

URGENT ACTION

ACTIVIST STILL HELD DESPITE REJECTED INDICTMENT

Fashion designer and LGBTI activist Barbaros Şansal remains in pre-trial detention since 3 January for allegedly ‘inciting the public to hatred or hostility’, despite a court rejecting the indictment drawn up in his case. He must be freed immediately and unconditionally.

LGBTI activist and fashion designer **Barbaros Şansal** remains in pre-trial detention since 3 January in Silivri prison, near Istanbul, despite the fact that, on 6 February, a court rejected the indictment charging him with “inciting the public to hatred or hostility” under Article 216 of the Turkish Penal Code. The accusation is based on a short video he shared on New Year’s Eve and two tweets, one of which he denies sending.

The Istanbul Criminal Court of 1st Instance No.43 rejected the indictment on grounds that there is insufficient evidence to prove the charges. According to Barbaros Şansal’s lawyer, the court stated that the indictment did not explain how Barbaros Şansal had been able to send one of the tweets from Istanbul when he was in fact in the territory of northern Cyprus.

Both the content of the video message and the tweet that Barbaros Şansal did recognise sending, are protected under the right to freedom of expression, and should not be subject to criminal prosecution. Amnesty International has long called for Article 216 of the Penal Code to be amended and be brought in line with international law, by repealing paragraphs 2 and 3 which exceed the permissible restrictions on the right to freedom of expression.

Barbaros Şansal’s lawyer also told Amnesty International that the prosecutor has requested the permission of the Minister of Justice to open another investigation under Article 301 of the penal code for “denigrating the Turkish nation”. Amnesty International calls for the repeal of Article 301 as it constitutes a direct and impermissible limitation to the right to freedom of expression.

Please write immediately in Turkish or your own language:

- Calling on the Minister of Justice to ensure that Barbaros Şansal is immediately and unconditionally released from pre-trial detention and charges against him are dropped;
- Urging the Minister not to give permission for an investigation under Article 301;
- Calling on him to ensure the repeal of paragraphs 2 and 3 of Article 216 and of Article 301 of the Penal Code.

PLEASE SEND APPEALS BEFORE 22 MARCH 2017 TO:

Minister of Justice
Mr Bekir Bozdağ
Ministry of Justice
Adalet Bakanlığı
06659 Ankara, Turkey
Fax: +90 (0312) 419 33 70
Email: ozelkalem@adalet.gov.tr
Salutation: Dear Minister

And copies to:
Parliamentary Commission on Human Rights
Mr Mustafa Yeneroğlu
Commission Chairperson
TBMM İnsan Hakları İnceleme Komisyonu
Bakanlıklar, 06543
Ankara, Turkey
Fax: +90 312 420 24 92
Email: insanhaklarikom@tbmm.gov.tr

Also send copies to diplomatic representatives accredited to your country.

HIS EXCELLENCY MR ABDURRAHMAN BİLGİÇ, Embassy of the Republic of Turkey, 43 Belgrave Square SW1X 8PA
020 7393 0202, embassy.london@mfa.gov.tr

Please check with your section office if sending appeals after the above date. This is the first update of UA 2/17. Further information:

<https://www.amnesty.org/en/documents/eur44/5431/2017/en/>

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ADDITIONAL INFORMATION

In response to prosecutors' questioning about the video he published on New Year's Eve, Barbaros Şansal said: "the reference to 'Turkey drowning in its shit' is a humorous comment I made two years ago during an interview. I made the same joke from time to time in my short videos I share on social media."

Barbaros Şansal was also asked about two tweets. The first following the armed attack on the Istanbul nightclub Reina on New Year's Eve, during which 39 people were killed and 65 injured, read: 'The owner is Jewish, the complainant is Sunni, the manager is Alevi... Santa Claus? F... O..' He said he had shared this tweet, stating 'what I was trying to say was that what happened was not a clash between religions or different faiths.'

In the record of the interrogation, Barbaros Şansal states that the second tweet he was questioned about, 'Sunni Muslims in Santa costumes shot at people in Istanbul because the manager and the workers were Alevi' was not sent by him. The time and location on the tweet indicates it was sent from Turkey, not from the territory of northern Cyprus where Barbaros Şansal was.

Since the 15 July coup attempt, a government crackdown on the rights to freedom of expression and association has seen hundreds of people including journalists, human rights defenders, activists and others imprisoned as a result of widespread and routine use of lengthy pre-trial detention, based on weak or non-existent evidence of internationally recognizable criminal acts. The state of emergency declared on 20 July 2016 was extended for the second time for a further three months on 4 January 2017. The executive decrees issued under the state of emergency limited detainees' access to their lawyers and increased the period of pre-charge detention from four to 30 days.

Article 216 of the Turkish Penal Code reads as follows: (1) A person who openly incites groups of the population to breed enmity or hatred towards one another based on social class, race, religion, sect or regional difference in a manner which might constitute a clear and imminent danger to public order shall be sentenced to imprisonment for a term of one to three years. (2) A person who openly denigrates section of the population on grounds of social class, race, religion, sect, gender or regional differences shall be sentenced to imprisonment for a term of six months to one year. (3) A person who openly denigrates the religious values of a section of the population shall be sentenced to imprisonment for a term of six months to one year in case the act is likely to distort public peace.

Article 301: 1) Insulting the Turkish nation, the Turkish Republic, the institutions and organs of the state (1) Public denigration of the Turkish nation, the state of the Republic of Turkey, the Turkish Parliament (TBMM), the government of the Republic of Turkey and the legal institutions of state, shall be punishable by imprisonment of between six months and two years. (2) Public denigration of the military or security authorities shall be punished according to the terms of paragraph (1). (3) Expression of thoughts intended to criticize shall not constitute a crime. (4) The investigation of this crime is subject to the permission of the Minister of Justice.

Further information on UA: 2/17 Index: EUR 44/5648/2017 Issue Date: 8 February 2017