

Briefing: Convictions of human rights defenders in the Büyükada case

This briefing explains the court verdict, its ramifications, what happens next, Amnesty International's updated calls on the case and provides a short history of the prosecution.

The verdict

On 3 July 2020 the first instance court issued its verdict on the Büyükada case. It convicted Taner Kılıç of 'membership of the Fethullah Gülen Terrorist Organization (FETÖ)' under Article 314/2 of the Penal Code, sentencing him to six years and three months' imprisonment. The court convicted İdil Eser, Günal Kursun and Özlem Dalkıran for 'knowingly and willingly supporting FETÖ' under Article 220/7 of the Penal Code, sentencing each of them to 25 months' imprisonment. The remaining seven human rights defenders were acquitted.

While Taner had previously been accused in the indictment of membership of FETÖ, all the others in the case had been accused of supporting "terrorist organizations". The judgment was the first time in which FETÖ was recorded as the proscribed organization that they were accused of assisting. The sentence against Taner is standard for people convicted of membership under Article 314/2 of the Penal Code while the 25-month sentences handed down to the others are in the lower range given to people convicted under Article 220/7 of the Penal Code. The sentences do not come into force until they become final after all appeals have been exhausted, and as such all the human rights defenders are at liberty, as the court did not order their detention. Only Taner is subjected to judicial controls, in the form of an international travel ban, which remains in force.

The verdict was a majority decision of the three judges: in a highly unusual move, one judge issued a dissenting opinion that all defendants should be acquitted. The four human rights defenders that were convicted were those with the strongest links to Amnesty International (Taner was the Chair of Amnesty Turkey at the time of his detention and current Honorary Chair, İdil was Amnesty Turkey Director at the time of her detention, Özlem a former Chair and founder of Amnesty Turkey and Günal one of Amnesty Turkey's most longstanding members. The four are also the highest profile human rights defenders among the 11 on trial. While the reasoned verdict has not yet been released, the acquittal of seven human rights defenders who attended the Büyükada workshop, and the reasoning of the prosecution in the case suggests that the convictions were due to their previous activism rather than participation in the Büyükada workshop. Taner was convicted despite the central allegation – that he downloaded and used the ByLock messaging application – was disproven by the State's own evidence. The approach taken by courts in Turkey in ByLock cases, of which there are thousands, would normally be to acquit in such circumstances.

The verdict makes crystal clear the nature of the case as a politically orchestrated attack against the individuals as human rights defenders, with the intention of silencing independent civil society in Turkey.

What happens next?

The 3 July verdict of the first instance court is subject to a two-stage appeal. The first is to the regional appeals court (İstinaf), and the second to the Court of Cassation (Yargıtay). On 6 July, the prosecutor wrote to the trial court indicating intention to appeal the acquittals of Nejat Taştan and Veli Acu. This is a fairly standard response, since the prosecutor requested their conviction along with the four defenders convicted, in his summing up of the evidence (mütaala) in November 2019.

The reasoned judgment is unlikely to be released before September 2020, and the appeal to the regional appeals court is unlikely to be heard before the middle of 2021.

Defence lawyers will argue that a hearing should be held by the regional appeals court rather than a paper review which is the usual process. The regional appeals courts that have been in operation since 2016 have thus far proved completely ineffective in overturning abusive convictions such as this one. The Court of Cassation is much more likely to overturn first instance courts' decisions but is similarly under government control. The Court of Cassation is unlikely to rule on the case before 2022 but may not issue its judgment until 2025 or beyond.

Taner's application to the European Court of Human rights has been communicated to the government, who have responded. The case has been awarded priority status, but it not known when the European Court will issue a ruling, although it is likely to happen before the appeals process is exhausted in Turkey.

Amnesty International's calls

Ministry of Justice officials in Ankara told Amnesty International that they were not available for a meeting until after July 2020. Therefore, we will be writing our concerns in a letter to the Minister of Justice

Amnesty sections should raise our concerns with Turkish ambassadors around the world as soon and as widely as possible. Sections also should seek meetings with their Ministries of Foreign Affairs to brief them about the outcome of the trial and urge them (with an emphasis on states who are friends and allies of Turkey) to communicate their concerns to the Turkish authorities. In these meetings we should express the following points:

- The conviction of human rights defenders in the Büyükada case is based on their human rights activism and lacks any evidence of the alleged crimes whatsoever.
- The unfair prosecution and unjust convictions illustrate yet again the fundamental flaws in Turkey's politicized judiciary and the extent to which the government is prepared to weaponize the judiciary to pursue perceived critics, including those speaking out on human rights abuses.
- All states, especially those that are friends and allies of Turkey and EU/CoE and UN bodies to raise their concerns with the Turkish authorities in public and private at the earliest opportunity on this pivotal case for civil society in Turkey. Diplomats of these countries should indicate that they will continue to closely monitor and scrutinize the appeals process. Public responses to the verdict should name the individuals, refer to them as human rights defenders, regret the decision by the court underlining that this illustrates the extent of executive control and political influence over the judiciary; underline the chilling

effect these conviction will have on the legitimate activities of independent civil society and call for the acquittal of all 11 HRDs.

- The only just verdict is an acquittal of the 11 human rights defenders. These convictions, until such a time as they are overturned, represent a key indicator of the Turkish authorities' continuing violations of the rights to freedom of expression, assembly and fair trial and their targeting of independent civil society and dissent more generally.

Background

The prosecution is known as the "Büyükada case" because 10 of the 11 human rights defenders on trial were detained during a human rights workshop on Büyükada island near Istanbul in July 2017. Taner had been detained the previous month and his prosecution was joined with theirs on the ground that he directed the Büyükada workshop that they participated in. According to the indictment of October 2017, the aim of the "secret" Büyükada workshop was to promote chaos and therefore support terrorist organizations. Taner was released after more than 14 months and eight of the others were released after almost four months pre-trial detention. The trial at the first instance court took over two-and-a-half years and 12 hearings and was subjected to a series of delays due to the state not presenting evidence and latterly because of Covid19.

The central allegation directed at Taner, that he had downloaded and used on his phone the messaging app ByLock, that the authorities say was used by the Gülen movement to communicate was proved to be false, including by the state's evidence in the form of police forensic reports. The prosecution failed to move on from the absurd allegations made against the human rights defenders, which they failed to substantiate, while defence lawyers comprehensively disproved them. Despite this, the prosecution requested that six of the human rights defenders be convicted in its summing up of the evidence in November 2019, which contained glaring factual errors and ignored evidence presented during the trial. The court issued its verdict on 3 July 2020, convicting four human rights defenders. All remained at liberty pending appeals.