

# TURKEY

## SENTENCED TO LIFE IN PRISON FOR HER RESEARCH AND DEFENCE OF THE RIGHTS OF MINORITIES

International Judicial Observation Mission Report on The 16-Year Long  
Judicial Harassment faced by Ms. Pınar Selek



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SIGRID RAUSING TRUST



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Cover Photo: Pinar Selek during a demonstration to protest violence against women, November 2012, Paris (France). Photograph by Aude Coquin.

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TURKEY: SENTENCED TO LIFE IN PRISON FOR HER RESEARCH AND DEFENCE OF THE RIGHTS OF MINORITIES

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## INTRODUCTION

Between February 2011 and January 2013, the Observatory for the Protection of Human Rights Defenders - a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT), carried out four international missions to Istanbul (Turkey) to monitor the hearings of the trial of Ms. **Pinar Selek**, sociologist, anti-militarist, defender of ethnic, sexual, gender and children's rights and co-founder of both Amargi Women's Solidarity Cooperative and Street Children's Art Atelier. Beyond these specific trial observation missions, the Observatory has been following the case closely since the end of 2010.

Ms. Pinar Selek is a respected sociologist, rights activist, and one of the most prominent activists in the anti-militarist peace movement in Turkey. She obtained her undergraduate and master's degrees from the Sociology Department at Mimar Sinan University. She subsequently studied political economics at Sophiantipolis UDEL University in France. She recently completed a PhD in political sciences at Strasbourg University in France where she has been living on exile since 2011.

After studying at the Mimar Sinan University in Istanbul, Ms. Pinar Selek carried out her first academic research project in 1996 on the indigenous movement in Mexico. At the same time, her research interest was mainly focused on sociology in Istanbul, particularly the marginalised populations such as street children and transvestites, and then the problem of violence in Turkey. When Istanbul was about to host the UN "Habitat II" conference, the Turkish authorities undertook the renovation of the city centre, involving a large number of forced evictions. Beyond studying the situation of the deprived persons, Ms. Selek took up their defence and set up a centre for them, the Street Artists' Workshop, open to all. The project became the subject of her doctoral thesis.

The Workshop, situated in the very centre of Istanbul, is a place of refuge, where people are listened to, can engage in artistic activities, and meet others. Matters such as violence, the war in the south-east of the country, and sexism are discussed. It is a somewhat marginal, anti-militarist, non-conformist initiative, suspected of undermining the appearance of consensus imposed by the government.

Ms. Selek has been a victim of protracted harassment by Turkish authorities principally because of some of her sociological research work, which focused on the Kurdish separatist movement and their use of violence in the course of their struggle for independence. Her research involved interviewing members of the PKK (Kurdistan Workers' Party), a Kurdish group that took up arms against the Turkish State in their struggle for an independent Kurdistan and for the recognition and respect of cultural and political rights of Kurds in Turkey. She was arrested, detained, interrogated and tortured from July 1998 to December 2000 by Turkish security operatives who pressured her to reveal the identities of her interview subjects. Despite compelling evidence that she did not commit any offence, she subsequently underwent a sham trial and conviction, on charges of 1/ being a member of the PKK and 2/ detonating a bomb that killed seven people and injured over one hundred others on July 9, 1998. While she remains in exile in France, judicial authorities in Turkey have convicted and sentenced Ms. Selek to life imprisonment in solitary confinement, a sentence for which the Government of Turkey is highly determined to secure her arrest and extradition.

As a consequence, Ms. Selek was forced to leave Turkey in 2008 and, following her conviction, to apply for asylum in France. On March 4, 2013, she was granted refugee status in France.

It should be noted that on June 17, 2010, Ms. Selek's lawyers filed a complaint before the European Court of Human Rights for violations of Articles 3, 6.1, 6.2, 6.3-b, 6.3-c and 10 of the Convention.

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**Martin Pradel**, lawyer at the Paris Bar (France), was mandated by the Observatory to observe several of the hearings of the trial held in Turkey between 2010 and 2013. Mr. Pradel met with representatives of the legal profession, academics, lawyers, and civil society representatives, as well as foreign diplomats and members of parliament. In 2010 and 2013, FIDH also had several meetings with high-level State representatives during which it raised the case of Ms. Selek. In particular, in May 2013, FIDH transmitted observations made during observation of the trial to Abdullah Gül, President of Turkey.

The report demonstrates that the legal proceeding held against Ms. Selek has failed to comply with European and international standards of fair trial. The entire procedure was fraught with serious human rights violations from the time of arrest, through detention, trial and conviction.

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# I. ARBITRARY ARREST, DETENTION, AND JUDICIAL HARASSMENT OF MS. PINAR SELEK

## **The arrest, detention and torture of Ms. Pinar Selek**

On July 9, 1998, seven persons were killed and 127 injured by an explosion in the Istanbul Egyptian market. The police, immediately considering, officially, that it was a terrorist act, arrested several suspects. The following days several police reports concluded that the explosion was not caused by a bomb. Police Crime Scene Investigation reports of July 13, 1998 and the Expert Reports of the Criminal Police Laboratory of July 14, 1998, which were prepared by police bomb experts immediately after the explosion at the Spice Bazaar concluded that there were no findings indicating a bomb. The Police Crime Scene Investigation Final Report, dated July 20, 1998 also concluded that "There are no findings with regards to a bomb".

On order of the Anti-Terrorism Prosecutor, the Police Department arrested Ms. Pinar Selek on July 11, 1998. She was taken into custody simply because she declined to disclose the identities of the persons she had interviewed in the course of her research work on the Kurdish conflict.

On July 11, Ms. Pinar Selek was arrested, owing to her "suspicious activities", without providing any more details as to the reason of arrest. She was neither charged with nor questioned about any specific act of terrorism.

On July 28, 1998, finally, charges of "membership of an illegal organisation" under Articles 168/2 and 264 of the former Turkish Penal Code (TPC) were filed against her and she was detained at Ümraniye Prison.

In August, a month and a half after her remand to detention, she found out on the news that she was being accused of causing an explosion that occurred at the Spice Bazaar in Istanbul on July 9, 1998.

On August 19, during a crime-scene reconstruction on the site of the explosion, the crowd called for the death of the "suspects", and Ms. Pinar Selek's portrait appeared in the press. Other persons arrested and interrogated designated her, under torture, as the mastermind of the attack.

Ms. Selek was held in detention for two and a half years before the courts ordered her provisional release on December 22, 2000 as legal experts had concluded that the explosion was due to an accident.

The criminal investigation lasted five years, and first concluded that the evidence against the accused were insufficient. Finally, at the request of the Istanbul Public Prosecutor, 9th Penal Department of the Supreme Court ruled that the accused should be tried.

During her detention in July 1998, Ms. Selek's research was confiscated and she was tortured using the *strappado* technique, which involved tying her hands together behind her and then suspending her in the air with a rope tied to her wrists. Her left arm was dislocated in the process<sup>1</sup>. In a bid to cover up for the acts of torture committed on her, false reports indicating that she fell on her arm, including one dated July 13, 1998, were later produced. During the

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1. See Pinar Selek's video testimony on: [http://www.dailymotion.com/video/xguv2t\\_turkey-testimony-of-Pinar-selek-regarding-acts-of-torture\\_news](http://www.dailymotion.com/video/xguv2t_turkey-testimony-of-Pinar-selek-regarding-acts-of-torture_news)

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time of the investigation from July 11 to 18, 1998, she was not allowed to receive any legal assistance from a lawyer. Even when the police requested the extension of Ms. Pınar Selek's custody, she was not presented before any official other than the police officers who held her into custody. On February 10, 1999, Ms. Pınar Selek filed a complaint for torture before the Prosecutor's Office. However, it was never followed through by any court.

By contrast, the Überleben Treatment Centre for Victims of Torture prepared a special expert report in August 2010, confirming the torture that Ms. Selek was subjected to and the effect it has had on her.

## **The judicial proceedings**

Ms. Selek has been subjected to sixteen agonising years of judicial proceedings marred by heavy manipulation of trial evidence, countless procedural irregularities and several other gross violations of her right to a fair trial.

On June 8, 2006, after numerous hearings, the Istanbul Special Heavy Criminal Court No. 12 finally acquitted Ms. Selek for the charges of "aiding and abetting the terrorist organisation"<sup>2</sup>, "membership of an illegal organisation" and "causing a bomb to explode". Mr. Abdülmecit Öztürk, a man who had allegedly confessed to conspiring with Ms. Selek to plant a bomb, was also acquitted for "causing a bomb to explode". The court found that "no certain and believable evidence that requires punishment could be found". Indeed, the only "evidence" in the criminal file linking Ms. Pınar Selek to the "bombing" of the Spice Bazaar was a coerced testimony made under torture by Mr. Abdülmecit Öztürk to the police and without the assistance of a lawyer. Later, on April 14, 1999, during a hearing, Mr. Abdülmecit Öztürk disowned the testimony in which he accused Ms. Selek.

However, on April 17, 2007, following the appeal of the Prosecutor, the decision to acquit was reversed by the Criminal Chamber No. 9 of the Supreme Court because, according to the higher court, "no verdict had been given".

The trial was conducted again and, on May 23, 2008, after another round of hearings, the Istanbul Special Heavy Criminal Court No. 12 acquitted for the second time both Ms. Pınar Selek and Mr. Abdülmecit Öztürk from all charges.

Following the appeal of the Prosecutor, on March 10, 2009, the Criminal Chamber No. 9 of the Supreme Court reversed for the second time the acquittal of Ms. Selek but confirmed the acquittal of Mr. Abdülmecit Öztürk, as the Prosecution had failed to appeal against it. The court also requested the inferior court to sentence Ms. Selek to aggravated life imprisonment, on the sole basis of Mr. Abdülmecit Öztürk's invalid testimony and a report made by the Gendarmerie, which was contradicted by at least three other police reports.

Therefore, the Prosecutor who accused Ms. Selek based on Mr. Abdülmecit Öztürk's coerced "confession" at the same time failed to challenge Mr. Abdülmecit Öztürk's acquittal and appealed the sole acquittal of Ms. Selek. Therefore while Mr. Abdülmecit Öztürk's coerced "confession" was not deemed as valid or credible against himself, it was deemed valid and credible against Ms. Selek with whom he said he acted to plant a bomb.

The Istanbul Special Heavy Criminal Court No. 12 again tried Ms. Selek and, for the third time, acquitted her on February 9, 2011 for the charge of "causing a bomb to explode", arguing once again that the explosion was not criminal, but accidental:

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2. With regard to the charges of aiding and abetting the terrorist organisation, the court decided to "dismiss the case due to lapse of time".

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## **February 9, 2011 - Hearing before the Istanbul Special Heavy Criminal Court No. 12**

At 9 am, on February 9, 2011, there were over a hundred people assembled. The main Turkish media, of all opinions, were represented.

Among the crowd there were in particular diplomatic representatives of the European Union, the United States, and France. Ms. H el ene Flaute, Member of the European Parliament (MEP), with two other Belgian and German MEPs, were also among the crowd, which was preparing for press statements. Turkish political parties, such as the Greens and the Socialist Party, were officially represented. The Amargi association, founded by Ms. Pinar Selek, the Human Rights Association (*İnsan Hakları Derneđi - İHD*), member of FIDH in Turkey, PEN-Germany, Researchers Without Borders, Human Rights Watch, in particular, were present. There were also a large number of anonymous persons, including political and human rights activists.

At 10.30 am, when the crowd was authorised to enter the courtroom, there were more than five hundred people outside. All could not enter, for the courtroom was small. Over a hundred people were inside, most of them standing up.

The hearing began. None of the accused were present. Ms. Pinar Selek, who was in Germany at the time, had written to the three judges asking to be excused.

At 10.45 am, the President recalled the terms of the indictment. Counsels for Ms. Pinar Selek - including her father - spoke in turn asking that the judicial harassment that had been going on for thirteen years be brought to an end.

At around 11.30 am, a video projector was set up by one of Ms. Selek's counsels, who addressed the expert opinions.

The counsel presented the ten-odd expert opinions commissioned in the case. All of them except one concluded that there was no bomb attack, and that the cause of the explosion on July 9, 1998 was accidental. The last one mentioned the existence of a bomb crater.

The lawyer then showed two photos. The first, taken immediately after the explosion, showed that there was no such crater. The second, taken at the same place, showed that a hole had been dug. The counsel concluded that such a fabrication was typical of the whole case, in which appearances had to be created in order to reach, unduly, the conclusions wanted by the Prosecution.

At around noon, the President called on the Istanbul Prosecutor, and the Observatory's delegate was told that he was the one who had requested the two former sentences against Ms. Pinar Selek in 2006 and 2008, asking whether he had anything to say. It was almost impossible to hear him, but those who could hear told the Observatory's delegate that he was calling for the sentencing of Ms. Pinar Selek to 36 years in prison.

The hearing was suspended for 15 minutes.

At 12.20 pm, the President announced that the Istanbul Special Heavy Criminal Court No. 12 had decided to acquit Ms. Pinar Selek for the third time in relation to the charge of "causing a bomb to explode".

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Pursuant to procedural law applicable in Turkey, should the decision adopted by the Court to acquit contradict the demands made by the Prosecution, the acquittal must be reviewed by the superior court. In such case, the Prosecution may either agree to the decision of the Supreme Court or on the contrary demand quashing.

Therefore there was no doubt that the third decision pronouncing the acquittal of Ms. Pinar Selek was not an end to this case.

And indeed, as soon as the following day, the Prosecutor of Istanbul stated that he would again demand the conviction of Ms. Pinar Selek.

It should be noted that Istanbul Special Heavy Criminal Court No. 12 - and not the appeal court (in this case the Supreme Court) - remained in charge of the review of the criminal proceedings that concluded to the third acquittal of Ms. Pinar Selek. Indeed, several issues were still to be decided upon by the Court, especially the charge of "membership of an illegal organisation".

**March 8, 2012 - Hearing before the Istanbul Special Heavy Criminal Court No. 12**

During this very short hearing, which took place in an almost empty courtroom in the Istanbul Court House, Ms. Pinar Selek's lawyers emphasised the fact that they did not understand why the Court consistently inquired whether the crime of "membership of an illegal organisation" had been committed by Ms. Selek in relation to an explosion which the Court itself had concluded had not been caused by a criminal action in so far as this explosion was in fact caused by an accidental gas leak.

However, while the case continued for other defendants, changes were made to the panel of judges. Indeed, on November 22, 2012, while the Istanbul Special Heavy Criminal Court No. 12 was discharged of the charge of "causing a bomb to explode" faced by Ms. Selek since the February 9, 2011 acquittal<sup>3</sup>, a hurriedly constituted new panel of judges sitting at the Istanbul Special Heavy Criminal Court No. 12 revoked the court's own earlier decision to acquit Ms. Selek - thereby violating basic procedural principles<sup>4</sup> and announced that it would issue a new verdict. The case was then postponed to December 13, 2012.

This ruling was given by the new board that was formed with a temporary Presiding Judge who acquainted himself for the first time with this quite bulky case file while the actual Presiding Judge of the court who chaired the board which decided on the ruling of acquittal and had been following this case for 14.5 years was on a sick leave.

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3. Following the appeal filed by the Prosecutor, the charge regarding the charge of "causing a bomb to explode" was to be referred to the General Assembly for Criminal Matters of the Supreme Court once all charges related to the Spice Bazaar explosion case had been heard and decided upon.

4. Including the right to be heard by a competent, independent and impartial tribunal and the prohibition on double jeopardy.

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### **December 13, 2012 - Hearing before the Istanbul Special Heavy Criminal Court No. 12**

Around 50 defence lawyers attended the hearing, as well as a large number of Turkish artists and scholars, MPs from the Republican People's Party (CHP) and BDP opposition party, as well as foreign diplomats from France, Germany and Belgium.

The court was composed of Mr. Mermet Hamzacebi, who chaired the court as Presiding Judge in replacement of Mr. Vedat Yilmazabdurrahmanoglu, the judge who previously chaired the proceedings. The latter was absent for medical reasons. Mr. Hamzacebi was assisted by two assisting magistrates, one of whom was present at the last acquittal hearing.

The Presiding Judge did not use the microphone though it was on the table and nobody could hear him properly, thereby undermining the principle of the publicity of the hearings. Only some of the lawyers could follow the hearing using two monitors. In addition, as the Presiding Judge refused to use the microphone, his statements during the hearing could not be properly recorded.

The courtroom was manifestly maladapted for a proper examination of this case, undermining the principle of the publicity of hearings.

As the debates opened, the defence lawyers requested the Judge to be dismissed, on grounds of partiality. This request was rejected.

At the opening of that hearing which addressed the merits of the case, the Public Prosecutor requested that his request made on December 28, 2005 against Ms. Pınar Selek be taken into account, in spite of the appeal lodged by the same Prosecutor against the acquittal issued by the Istanbul Special Heavy Criminal Court No. 12 on February 9, 2011. The Public Prosecution therefore ignored the appeal that he had filed previously.

The defence lawyers vigorously reacted, emphasising the obvious partiality of the court. The court then decided to postpone the examination regarding the conviction of Ms. Pınar Selek to the hearing of January 24, 2013.

Ms. Selek's lawyers explained to the trial observers that:

- it was the first time a Court had retracted, and then subsequently granted itself the jurisdiction on appeal over an acquittal ruling it had previously issued.
- in the event of a sentencing of Ms. Pınar Selek by the Istanbul Special Heavy Criminal Court No. 12, the Supreme Court would be seized by two appeals: the first appeal lodged by the Public Prosecutor against the acquittal issued by the Istanbul Special Heavy Criminal Court No. 12 with the seizure of the General Assembly for Criminal Matters of the Supreme Court and an appeal lodged by the defendant against any sentence pronounced by the Istanbul Special Heavy Criminal Court No. 12 with the jurisdiction of the Criminal Chamber No. 9 of the Supreme Court.

### **January 24, 2013 - Hearing before the Istanbul Special Heavy Criminal Court No. 12**

The hearing took place in the new Istanbul Court House.

At the last moment, the room reserved for the trial was re-allocated. The new room could only accommodate 20 persons. Lawyers asked for the bigger room.

Access to the courthouse was subjected to stringent security measures and significant filtering. One must appear on a list to get access to the courtroom. Therefore, the Observatory's delegate recorded a violation of the right to a public hearing, though some Turkish and foreign journalists were allowed to enter the room (AFP, etc.).

11.15 am - The Observatory's delegate entered the courtroom. Only 80 people were authorised into the room. Several trial observers remained outside. Approximately 60 lawyers represented Ms. Pınar Selek.

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The hearing was chaired by Mr. Vedat Yilmazabdurrahmanoglu, the Judge who had been chairing the proceedings initially, before he became ill. In February 2011, he chaired the hearing that was concluded by Ms. Selek's acquittal.

The lawyers filed a confidence motion towards the previous composition of the tribunal, which had agreed on the sentencing of Ms. Pınar Selek, despite her former acquittal.

The defence lawyers claimed that the verdict convicting Ms. Selek was irregular, as the Court no longer had jurisdiction to examine the charge of "causing a bomb to explode" faced by Ms. Selek.

The hearing was suspended at 1.10 pm.

2.25 pm - The hearing resumed, the Court announced that it had rejected all procedural exception made by the defence lawyers and that it was about to issue its decision on the sentences against the accused.

Defence lawyers requested that the hearing be postponed because they were not ready for their final conclusions.

They stated that the consequence of what the Court had just done, by rejecting all claims, was the conviction of Ms. Pınar Selek. Therefore, there was nothing to be added on the merits.

Defence lawyers argued that the proceedings were very confusing. They added that they did not even know to which decision the judges were referring to when they mentioned a confirmed or contradicting decision.

Ms. Pınar Selek's defence lawyers said that they had stopped trying to understand and therefore to make a defence because the situation was impossible. They added that the behaviour of the Court - which on a procedural point contradicted the last decision of the Supreme Court - was an inadmissible prejudgement.

3.20 pm - The hearing was suspended.

3.32 pm - The hearing resumed.

Nobody could hear what the Presiding Judge was saying. He was muttering. Lawyers complained that they could not hear anything. Lawyers stated that they had already provided all their arguments and that it seemed that the Court had already reached a decision.

Defence lawyers replied that it was useless to continue, as it seemed that a decision had already been made.

The Court announced that it would not oppose the request made by the Criminal Chamber No. 9 of the Supreme Court to convict Ms. Pınar Selek and sentence her to life imprisonment.

3.35 pm - The Court closed the session for an hour.

5.25 pm - The hearing resumed. An assisting magistrate read the sentence of the Court: Ms. Pınar Selek was sentenced to life imprisonment in solitary confinement for the both charges of "causing a bomb to explode" and "being an executive member of an illegal organisation".

On January 29, 2013, defence lawyers for Ms. Pınar Selek filed an appeal against the decision condemning Ms. Selek.

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## The manipulation of trial evidence

Despite overwhelming evidence of court-appointed experts as well as experts from scientific institutions and even the police force, which proved beyond reasonable doubt that the explosion was due to a gas leakage, the authorities have gone to great lengths to manipulate evidence towards giving the impression that the explosion was caused by a bomb planted and detonated on the instruction of Ms. Selek.

In the course of investigation, the police produced three reports and one expert testimony: Police crime scene investigation report dated July 13, 1998, Expert report of the criminal police laboratory dated July 14, 1998, Police crime scene investigation final report dated July 20, 1998, and the testimony, at the hearing of July 5, 1999, of the Chief Inspector and Head of the Bomb Disposal Bureau of the Police who conducted an on-site examination. At least five other reports were then also produced in the course of investigation and trial. Mr. Resat Apak, Director of the Analytical Chemistry Department of Istanbul University, produced a report dated June 15, 2000; the Forensic Department of Cerrahpasa Faculty of Medicine produced a report dated July 27, 2000; three court-appointed expert professors produced a report dated December 21, 2000; another expert appointed by the court produced a report dated July 10, 2002; and the Department of Electrical and Electronic Engineering of the Middle East Technical University produced a Final Report dated November 21, 2002.

All the foregoing evidence clearly concluded that the explosion at the Spice Bazaar was caused by a gas leakage and not a bomb. More specifically, the Chief Inspector stated that *"We have not found any trace of a bomb. A leakage of bottled gas may diffuse on the floor and cause such an explosion. If this were a bomb, it would open a pit of at least 50cm where it exploded. However, our on-site examination shows no such pit."* Also, the report of Cerrahpasa Faculty of Medicine concluded that the wounds of the victims of the accident were inconsistent with a bomb blast, while the report of Middle East Technical University concluded that the explosion emanated from an oven.

Yet, in a desperate bid to criminalise Ms. Selek, the authorities procured, by means of torture, the confession of Mr. Abdülmecit Öztürk that he and Ms. Selek planted a bomb; commissioned the writing of reports concluding that the explosion was caused by a bomb, and ensured the digging of a pit at the site of the accident in order to give it the appearance of a site of a bomb-blast. First, Mr. Abdülmecit Öztürk was said to have confessed to placing a bomb in the Spice Bazaar jointly with Ms. Selek. but during the hearing of December 22, 1998, he and the other defendants testified that they made their earlier statements under severe torture and that they in fact did not know Ms. Selek. Second, about three years after the explosion, an unsigned and undated report suddenly surfaced in Ms. Selek's criminal case file, which concluded that the explosion had been caused by a bomb: following the release of Ms. Selek, the Ministry of Internal Affairs and the Istanbul Police Department sent a letter to the court, dated April 19, 2001, saying that this release had greatly disturbed them and transmitted a new report put into the criminal file, which bore no signature or date and said that *"the explosion had been caused by a bomb"* though said report had been prepared by members of the gendarmerie lacking expertise in the matter. This new report had not been commissioned by the court. At this point, judicial independence had been blatantly been interfered upon.

The report of the Middle East Technical University dated November 21, 2002 concluded that the unsigned and undated report lacked credibility and was against the laws of physics while the report of the Director of the Department of Analytical Chemistry of Istanbul University adjudged it to be unscientific and to be inclined to mislead the court. Similarly, photographs taken immediately after the explosion show no bomb crater at the spot at the Spice Bazaar where the accidental explosion took place but photographs taken much later show that a hole made to look like a bomb crater had been dug. These before-and-after photographs were shown to the court during the hearing of February 9, 2011.

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## Procedural irregularities

Countless procedural irregularities were observed in the course of the trial. Some of them are especially worth highlighting.

- A new panel of judges reversed the acquittal decision of an earlier panel that had conducted a full trial, examined witnesses and generally taken evidence. None of the judges constituting the new panel had the benefit of taking evidence and examining witnesses or observing their demeanour.

- The court found the confession of Mr. Abdülmecit Öztürk inadmissible against Mr. Abdülmecit Öztürk himself, yet the same court found the same confession admissible against Ms. Selek.

The court revisited its own final decision and reversed it in violation of the procedural doctrine of *functus officio*, which is not only well grounded in Turkish jurisprudence but also codified as a legislation<sup>5</sup>. The Turkish Criminal Procedures Act provides that once a court gives its final ruling or judgement, it can by no means revoke that final ruling or judgement or give another decision on the issue. According to the same legislation, an acquittal is not an interim ruling or judgement but a final one and it can only be appealed before the Supreme Court. Worse still, the decision that was revoked was already the subject of an appeal before a higher court.

The Istanbul Special Heavy Criminal Court No. 12, with this scandalous ruling unprecedented not only in the history of the Turkish law but in the world history of law, has revoked its own ruling of acquittal and gave a second ruling in a case that it had previously ruled on, despite having no such authority and in a way that is against due process and the law.

Indeed, according to the Code on Criminal Procedure (CMK), once the court gives its final ruling, by no means can it revoke that ruling nor can it give a second ruling on the issue. According to the CMK, acquittal is not an interim ruling, but a final judgment. It can only be appealed before the Supreme Court. A ruling that a court has decided on gets out of its jurisdiction and enters that of the Supreme Court. In Ms. Selek's case, the court, by withdrawing its ruling of acquittal, has substituted itself for the "authority of appellate", replaced the Supreme Court and put its own ruling to appellate review. Moreover, this interim ruling has been given before the hearing started and before the lawyers were given the floor, it has been written on the monitor beforehand and it has been announced to the lawyers after the ruling was given, and this was called a "proceeding". The court has not taken into consideration the lawyers' objections to the proceeding that was carried out against due process and the law. On the one hand, the Prosecutor has given one more time an opinion on the case itself, which he had appealed, as if the final judgment on the file had not been given, and on the other hand, he has not withdrawn his petition for appeal.

## Violation of the right to a fair and public hearing within reasonable time

Ms. Pınar Selek's right to receive a fair hearing in public and within reasonable time was grossly and repeatedly violated. The trial has dragged on interminably while principles guiding fair and public hearings were blatantly disregarded. Access to the hearings was often restricted to persons whose names appeared on lists. Neither the makers of the lists nor the criteria for their compilation were known. Also, many of the hearings were conducted in courtrooms maladapted for criminal trials and the judges often refused to speak loudly enough to be heard or use public address systems available in the courtrooms.

Finally the legal process has been ongoing since 1998, 16 years during which Ms. Selek has been kept uncertain about her legal fate. This delay amounts to a form of psychological torture.

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5. In particular Article 223 of the Code on Criminal Procedure (CMK) and First Chamber of the Supreme Court Decisions Nos. 1993/898 and 1993/1458 of June 29, 1993 and the General Assembly for Criminal Matters of the Supreme Court Decision No. 1/125 and 369 of September 21, 1987.

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## II. TURKISH AUTHORITIES' DESPERATE INTERNATIONAL HUNT FOR MS. SELEK

On January 24, 2013, in addition to its judgement convicting and sentencing her, the court ordered the arrest of Ms. Pınar Selek. The following day, on January 25, 2013, the Ministry of Interior Affairs informed the Ministry of Justice that Ms. Selek was residing in Strasbourg, France, and then went further to inquire what course of action should be pursued. Four days later, on January 29, 2013, the Ministry of Justice in turn transmitted a request to the court from where the judgement originated, asking it to immediately prepare the required forms and documents for the extradition request concerning Ms. Selek as well as for the issuance of a Red Notice by INTERPOL. The court obliged the Ministry's request without delay. Curiously, the request for the issuance of a Red Notice listed Mr. Abdülmecit Öztürk as Ms. Selek's accomplice, despite his having been acquitted. This once again reminds one of the absurdity of admitting a confession against Ms. Selek but not against the maker of the confession himself.

Although they did so in error, the Ministry of Justice proposed the pursuit of the issuance of a Red Notice as "a warrant for her arrest as it takes less time relative to the extradition procedures". It must be noted, however, that a Red Notice is not an international warrant of arrest. It is merely one of the many ways in which INTERPOL informs its 190 member countries that an arrest warrant has been issued in a member country. Also, INTERPOL cannot effect or demand the arrest of any person or group of persons. The ultimate decision to effect an arrest and oblige a request for extradition lies with a State within whose territory a subject of a Red Notice may be located.

While Turkish authorities may be overly ambitious as to what they can achieve with an INTERPOL Red Notice, the Red Notice still serves the unjust purpose of further psychological harassment of Ms. Selek and the restriction of her freedom of movement. Apart from her concerns over the conviction and the prison sentence hanging over her head, the Red Notice of INTERPOL puts Ms. Selek at great risk of arrest and repatriation if she steps on the soil of any State that is willing to do Turkey the favour of arresting and delivering her to the Turkish Government<sup>6</sup>.

In March 2014, INTERPOL informed Ms. Selek's lawyer that they decided to destroy all files related to her Red Notice Alert as it was not "in compliance with INTERPOL's rules".

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6. INTERPOL enables countries to share information about people either under criminal investigation or sought for arrest, but it does not legally bind any member country to take any action. INTERPOL cannot insist that any member country arrest an individual, nor does it issue international arrest warrants. Red notices are the highest level of police alert. Many countries treat them as provisional arrest warrants. In effect they prevent those named from travelling abroad. Concerns about potential abuses of INTERPOL red notices, including for personal or political grievances, have been highlighted by the campaign group Fair Trials International, which accuses INTERPOL of failing to scrutinise requests rigorously enough. The NGO Fair Trials has called on INTERPOL to "refuse or delete red notices where it has substantial grounds to believe the person is being prosecuted for political reasons". If a red notice is found to be in violation of INTERPOL's constitution and rules, it can be deleted from INTERPOL's systems and all member countries are required under INTERPOL's rules to do the same at the national level.

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## CONCLUSION

The series of trials against Ms. Pinar Selek woefully failed to comply with international standards of fairness. The entire allegations and procedure were marred by grave human rights violations from arrest, through detention, trial, conviction and sentencing.

Ms. Selek was arrested, tried, convicted and sentenced in relation to her exercise of universally recognised human rights, in particular, the right to freedom of expression, freedom of association and freedom of peaceful assembly, which includes the right, individually or in association with others, to promote and protect human rights. The trial and appeal proceedings demonstrated numerous violations of the right to a fair trial, especially the right to be promptly informed of the nature of the offence with which one is being charged, the right to have access to a lawyer upon arrest and during the investigation, the right to be tried before an independent and impartial court, the right to a public hearing, the right to the equality of arms, despite the provision for these rights in the International Covenant on Civil and Political Rights and the European Convention on Human Rights, both duly ratified by Turkey.

The trial of Ms. Selek reflects Turkey's policy and practice of criminalising the exercise of the right to freedoms of expression, association and peaceful assembly and silencing human rights defenders and other dissenting voices, especially within the framework of the government's determination to suppress the voices of ethnic minorities nationalism by all means.

Numerous reforms have been implemented towards bringing Turkish legal mechanisms into consonance with international and European human rights standards. Yet, many problems remain. The existence of a myriad of potentially repressive provisions and the propensity of law-enforcement and judicial bodies to interpret and apply laws in ways that place State interest above the protection of fundamental rights render the operating environment of human rights defenders precarious<sup>7</sup>.

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7. For more information, see Observatory's International Fact-Finding Report, *Turkey: Human rights defenders guilty until proven innocent*, May 2012 and Observatory Urgent Interventions on [http://www.fidh.org/en/europe/turkey/?id\\_mot=27](http://www.fidh.org/en/europe/turkey/?id_mot=27).

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## RECOMMENDATIONS

In view of these elements, the Observatory for the Protection of Human Rights Defenders formulates the following recommendations:

**- To the relevant authorities of Turkey to:**

. Immediately and unconditionally quash both the conviction and the prison sentence pronounced against Ms. Pinar Selek since they are arbitrary and only aim at sanctioning her human rights activities.

. Discontinue all steps towards depriving Ms. Selek of her personal liberty, including requesting the cancellation of the Red Notice issued against her by INTERPOL and the extradition procedure.

. Conduct comprehensive legal reforms to bring both the letter and the spirit of substantive and procedural criminal law in conformity with internationally recognised human rights standards.

. Conduct comprehensive reforms of the system for the administration of criminal justice for greater guarantee of the respect of human rights in full conformity with international human rights and fair trial standards.

. Improve the quality, coverage and frequency of training of actors in the criminal justice system and regularly sensitise them to their obligations to perform their duties in a manner consistent with internationally recognised human rights standards.

. Guarantee in all circumstances the physical and psychological integrity of all human rights defenders in Turkey, including by putting an end to all forms of judicial or other harassment by the State, investigating and punishing all acts or threats of violence and positively acknowledging their legitimacy and importance.

. Refrain from any act or practice that may be considered as amounting to torture or ill-treatment and duly investigate and punish any such act or practice, including when they are committed by public officials. In any event, ensure that no conviction is based on evidence gathered in circumstances that may be considered as amounting to torture or ill-treatment or where the person's free will may have otherwise been coerced.

. Respect the right to freedoms of expression and assembly and increase tolerance to criticism.

. Stop the use of counter-terrorism provisions and other similar legislation to investigate, prosecute or otherwise harass human rights defenders peacefully advocating for recognition and respect of the rights of the Kurds and human and peoples' rights in general.

. Work towards greater cooperation with the human rights monitoring bodies of the United Nations. This should include implementing recommendations issued by UN human rights mechanisms; following up on the open invitation to the Special Procedures of the UN Human Rights Council; complying at all times with the UN Declaration on Human Rights Defenders; and requesting a visit as soon as possible by the UN Special Rapporteur on the Situation of Human Rights Defenders, the Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, and the Independent Expert on Minority Issues.

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**- To the Government of France, the European Union (EU), the United Nations (UN) and the international community at large:**

- . To refuse any request for arrest or extradition in respect of Ms. Selek.
- . To firmly and publicly condemn the deterioration of the situation of human rights in Turkey, especially the situation of human rights defenders, and raise it in their diplomatic relations, both bilateral and multilateral, with the Turkish Government.
- . To call on Turkish authorities to guarantee the physical and psychological integrity as well as the rights of all human rights defenders, including in the context of investigations and judicial proceedings against them.
- . To request the immediate release of all human rights defenders detained in Turkey and charged merely to sanction their human rights activities.
- . To continue to pay close attention to the protection of human rights defenders in Turkey, in accordance with the UN Declaration on Human Rights Defenders and the EU Guidelines on Human Rights Defenders, and follow up on the implementation of recommendations issued by human rights bodies on Turkey.
- . To call on Turkish authorities to accept visits by the relevant UN Special Rapporteurs.
- . To meet and support independent human rights NGOs and human rights defenders in Turkey.
- . To monitor court cases involving human rights defenders and report publicly violations and other issues of concern observed.
- . To ensure human rights issues are raised in all forms of counter-terrorism dialogue the EU has with Turkey, and that operational guidance ensures the respect of human rights in the planning and implementation of counter-terrorism assistance project, as the EU has committed in its EU strategic framework and action plan on democracy and human rights.
- . To ensure that the EU financial and technical support to Turkey is designed and implemented in order to foster comprehensive legal, administrative and judicial reforms aiming to ensure compliance with internationally recognised human rights standards.

**- To the European Court of Human Rights:**

- . To review the complaint filed on the case of Ms. Selek as soon as possible.

## ANNEX: CHRONOLOGY OF KEY EVENTS

**July 11, 1998** - The Istanbul Police Department arrests Ms. Pinar Selek.

**December 22, 2000** - The courts orders Ms. Selek's provisional release.

**June 8, 2006** - The Istanbul Special Heavy Criminal Court No. 12 acquits Ms. Selek for the first time.

**April 17, 2007** - The Criminal Chamber No. 9 of the Supreme Court reverses the acquittal of June 8, 2006.

**May 23, 2008** - The Istanbul Special Heavy Criminal Court No. 12 acquits Ms. Selek for the second time.

**March 10, 2009** - The Criminal Chamber No. 9 of the Supreme Court again reverses the acquittal of May 23, 2008.

**April 2009** - Ms. Pinar Selek leaves Turkey for Berlin (Germany) where she received a scholarship from PEN Club Germany.

**August 2010** - The Überleben Treatment Centre for Victims of Torture confirms in a special report that Ms. Selek was tortured during her detention between July 11, 1998 and November 22, 2000.

**February 9, 2011** - The Istanbul Special Heavy Criminal Court No. 12 acquits Ms. Selek for the third time.

**November 22 and December 13, 2012** - The Istanbul Special Heavy Criminal Court No. 12 revokes its own earlier acquittal decision of February 9, 2011.

**January 24, 2013** - The Istanbul Special Heavy Criminal Court No. 12 convicts and sentences Ms. Selek to life imprisonment and orders her arrest.

**March 4, 2013** - Ms. Pinar Selek is granted refugee status in France.

**May 3, 2013** - The Istanbul Special Heavy Criminal Court No. 12 requests Interpol to issue a Red Notice on the arrest

**March 3, 2014** - Interpol's file related to Ms. Pinar Selek is destroyed.

**April 30, 2014** - Ankara Supreme Court hearing session.

## **Establishing the facts**

Investigative and trial observation missions

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Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility.

Experts sent to the field give their time to FIDH on a voluntary basis.

FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

## **Supporting civil society**

Training and exchange

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FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

## **Mobilising the international community**

Permanent lobbying before intergovernmental bodies

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FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part in the development of international legal instruments.

## **Informing and reporting**

Mobilising public opinion

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FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

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**Created in 1985, the World Organisation Against Torture (OMCT) is the main international coalition of non-governmental organisations (NGOs) fighting against torture, summary executions, enforced disappearances, arbitrary detentions and all other cruel, inhuman and degrading treatment or punishment.** The strength of OMCT lies in its SOS-Torture Network composed of 311 NGOs from around the world.

## **Assisting and supporting victims**

OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions.

OMCT pays particular attention to certain categories of victims, such as women and children.

## **Preventing torture and fighting against impunity**

Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture.

OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

## **Protecting human rights defenders**

Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

## **Accompanying and strengthening organisations in the field**

OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture.

OMCT presence in Tunisia and Libya is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture.

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## Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

**To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:**

E-mail : [Appeals@fidh-omct.org](mailto:Appeals@fidh-omct.org)

**FIDH** Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80

**OMCT** Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29