

Trial of migrant search and rescue worker Seán Binder is due to be heard in Lesbos, Greece on 10 January despite multiple breaches of international human rights law.

Gráinne Mellon of Garden Court Chambers acts for Seán Binder. She is led by Edward Fitzgerald KC of Doughty Street Chambers, instructed by Tessa Gregory and Carolin Ott of Leigh Day Solicitors London.

The criminal case against search and rescue worker Seán Binder has been ongoing since 2018. Edward Fitzgerald KC and Gráinne Mellon, on behalf of the international legal team acting for Mr. Binder, condemn the trial and the failure of the Greek authorities to urgently review the case against Mr. Binder.

Mr. Binder is a 28-year-old law graduate. In August 2018, he was arrested and charged with a number of serious criminal offences connected to migrant search and rescue work he carried out as a volunteer for a humanitarian NGO in Lesbos, Greece. Following his arrest, he spent 106 days in pre-trial detention in a Greek prison. He is charged with a number of serious criminal offences, including facilitation of illegal entry (smuggling), money laundering, espionage and membership of a criminal organisation. If found guilty of these offences he faces up to 20 years in jail.

Mr. Binder's trial has been delayed for over four years. An initial trial date for some of the more minor "misdemeanour" charges was initially set on 18 November 2021 but was adjourned for procedural reasons. It is now due to begin in Lesbos on 10 January 2022. The outstanding and more serious felony offences remain at the investigation stage. In relation to those charges, a trial date has not been set and a final indictment has still not been served.

Mr. Binder's international legal team have previously concluded that there have been breaches of a number of Mr. Binder's fundamental rights in the case so far - including

serious violations of his right to freedom from arbitrary detention and violations of his right to a fair trial without undue delay. ¹

Mr. Binder's team have consistently raised difficulties with the proposed misdemeanour trial which remain despite that trial having been adjourned on 18 November 2021.

In particular, the indictment on which the prosecution relies lacks clarity to such an extent that Mr. Binder and other Defendants are unclear about which Defendant was connected to which charge and what the case was against particular Defendants. The indictment contains serious deficiencies including:

- (i) A failure to clearly identify which Defendant is charged with which charge;
- (ii) A failure to provide sufficient specific information in relation to the nature of the charges against each Defendant;
- (iii) A failure to provide a date or timeframe for many of the alleged charges;
- (iv) A failure to outline the facts/evidence against each specific Defendant and link these to clear charges.

Questions have repeatedly been asked of the Prosecutor in order to ascertain the identify of each Defendant and the basis and nature of the charges. This information has still not been provided and the trial starts tomorrow.

Further, at least one charge remains on the indictment, despite it no longer existing on the statute books. This absence of statutory authority offends rudimentary principles of legality in international law.²

¹ <https://www.gardencourtchambers.co.uk/news/greek-authorities-urged-to-review-the-criminal-case-against-search-and-rescue-volunteer>

² Human Rights Watch "Greece: Rescuers at Sea Face Baseless Accusations"- Prosecution Seeks to Criminalise Saving Lives" dated 5 November 2018

Mr. Binder's legal teams have continued to raise serious concerns that the lack of clarity in the indictment renders it difficult for Mr. Binder and his co-Defendants to properly understand and challenge the case against them. They consider that unless rectified immediately, this injustice is likely to lead to an unfair trial.

There is also a concern that the listing in this case on 10 January 2023 is motivated primarily by the statute of limitation concerns, and not by a proper evaluation of what is necessary for a fair prosecution to take place. The separation of misdemeanour offences from felony charges - in particular, when no information has been provided about the latter - and when the charges interact and affect each other is artificial. It does not appear to give any or any adequate consideration to Mr. Binder's right to a fair trial.

Finally, and crucially, Edward Fitzgerald KC and Grainne Mellon have expressed concern that there is no evidential basis for the charges against Mr. Binder. They share concerns expressed by international civil society that these deficiencies undermine the basis of the prosecution case and support the view that the decision to prosecute has not been based on an assessment of the evidence, but instead on an attempt to criminalise humanitarian actors and human rights defenders working on migrant rights in Greece. Such motivation would obviously be contrary to all established norms of legality and fair trial.

Gráinne Mellon, of Garden Court Chambers states:

"We have serious concerns as to the basic compliance with international human rights law in this case and consider that a series of breaches of Mr. Binder's fundamental rights have already occurred. The proposed trial on 10 January 2023 risks further serious violations of international human rights principles in Mr. Binder's case. There is still time for the prosecutor and Greek authorities to urgently review the conduct of this criminal trial and make a sensible decision in this case."

Edward Fitzgerald KC states:

"Mr. Binder's search and rescue work sought to protect the life, health and physical integrity of men, women and children at sea and immediately on arrival in Greece. The fact that he was acting pursuant to a duty to provide assistance and the exemption for

humanitarian work in international law should, in our view, serve to protect him from prosecution for this work.”

Tessa Gregory, Partner at law firm Leigh Day, said:

“On the basis of the evidence we have seen, we believe that there have been serious breaches of Seán’s human rights by the Greek authorities in relation to his detention, the charges brought against him and the delays in hearing his case in court. Seán’s case is important as it shows what appears to be a disturbing trend towards criminalising human rights defenders who are working for recognised NGOs seeking to help refugees. We urge the Greek authorities to review Seán’s case immediately to prevent any further potential breaches of his human rights. Urgent reconsideration needs to be given to whether his criminal trial should go ahead at all.”

Seán Binder stated:

“We are not criminals, neither are we heroes, providing assistance to people in distress is necessary - nobody should be abandoned to drown. My actions were guided by the duties enshrined in international maritime law and the European Convention on Human Rights. Now Greece should be guided by Europe’s commitment not to criminalise humanitarian activity and its obligations under International Human Rights Law, including the ECHR.”

See media coverage below:

[Amnesty: Greece: ‘Farcical’ trial of rescue volunteers begins next week](#)

[Human Rights Watch: Greece: Migrant Rescue Trial to Begin](#)