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The judicial scandal has to come to an end - the imprisoned lawyers must be released

On November 11, the ÇHD I criminal case, which started in 2013, will continue at the 1st instance, before the 18th Heavy Penal Court in Istanbul. The victims of this long lasting trial are the accused 22 lawyers, all members of the Turkish Lawyers' Organization ÇHD (Progressive Lawyers of Turkey) and all working in one of the two offices of the People's Law Office. At the opening of the trial, 9 of the accused had already served 11 months in pre-trial detention. However, in order not to put a disproportionate burden on the defendants, the court released the last defendants from pre-trial detention 14 months after their arrest in January 2013.

The trial could have ended long ago if the prosecution had not initiated a second criminal case (ÇHD II trial) in 2018, with the approval of the 37th Heavy Penal Court, also against lawyers of the ÇHD and the People's Law Office. 8 of the 20 lawyers accused in this case were also accused in the ÇHD I trial. In both proceedings, the defendants are accused of supporting, being members of, or directing a terrorist organization, on the same evidence. In September 2017, pre-trial detention was ordered for the defendants. One year later, the proceedings were opened. After the first week of hearings, the court ordered the release of all defendants from pre-trial detention. After an appeal by the public prosecutor's office, 13 lawyers were again remanded in custody.

What the 18th Criminal Chamber failed to achieve in 4 years, the 37th Heavy Penal Court achieved in half a year after the opening of the proceedings. The accused were sentenced to prison terms between 2 and over 18 years. The sentences were largely confirmed in the Court of Appeal and the Supreme Court.

The public prosecutor's office and the 37th Heavy Penal Court were aware of the proceedings pending before the 18th Criminal Chamber when the new proceedings were opened. They were also aware that 8 defendants in the ÇHD II trial had already been charged in the ÇHD I trial. They likewise knew that the principle "*ne bis in idem*" prohibits sentencing defendants twice for the same crime. The prosecutors and the 37th Heavy Penal Court must answer as to why they interfered in the current ÇHD I trial by opening a second trial. The convictions by the 37 Heavy Penal Court prevent the 18th Heavy Penal Court from pronouncing sentences on identical defendants. The 18th Heavy Penal Court is therefore also prevented from pronouncing lesser sentences, stopping the proceedings against the accused, or acquitting the accused. This situation currently affects the following defendants: Att. Selçuk Kozağaçlı , Att. Barkin Timtik, Att. Oya Aslan and Att.Günay Dag.

The Commission of Inquiry conducted in October 2019 by 23 lawyers' organizations and bar associations from all over the world in Istanbul pointed out violations of the `principles of fair trial in the two ÇHD trials in its analysis and report "Fact-finding mission on CHD's trials, Breach of Fair Trial, Independence of the Judiciary and Principles, on the Role of Lawyers, October 2019, Istanbul" <https://eldh.eu/2020/06/18/final-report-fact-finding-mission-on-chds-trials-october-2019-istanbul/> published in June 2020 .

One of the lawyers accused in both trials, Att. Ebru Timtik, paid with her life for her struggle for fair trials. She went on hunger strike. The court refused to release her temporarily from detention in order to recover from the consequences of the hunger strike. Her colleague Att. Aytac Ünsal, who also went on hunger strike, only survived because the Court of Appeal, aware of the worldwide protests following the death of Ebru Timtik, did not want to be responsible for another victim of its intransigence.

If the 18th Heavy Penal Court is to avoid further damage to the reputation of the Turkish judiciary, the only option left to it is to acquit the accused, or to close the case.

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