able to see their faces from the place where we stand.

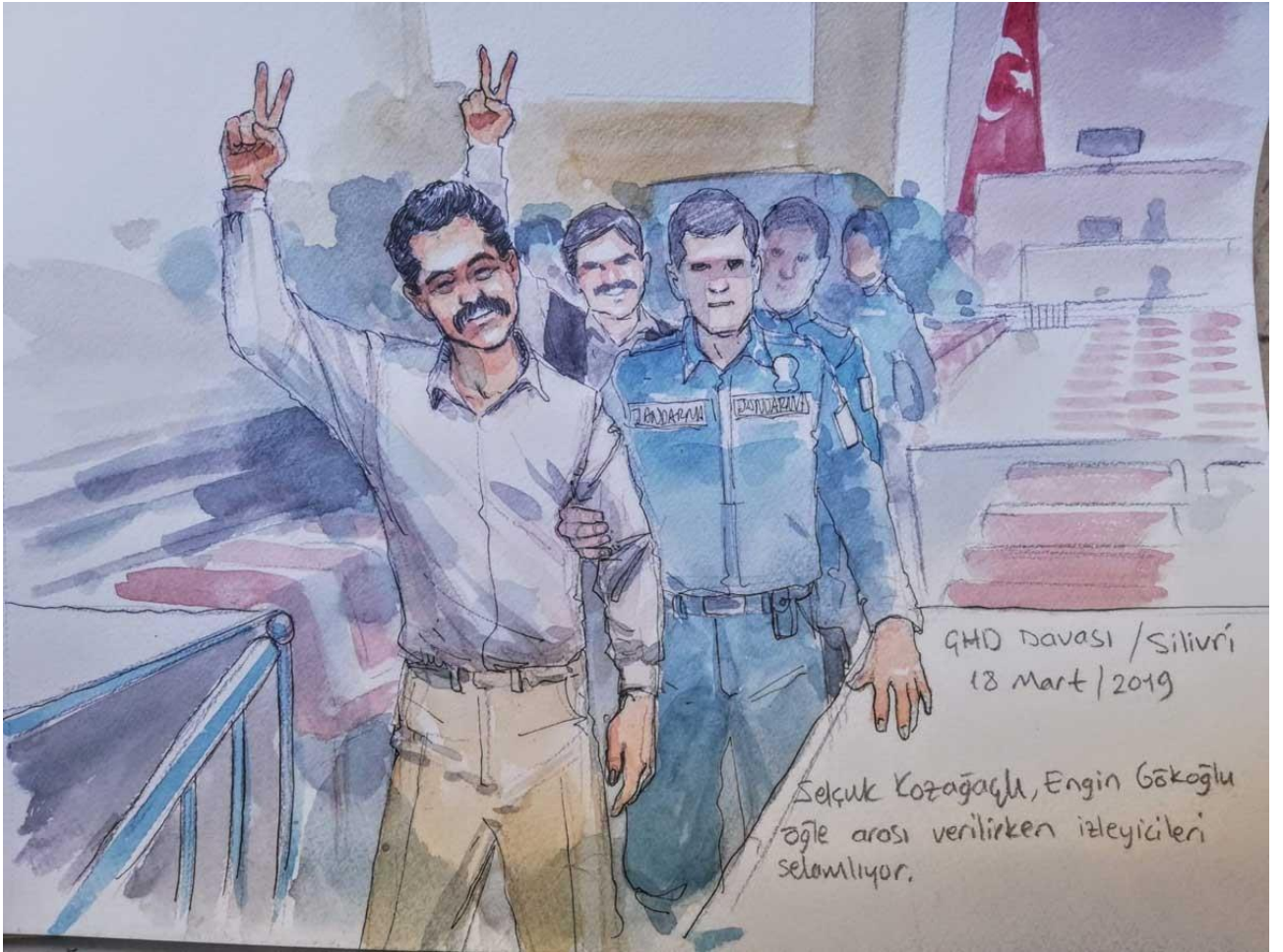


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A large number of defence lawyers were present. They were separated from their clients by a double row of gendarmes and anti-terrorist police officers encircling the accused lawyers.

The Court was composed by 3 magistrates, among whom is the newly appointed President of the Court, Akin GÜRLEK, aged of approximately 40 years old, and his 2 assessors.

The accused lawyers enter the Courtroom with their fists raised in the air and are greeted with applause and cheers from the public.



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The gendarmes sit right behind the accused, however, after strong protests from the accused lawyers and their defence lawyers, the President of the Court ordered that the gendarmes sit a little further from the accused.

The Court room was gigantic but the sound from the microphones was low and the screens did not allow to distinguish the different protagonists.

The defence team was composed of more than one thousand Turkish lawyers.

Several Turkish Bar Presidents, including the President of the ISTANBUL Bar, were part for the defence team.

➤ **Conduct of the hearing**

- The President of the Court requested that the defence lawyers only plead on the request for supplementary information.
- The defence team first requested that the attending Bar Presidents express themselves.
- The Representative of the Union of Turkish Bars indicated that only two members from the Union will plead for the accused.
- **Intervention of the President of the ISTANBUL Bar:** The President of the ISTANBUL Bar spoke about the transfer of judges after the release of the accused lawyers at the hearing of September 2018, and described this trial as a play, a shame for the judicial system and a terrible injustice. He called for the respect of the right to a fair trial.

(Applause – Our translator outlined to us that he had rarely seen the President of the Istanbul Bar speak with the same vehemence)

- **The President of the Court intervened** by noting that the President of the ISTANBUL Bar was making a judgement on the Court.
- **Intervention of the President of the MERSIN Bar:** The President of the MESRIN Bar pointed that he had hope that this judgement will be a judgement worthy of the 21st century; if the judges do not respect the right to a fair trial, the trial will not be worth anything.

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- **Intervention of the President of the AYDIN Bar:** It is the first time that the President of the AYDIN Bar is attending a hearing in this trial. He indicated that there would not be so many lawyers attending the hearing if the approach of the Court was not so bad. He added: *“I am a lawyer for 22 years and it is the first time that I see gendarmes encircling the accused. The accused only ask for a fair trial and they are forced to go on hunger strike to have their voice heard. It is a catastrophe for the judicial system. Over 22 years, I have never seen a President of a Court forcing a Prosecutor to submit his closing arguments from the very start of a hearing just to finish it as soon as possible.”*
- **Intervention of the President of the ADANA Bar:** *“The approach of the President of the Court consisting in forcing the Prosecutor to submit his closing arguments shows that the President of the Court has already reached his decision and that the rest is nothing but a staging. It is a shame for the judicial system. Does Turkey is still a State of law? The decision which will be taken by the Court could still be an example of fair judgement, and our foreign colleagues attending the hearing are here to report on your behaviour.”*
- **Intervention of the President of the Court:** The President indicates that he will reach his decision on the requests made by the defence lawyers and on the objections pertaining to the presented evidence.
- **Intervention of Defence Lawyer No 1:** Injustice began before entering within the courtroom because the Court is located within a penitentiary centre.

The indictment is turned into a judgment by the judge who will sign it without changing a line.

This is not a judgment because we are not dealing with evidence.

The established case law from the Turkish Supreme Court states that digital evidence alone cannot constitute evidence because digital documents can be modified.

This is what is happening here since false evidence are used by the judge.

- **President of the Court:** The President is trying to silence the lawyer because he would not present his requests and indicates that he will decide on the defence's requests.

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After consulting the assessors (for 30 seconds), the President decided to reject all the requests.

- **Intervention of the CHP deputy Mahmut TANAL**, former lawyer, member of the Republican People's Party (Cumhuriyet Halk Partisi – CHP), who protests vehemently.
- **President of the Court:** The President is trying to justify himself and accuses the defence of having delaying tactics to make the trial last. He points out that the defence has had more than enough time to submit its requests.

The hearing is suspended for 15 minutes.

[The defendants go out under the cheers of the public who sing "Revolutionary lawyers are our honour."]

- **Intervention of the President of the IZMIR Bar:** The President of the IZMIR Bar indicates that the time that should have been granted to the defence to make its claims should have extended to today since the court had not set a time limit in its interim decision.

He requests the agreement of the President of the Court to let the necessary time for the defence to make its requests. The lawyers' speaking time cannot be cut.

- **The President of the Court** rejects the request from the President of the IZMIR Bar.
- **Intervention of Defence Lawyer No 2:** The refusal decision is not compliant with the Law. The evidence analysis is a legal requirement which will allow to establish the truth.
- **Intervention of Defence Lawyer No 3:** He mentions witnesses who were listened at, without the accused being present, nor the defence, in addition to the Court refusal to hear them for a second time.

Some witnesses have even been listened at by the Police and by the Prosecutor but not by the judge himself.

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Legally, witnesses' declarations given without the Defence Lawyers' presence cannot constitute evidence. Once more, this is a total ignorance of the Code of Criminal Procedure.

The Defence Lawyer gives an example of a testimony kept in the President's file, whereas the witness has mentioned that he had no information on the matter since 2006. He is a former Intelligence member who has not been working there since 2006 but who, anyway, testifies about facts dated 2013.

This is another example which demonstrates that the judgement has already been reached, and that all this is a stage production. The Lawyer also notices that the President of the Court behaves like a Prosecutor.

He quotes an ECHR jurisprudence regarding anonymous witnesses which stated that the aim of witness's anonymity is to protect them, and that it cannot have as unique purpose to dissimulate the witness's identity in order to provide false statements.

He quotes a High Court jurisprudence: a single testimony cannot constitute a reliable evidence and must be reinforced by concordant elements.

The Lawyer reads out the questions asked by the President to the witnesses and finds out that every question is suggestive. It is not the witnesses who list the names of the accused persons but the judge himself.

The defence does not have the testimonies in original, although it had made a request to the Court, which the Court has rejected, following the anti-terrorist Section's refusal.

It is always the same expert who has processed the digital materials. One can question the reliability of this expert. Digital evidence were never communicated to the defence, who was not able to analyse it and carry out a counter-expertise.

- **Intervention of the President of the Court:** He decides that for each accused person, only one lawyer will be pleading.
- **Intervention of Defence Lawyer No 4:** During 15 minutes, the Defence Lawyer reads out the Code of Criminal Procedure. To our amazement, the President does not interrupt her, either because he does not bother listening, either because he is totally unaware of the procedure.

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The Defence strategy is to speak as long as possible in order to save time and delay the sentence.

Regarding the witness (the former Intelligence Services' member), she clarifies that he was banned from the Intelligence Services due to dangerous behaviour. He would have also been a member of the accused organisation. She is wondering why this witness should be better considered as a member of the Intelligence Services rather than as a member from the organisation.

[Reactions from the accused lawyers who learn about these elements and object.]

- **Intervention of the President of the Court** who instructs the accused lawyers to keep quiet and suspends the hearing for one hour.
- **Intervention of Defence Lawyer No 5:** He mentions, from reading the 56-page Testimony report, that only four questions had been asked to the witness. The witness is telling a story he knows by heart.

It is a Report which has been drafted by the policemen and then signed by the witness.

A witness certifies that one of the accused persons had done a military training in Greece while no element from the file could assert this alleged military training in Greece.

- **Intervention of the President of the Court:** He asks the accused persons who are not detained (they are three) to step forward along the detained accused persons.
- **Intervention of Defence Lawyer No 6:** He tells the President that his judgement will be overturned by the High Court considering the lack of respect of the inherent principles of a criminal hearing and of the right to a fair trial.

He puts forward the fact that testimonies are signed by the Prosecutor, which is against the rules of Criminal Procedure. Adding that one witness has made declarations twice the same day whereas the defence has only one testimony. What happened to the second testimony?

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He demands the witness to be present to the hearing

[End of Hearing Day 1 a 7:30 PM]

➤ **Summary of first day**

The President of the Court has refused the Defence Lawyers to plead and has decided after a few-minutes deliberation to reject all requests. He decides in the aftermath to send the file to the Prosecutor for his indictment.

It was only after strong protests from the Defence Lawyers that the President suddenly changed his mind and agreed to listen at the Defence pleadings about the additional investigation requested.

It was a historical hearing which evidenced the lack of respect of the rule of Law and the endless violations of the fundamental right to a fair trial.

b) Second day of hearing (March 19, 2019)

There are significantly less Turkish lawyers and less public for the second day of the hearing.

➤ **Running of the Court Hearing**

- **Pleading of Mr. Behiç ASCI, accused:** He requests the recusal of the judge considering the terms employed which demonstrate an obvious partiality.

He mentions that the judges who were presiding the September 2018 hearing and who had decided to end their temporary custody were removed.

The grounds indicated by the President for rejecting the Defence's requests demonstrate how meaningless is the case.

He raises the testimonies' inconsistencies:

- Experts and witnesses gave different names for the leader when they were questioned to find out for which leader the information was transmitted;
- Fictional conflict while no conflict happened in this area for years;
- Contradictory statements from one witness who states that one lawyer would have fetched in 15 minutes a petrol bomb (cocktail molotov) in a place located 20 kms away from his law firm. He mentions that the defence lawyers are not

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using delaying tactics, despite what the President asserts. On the contrary, during several months, the lawyers have been requesting to be provided the indictment in order to launch the trial.

It does not even have the colour of fairness.

- **Pleading of Mrs. Barken TIMTIK, accused:** She also requests the judge to be removed.

She states that all of them advocate for sick prisoners, for fighting lawyers when soldiers charge their homes at dawn, for the victims of soldiers, and tells that they are lawyers who have defended the people in the aftermath of the coup, or advocated for professors in hunger strike...

She reads out a declaration about the fundamental right to a fair trial and denounces the panel of magistrates which do not observe any of those principles.

There are not anymore free judges in Turkey; the sentence is then inevitable.

- **Pleading of Mr. Aytac UNSALTZ, accused:** He depicts the tortures he has endured and those he has witnessed.

This trial is a stitch up/a plot. The witness statements are stories signed by the police officers themselves.

He gives a full story of the situation, reminding the persecution of the Turkish Communist Party so that it could justify the setting up of special courts and of tougher measures against the people. He quotes as an example a Turkish poet who was sent to jail on the grounds of a single testimony from a witness he had never met. An unfairness known by everyone.

This is exactly what is happening again today.

- **Intervention from the President** who asks the accused lawyer to summarize and begs the Court's clerk to write down that Mahmut TANAL, MP here in the room, has talked with his mobile phone.

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The MP intervenes vehemently, accuses the President to be a liar and tells he was not talking with his phone. The MP stands up and walks towards the President in order to show him his mobile.

Ultimately, the judge indicates to the Court's clerk to amend and to delete this element.

- **Restart of Mr. Aytac UNSALTZ's pleading:**

The Security forces tried to find ways to legitimate lies. They found witnesses who have accepted (sometimes as a result of coercion) to proceed with fake testimonies.

It is always the same witness who is mentioned, however:

- he states to have seen nothing and only heard things;
- he states that he never met Aytac UNSALTZ: « *How can he hold so many information about myself and still pretend not knowing me?* ».

He evokes torture: threats to never see his child again, being beaten up with sticks over his head, being wet and positioned in front of a cool air- conditioning and in the same time being beaten up.

He mentions that the tactics of the Government which consist to prevent them from doing their duty is useless as their trainees, their friends and their colleagues have taken over their files and will carry on their work.

They are heirs of fighting lawyers and they represent a tradition of resistance.

- **Pleading of Mr. Engin GÖKOGLU, accused:** This case has ended before it has properly started. He accuses the President of having guided the witnesses, this is the reason why I am requesting the disqualification of the President and of his assessors.
- **Pleading of Mr. Aycan CICEK, accused:** He is appearing free.

The judge behaves like an enemy more than a magistrate, anyway, it looks like he knows nothing of the procedure.

« *It is not because a witness knows me that it makes me a criminal.* »

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He demands the disqualification of the President and as well of his assessors.

- **Pleading of Mr. Selcuk KOZAGACLI, accused:** He is the President of the Law firm.

« I have been a lawyer for 25 years and I would have never thought that what has happened during the hearing yesterday could be real. I have never seen a judge who shares his sentence in an intermediate decision. The judge is even lacking the courage to act up as a judge in this trial. »

Addressing to the President: *« You are committing a crime and the absence of reaction from your assessors also allows to call them criminals ».*

Most of the documents supporting the accusation come from witnesses who have been sentenced for plotting against the Government. The question is to find out if they have obtained a reduced sentence or any benefit by witnessing in the context of this trial.

He accuses the President to be directly involved in the creation of false testimonies and tells him directly *« You are a member of a terrorist organisation ».*

- **Interruption from the President of the Court:** *“Do not accuse us!”*
- **Restart of Selcuk KOZAGACLI’s pleading:** “I accuse you and, before the Prosecutor, I denounce you! I have been asking for more than 6 months to be granted access to my file, but in vain. I have asked for it six times. You have to grant me access to my file; it is not possible to release yourself from this obligation.

I have never seen a President of a court forcing a Prosecutor to submit his closing arguments before the defence has had a chance to express itself. There is no similar example of what is currently happening since the beginning of the Republic of Turkey. You threaten both sides to reach a guilty verdict as fast as possible. This is no longer any judgment.

You commit offences and the Court of Appeal will surely prove you right, but your decision will necessarily be overturned by the Supreme Court.

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This is a punishment, not a judgment. You do not even bother to hide your partiality.”

In witness statements, they always speak in the fourth person ("we") and not in the first person ("I").

No details are provided on the conditions under which the USB key, which contained the documents on which the charges were based, was found.

[ACCLAMATION of the defence lawyers and of the public]

- **Intervention of the President of the Court** who orders the accused as well as the defence lawyers to leave the courtroom.

[They will no longer be allowed to return. We remain in the courtroom.]

- **Pleading of the accused trainee lawyer Ahmed MANDACI:** He appears free.

The only evidence against him is a statement from a witness who states that he never participated in the activities.

[Members of the public (family) scream, "We do not accept the fascist legal system" and leave the room.]

- **Pleadings of an accused lawyer:** She appears free.

She remained in prison for 1 year and is now under judicial supervision. She is requesting the termination of her judicial supervision as she is forced to come twice a week at the police station. She is very tired and cannot any longer practice as a lawyer. The UYAP system (electronic system) still mentions her as "detained" and she therefore cannot access her professional files.

She does not want to plead today because she is not ready.

- **Intervention of the President of the Court** who notes the absence of an accused lawyer, Yapak TURKMEN, appearing free, who did not appear before the Court.

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[Suspension of the hearing for one hour. Prohibition on the families and the defence lawyers from entering in the courtroom. The President of the Court reached his interim decision alone. International observer lawyers are the only ones still present in the room.]

[The hearing ends around 3:00 pm]

- **Press conference**

Several journalists are present, and our Turkish colleagues are asking international observers to speak out.

We meet in front of the Court (Belgian, French and Italian lawyers). Four people will speak to testify and denounce the lack of respect of the principles of a fair trial and request the acquittal of the accused.

It will be the last day for Isabelle DURAND, Amélie VILLAGEON and Gaëlle GIRARDON, as we will leave the next morning.

c) Third day of the hearing (March 20, 2019)

- **Procedure**

Christine MARTINEAU is the only one present at this hearing to represent DFS.

At the end of a hearing lasting a few minutes, without the presence of the accused, the defence and the public, the judgment is rendered.

- **Decision**

On Wednesday, March 20, 2019, the 37th Chamber of the Istanbul Special Criminal Court at the SILIVRI Palace of Justice sentenced 18 lawyers to sentences of up to 18 years and 9 months' imprisonment for "founding and directing a terrorist organization", "belonging to a terrorist organization" and "supporting a terrorist organization".

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The convicted lawyers (members of the CHD and HHB respectively) are as follows:

For "founding and directing a terrorist organisation":

- Barken TIMTIK: 18 years and 9 months

For "belonging to a terrorist organization":

- Ebru TIMTIK and Özgür YILMAZ: 13 years and 6 months;
- Behiç ASÇI and Sükriye ERDEN: 12 years;
- Selçuk KOZAGACLI (President of ÇHD): 11 years and 3 months;
- Engin GÖKOGLU, Aytac ÜNSAL and Süleyman GÖKTEN: 10 years and 6 months;
- Aycan ÇIÇEK and Naciye DEMİR: 9 years; and
- Ezgi ÇAKIR: 8 years.

For "wilfully and knowingly supporting a terrorist organization":

- Aysegül CAGATAY, Yagmur EREREN, Didem Baydar ÜNSAL and Yaprak TÜRKMEN: 3 years and 9 months; and
- Zehra ÖZDEMİR and Ahmet MANDACI: 3 years, 1 month and 15 days (reduced sentence due to their presence at the hearing on 20 March unlike the other accused).

This conviction was handed down after more than a year of pre-trial detention for 6 of the 18 lawyers, and only three hearings, offering the spectacle of a travesty of justice and serious and repeated violations of the rights of the defence.

Intense emotion and indignation were expressed by all the lawyers.

Defence Without Borders - Solidarity Lawyers (DSF-AS), which is following several trials against Turkish lawyers, is outraged by this instrumentalization of justice against lawyers prosecuted for the mere fact of having exercised their profession and expresses its solidarity with the convicted lawyers.

DSF-AS calls for:

- The immediate acquittal of the 18 convicted lawyers and the release of the detained lawyers;

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- The respect for 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 in 1990, in particular article 16, which provides that the public authorities shall ensure that lawyers "may perform all their professional duties without hindrance, intimidation, harassment or undue interference" and article 18, which provides that "lawyers shall not be considered as their clients or the cause of their clients as a result of the performance of their duties."; and
- The respect for Article 6 of the European Convention on Human Rights and Article 14 of the International Covenant on Civil and Political Rights, which guarantee the right to a fair trial.



April 8, 2019

Christine MARTINEAU, Isabelle DURAND, Amélie VILLAGEON, and Gaëlle GIRARDON

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List of Professional Institutions and French Bars represented at the hearing of March 19-21, 2019 - "CHD 2" trial

Members of DSF

Maître Christine MARTINEAU
Paris Bar

Maître Isabelle DURAND
Toulouse Bar

Maître Amélie VILLAGEON
Tarn et Garonne Bar

Maître Gaëlle GIRARDON
Paris Bar

Professional institutions represented by DSF-AS

National Bar Association Conference
National Bar Council (CNB)
International Observatory of Lawyers in Danger (OIAD)

French Bars represented by DSF-AS

PARIS
BORDEAUX
BRIVE
CLERMONT-FERRAND
HAUTS DE SEINE
LYON
RENNES
TOULOUSE
TARN ET GARONNE