

## REPORT ON THE MOST IMPORTANT RECENT ECBA HUMAN RIGHTS COMMITTEE'S ACTIVITIES

### 1. TURKEY: JOINT LETTER TO PROTECT PROSECUTED LAWYERS

On 5 April 2019 - celebrated as Lawyers' Day in Turkey - the *ECBA Human Rights Committee* took the opportunity to strongly condemn the ongoing crackdown against lawyers in Turkey.

Following the failed coup d'état of 15 July 2016, the Turkish Government declared a state of emergency and adopted a series of decree-laws that seriously undermined human rights and the rule of law across the country. Although the state of emergency was lifted in July 2018, many of the decree-laws were integrated into ordinary laws and the persecution of lawyers continues, including mass arrests, unfair trials and harsh sentences.

According to the latest information available, since July 2016:

- 1,546 lawyers have been prosecuted;
- Almost 600 lawyers have been arrested;
- 274 lawyers have been sentenced to long prison terms - with the average prison term being 7 years.

Lawyers are being targeted solely because they are carrying out their professional activities, on the basis of allegations of supporting terrorist organisations. The use of "mass trials" against lawyers or lawyers' associations is frequent and fundamental rights and procedural safeguards are often not respected.

In a joint letter with other like-minded organisations and institutions, the ECBA Human Rights Committee urges the Turkish Government to uphold the rule of law and bring an end to the persecution of lawyers.

As stated in the letter, the independence of the legal profession is an essential component in upholding the rule of law in a free society. **All lawyers who have been unduly detained for carrying out their professional activities should be immediately released.**

### 2. TURKEY: INTERVENTION BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS FOR THE IMPRISONED JUDGES

On 17 May 2019, the European Court of Human Rights gave notice to the Turkish Government concerning the application in the case of Altun v. Turkey (application no. 60065/16) and 545 other applications.

The applications concern, in particular, the provisional detention of members of the legal service following the attempted coup d'état of 15 July 2016.

On different dates the 546 applicants, all of whom are members of the national legal service, were suspended from their duties by the Supreme Board of Judges and Prosecutors (Hakimler ve Savcılar Kurulu - HSK) on the grounds of their membership of the organisation "FETÖ/PDY" ("Gülenist Terrorist Organisation"/parallel State structure). Subsequently they were detained in custody and then brought before justices of the peace, who ordered their placement and later their maintenance in provisional detention. The applicants' appeals against those decisions were dismissed. They then lodged individual appeals, which the Turkish Constitutional Court declared inadmissible. Meanwhile, the applicants were charged with belonging to a terrorist organisation. The criminal proceedings against them are still ongoing.

The applicants relied, in particular, on Article 5 (right to liberty and security), as well as other articles of the Convention.

*In the above historically significant case of the Turkish Judges, it was the historical duty of the ECBA HRC to intervene, as the leading defence association in Europe. According to the rules of the Court, the ECBA requested intervention status as a third party in the ongoing trial.*

The proposed intervention will cover the following:

- Contextual information drawn from ECBA and HRC's work on the persecution of legal professionals, noting in particular individual trends of relevance to the present case, such as the failure to distinguish between criminal conduct on the one hand, and the exercise of freedoms protected by the Convention and/or professional duties on the other. This would be relevant to the delineation of criminal conduct in reasons for detention whereby "reasonable suspicion" is purportedly established under Article 5(1).
- Contextual information drawn from the EBCA and its working groups' work experience of the co-option of professional disciplinary bodies as a manifestation of broader threats to the rule of law in the European Union and Council of Europe. This would be relevant to the propriety, under the Convention, of courts seized of pre-trial detention decisions relying upon assessments made by such bodies in the context of their own decision-making, resulting in deprivation of liberty.
- Submissions, in light of the above information and a range of regional and international standards, as to the practical implications of Article 5 for the motivation of pre-trial decisions in systemic "emergency" situations affecting large numbers of detainees, drawing certain analogies with other areas e.g. standards governing the delineation of individual criminal responsibility in the context of mass protests. This would be relevant to the requirement for "relevant and sufficient" reasons for detention under Article 5(1) and (3) read together.

### 3. THE PHILIPPINES: ECBA'S CONCERNS REGARDING ESCALATING ATTACKS AGAINST LAWYERS

Since President Duterte took office on June 30, 2016, the number and intensity of attacks against lawyers have increased significantly. At least 40 lawyers and prosecutors were killed between July 2016 and 29 July 2019, including 23 practising lawyers. Lawyers are also harassed and intimidated. They are subjected to (death) threats, surveillance, labelling, and other forms of attacks. In addition, at least five judges and retired judges have been murdered since July 2016, bringing the total number of jurists extrajudicially killed in the Philippines to at least 45 in the same period. Seven jurists survived attacks on their life.

Most killings and attacks of lawyers took place as a result of discharging professional duties or are believed to be otherwise work-related. Especially at risk are lawyers representing people accused of terrorist- or drug-related crimes, or government critics, such as journalists, political opposition leaders, and human rights defenders. Lawyers providing legal representation in high-profile cases impacting established interests, such as land reform, or lawyers taking part in public discussion about human rights issues, also face reprisals.

Prior to being attacked, some lawyers were labelled as "communist" or "terrorist" by state agents. The practice of labelling (i.e. classifying persons as "enemies of the state" or otherwise) combined with the culture of impunity was identified by national and international fact-finding missions as one of the main root causes of extrajudicial killings in the Philippines in the past. It continues unabated.

*The ECBA Human Rights Committee, along with other like-minded organisations, in a joint letter, express deep concern over the increasing attacks against lawyers in the Philippines and the oppressive working environment they have been faced with since the*

*start of President Duterte's administration. We call on the Duterte Government to adequately protect the safety and independence of lawyers and end the culture of impunity in which these attacks occur.*