

**LAWYERS FOR LAWYERS, THE LAW SOCIETY OF ENGLAND AND WALES,
LAWYERS' RIGHTS WATCH CANADA AND FAIR TRIAL WATCH JOINT UPR
SUBMISSION – TURKEY – JUNE 2014**

A. Introduction

1. The Law Society of England and Wales (hereinafter: 'the Law Society'), Lawyers for Lawyers (hereinafter 'L4L'), Lawyers' Rights Watch Canada (hereinafter: 'LRWC') and Fair Trial Watch (hereinafter: 'FTW') submit this report on the state of human rights, especially those regarding the legal profession, in Turkey, with recommendations to the OHCHR for the 21th session of the UPR Working Group in the UN Human Rights Council in January / February 2015.
2. The Law Society is the professional body representing more than 166,000 solicitors in England and Wales. Its concerns include the independence of the legal profession, the rule of law and human rights throughout the world.¹
3. L4L is an independent and non-political Dutch foundation and is funded by lawyers' donations. The foundation was established in 1986 and has special consultative status with ECOSOC since 2013.²
4. LRWC is a committee of lawyers who promote human rights and the rule of law internationally through advocacy, research and education. LRWC has Special Consultative status with the Economic and Social Council of the United Nations³.
5. FTW is an independent and non-political Dutch foundation who promotes a fair trial for anybody around the world.⁴

B. Executive Summary

6. This submission outlines L4L's and the Law Society's key concerns regarding Turkey's compliance with its international and national human rights commitments to guarantee effective access to legal services provided by an independent legal profession as set out in the Basic Principles, which is required to ensure the right to equality before courts and tribunals and to a fair trial, in accordance with Article 14 of the ICCPR.
7. It highlights, in particular, concerns in relation to the following issues:
 - (i) No effective guarantees for lawyers to perform their professional duties without interference and reprisals:

¹ For more information, visit: <http://www.lawsociety.org.uk>.

² For more information, visit: <http://www.lawyersforlawyers.org>

³³ For more information, visit: <http://www.lrwc.org>

⁴ For more information, visit: <http://fairtrialwatch.org/>

- a. Abuse of legal proceedings against lawyers contrary to the Basic Principles, Article 16(c),
 - b. Interference with the (Istanbul) Bar Association contrary to the Basic Principles, Article 24,
 - c. Lack of protection against harassment and attacks on lawyers contrary to (the Basic Principles, Article 16(a).
- (ii) Improper identification of lawyers with their clients or their client's causes contrary to the Basic Principles, Article 18.
- (iii) Violation of the right to confidentiality in relation to communications and consultations between lawyers and their clients within their professional relationship and for the role of a lawyer in court contrary to the Basic Principles, Articles 20, 22.

8. Recommendations:

The Law Society, L4L, LRWC and FTW recommend that the Turkish government take all legal and practical steps necessary to:

- (a) prevent the prosecution or other sanctioning on improper grounds of lawyers, including lawyers advocating for human rights and/or defending suspects accused of terrorism-related charges, in accordance with Article 16(c) of the Basic Principles;
- (b) ensure that the Bar Associations can function properly and that the executive bodies of the bar associations are free to exercise their functions without external interference, in accordance with Article 24 Basic Principles;
- (c) prevent lawyers from being threatened, intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with Article 16 (a) of the Basic Principles, and ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are held accountable;
- (d) ensure that lawyers enjoy civil and penal immunity for statements made in in written or oral pleadings or in their professional appearances before court, in accordance with Article 20 of the Basic Principles;
- (e) protect lawyers from being identified with their clients or their client's causes, in accordance with Article 18 of the Basic Principles;
- (f) provide lawyers with all the facilities, rights and privileges necessary for discharging their professional functions, including the right to consult and communicate with their clients freely and in full confidentiality, in accordance with Article 22 of the Basic Principles;

- (g) provide effective training for judges and prosecutors to raise awareness of the Basic Principles and ensure that its provisions are taken into account before national courts and in pre-trial stages.

C. Effective mechanisms for the protection of human rights

9. The adequate protection of human rights and fundamental freedoms requires that every citizen have effective access to justice and legal assistance. Legal assistance can only be provided effectively in a judicial system where lawyers, along with judges and prosecutors, are free to carry out their professional duties independently. This follows from the ICCPR, to which Turkey is a party and other instruments.
10. In its task of promoting and ensuring the proper role of lawyers, Turkey should respect and take into account the Basic Principles within the framework of its national legislation and practice. Adherence to the Basic Principles is considered a fundamental pre-condition to fulfilling the requirement that all persons have effective access to independent legal assistance.⁵
11. Although laws governing the legal profession in Turkey contain principles guaranteeing the independence and role of lawyers, practice demonstrates that Turkey does not always uphold the necessary guarantees for the proper functioning of the legal profession. The consequential difficulties encountered by lawyers negatively impacts the right to effective legal representation as enshrined in Article 14 of the ICCPR.
12. Contrary to Article 16 of the Basic Principles, at least 62 lawyers have been and are still being prosecuted for actions performed in legitimate discharge of professional duties⁶. Many of these lawyers have also been subjected to arbitrary detention. Four lawyers have already been convicted. Sometimes lawyers are threatened with prosecution or harassed when discharging their function. Furthermore, the President and the Board members of the Istanbul Bar Association have been prosecuted simply for requesting the judge in a criminal trial to adhere to domestic rules which required him to give the defence advocates the opportunity of putting their case on behalf of their clients.

I. NO EFFECTIVE GUARANTEES FOR THE FUNCTIONING OF LAWYERS

a. Abuse of legal proceedings against lawyers

13. In Turkey several trials against lawyers have been taking place in the last couple of years, most of which have been monitored by L4L, the Law Society, LRWC, FTW and other international observers. International observers concluded in one case involving 46 lawyers, "the lawyers accused in this case are being identified with their client's

⁵ Basic Principles on the Role of Lawyers, Preamble and paragraph 8 in particular.

⁶ This was already observed by the Special Rapporteur on the Independence of Judges and Lawyers, who visited Turkey from 10 – 14 October 2011 and issued a report (GE.12-13403), <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Visits.aspx>. See pages 16 - 17.

cause and that these criminal proceedings are being used to repress, intimidate and punish the lawyers concerned for the fact that they represent a client involved in a politically sensitive case.”⁷

14. These prosecutions arbitrarily target lawyers providing legal representation in politically sensitive cases. Available information indicates that these lawyers are prosecuted solely for discharging their functions.

15. This is illustrated by the following cases:

Case of Filiz Kalayci, Hasan Anlar, Halil Ibrahim Vargün and Murat Vargün

16. On May 12, 2009, lawyers Filiz Kalayci, Hasan Anlar, Halil Ibrahim Vargün and Murat Vargün were arrested and charged with alleged membership in an armed, illegal organization, the Kurdistan Workers Party (PKK). Their law offices were raided and case files, computer hard disks, and several other professional items were confiscated. The lawyers later learned their phones had been tapped and had been under surveillance of the police for several years. The accusations were based on the lawyers’ legitimate professional activities such as the provision of legal advice, engaging in telephone conversations with clients and colleagues, attending meetings and other professional activities involved in the investigation of claims of torture and ill treatment in prison.

17. The lawyers were detained for three days and then released. Filiz Kalayci was re-arrested on May 27, 2009, and was kept in pre-trial detention until January 28, 2010.

18. On January 24, 2013, all four lawyers were convicted for working for, or belonging to, the PKK and received sentences of imprisonment ranging from 6 years and 3 months to 7 years and 6 months. All four have appealed, and the appeals are still pending. A copy of the verdict of the Court has been sent to the Office of the President of the Ankara Bar Association and to the Union of Bar Associations of Turkey for use in disciplinary proceedings. Filiz Kalayci now lives in exile in Austria.⁸

The Lawyers’ trial

19. In November 2011, 46 lawyers, three employees of law firms and 1 journalist were arrested and charged with membership in the PKK. All lawyers are alleged to have

⁷ Turkey: *Petition regarding mass detention of lawyers in Turkey* | *Joint Statement*, 29 March 2013 issued by Union internationale des Avocats, Conférence Internationale des Barreaux (CIB), Fair Trial Watch, International Association of Democratic Lawyers, International Association of People’s Lawyers, Lawyers for Lawyers (L4L), European Association of Lawyers for Democracy and World Human Rights ELDH, European Democratic Lawyers (EDL / AED), Human Rights Commission of the Federation of European Bar Associations, Law Society of England and Wales, Netherlands Bar Association, Amsterdam Bar Association, German Bar Association, Republikanischer Anwälten- und Anwälteverein (RAV), Lawyers’ Rights Watch Canada (LRWC), Ordre des barreaux francophones et germanophone de Belgique, Institut des droits de l’homme des Avocats européens IDHAE, Avocats sans Frontières, National Lawyers Guild International Committee, Solicitors International Human Rights group (SIHRG/UK), Institut des Droits de l’Homme du barreau de Bruxelles, Institut des Droits de l’Homme du Barreau de Grenoble, Vereniging Sociale Advocaten Nederland (VSAN), Vereinigung Berliner Strafverteidiger e.V., Margaret Owen O B E Barrister and Ali Has, Solicitor-Advocate and supported by The Observatory for the Protection of Human Rights Defenders, a joint programme of the International Federation of Human Rights (FIDH) and the World Organisation Against Torture (OMCT), the League for Human Rights and Front Line Defenders.

⁸ For background information see <http://www.advocatenvooradvocaten.nl/lawyers/filiz-kalayci/>

provided legal representation at some time to PKK-leader Abdullah Öcalan. The lawyers are accused of communicating to PKK members orders given to them by Öcalan during client meetings at the prison where Öcalan has been incarcerated since 1999. The lawyer client interviews were monitored by the state authorities who also made notes and tape recordings of the interviews.

20. The mass trial of these 50 accused (Lawyers' Trial) commenced on July 16-18 2012. Since then the only trial dates have been one day appearances on 6 November 2012, 3 January 2013, 31 March 2013⁹, 20 June 2013, 17 September 2013 and 19 December 2013. The delay in determining the charges contravenes the right to be tried without undue delay guaranteed by the ICCPR Article 14(3) (c).
21. At the start of the Lawyers Trial, in July 2012 36 lawyers were still in pre-trial detention. At the end of every hearing, one or several detained lawyers were set free¹⁰, but after 500 days still 26 lawyers were in pre-trial detention. It has never been clear why some lawyers were freed and others were not. In March 2014 the last 10 lawyers in pre-trial detention were released. They were in pre-trial detention for almost 2.5 years¹¹.
22. Due to a change of the Turkish Code of Criminal Procedure and Anti-terror Law that came into effect on 6 March 2014 (law no. 6526)¹², the Heavy Penal Courts (special courts for terrorism cases), such as the court where this trial took place, were abolished. The Lawyers Trial was transferred to a regular heavy penal criminal court. The next court hearing I scheduled for 13 November 2014.
23. The accused lawyers – and their defence lawyers - argue that there is no evidence for any criminal offence in this case and that the activities that form the basis for the accusations are all legitimate activities for a lawyer. The request by defence counsel to have Abdullah Öcalan give evidence has been denied.

⁹ See the Trial Observation Report of this hearing, written by Tony Fisher of the Law Society of England and Wales <http://international.lawsociety.org.uk/node/12824>.

¹⁰ After the hearing on 18/07/2012, nine lawyers were released: Mahmut Alınak, Yaşar Kaya, Mehmet Nuri Deniz, Veysel Vesek, Cemo Tüysüz, Osman Çelik, Aydın Oruç, Hüseyin Çalışçı and Haksan Sadak. After the hearing on 03/01/2013, one lawyer was released: Davut Uzunköprü. After the hearing on 29/03/2013, four lawyers were released: Şaziye Öner, Mustafa Eraslan, Mehmet Sabır Taş and Cemal Demir. After the hearing on 20/06/2013, seven lawyers were released: Serkan Akbaş, Mizgin Irgat, Mehmet Ayata, Mensur Işık, Şakir Demir, Servet Demir and Mehmet Deniz Büyük. After the hearing on 18/03/2014, nine lawyers were released: Doğan Erbaş, İbrahim Bilmez, Ömer Güneş, Hatice Korkut, Cengiz Çiçek, Muharrem Şahin, Emran Emekçi, Sebahattin Kaya and Mehmet Bayraktar.

¹¹ See the Briefing to the Human Rights Committee, 106th Session (15 Oct. – 2 Nov. 2012), from Lawyers' Rights Watch Canada and the Observatory for the protection of Human Rights Defenders (FIDH-OMCT) about the failure of Turkey to comply with obligations under the ICCPR to protect and ensure the right to pre-trial release in this case, <http://www.lrwc.org/turkey-briefing-to-the-human-rights-committee-106th-session/>.

¹² See for background information: Human Rights Watch, "Dispatches: Turkish government moves threaten judicial independence", 18 January 2014.

Progressive Lawyers' Association -trial

24. On January 18, 2013, Turkish police arrested 55 persons during raids carried out in 7 cities, of whom 12 were lawyers, mostly members of Çağdas Hukukçular Derneği, the Progressive Lawyers' Association (ÇHD).¹³
25. Amongst those arrested were lawyers Taylan Tanay, head of the Istanbul branch of ÇHD, and ÇHD-executives Güray Dag, Efan Bolaç, Günay Dag, Gülvin Aydın, Ebru Timtik, Barkin Timtik, Naciye Demir, Güclü Sevimli, and Sükriye Erdem. The head of ÇHD, Selçuk Kozagaçlı, and executive board member Oya Aslan were abroad at the time, but were arrested on their return to Turkey on January 21, 2013. The offices of ÇHD were searched, as well as several of the lawyer's houses.
26. Most of the lawyers arrested reportedly worked for the People's Legal Aid Bureau and all are known for their work on human rights and torture issues. The accusation is that the ÇHD and the People's Legal Aid Bureau are used for terrorist purposes.
27. The first court hearing was on December 24, 25 and 26, 2013. The case was postponed until 17 April 2013, but that hearing was cancelled following the abolition of the Heavy Penal Courts. The five accused lawyers who were still in pre-trial detention were released on 21 March 2014. The case has been transferred to a regular criminal court. The next court hearing is scheduled for two day on 11 and 12 November 2014.
28. Several of the arrested lawyers were defending accused lawyers in the Lawyers' Trial. Their arrests prevented them from discharging their functions as a lawyers for their clients in the Lawyers' Trial.

Case of Muharrem Erbey

29. Prominent human rights lawyer Muharrem Erbey was arrested on December 24, 2009, by the Anti-Terror Unit of the Diyarbakir Security Directorate as part of an operation launched simultaneously in 11 provinces in Turkey. His arrest and detention were based on his alleged membership in an illegal organization, the Kurdish Communities Union (KCK). Mr Erbey faces a sentence of 7,5 to 15 years in prison should he be found guilty.
30. According to Mr. Erbey's lawyers, the charges are based on allegations that he participated in a workshop in Diyarbakir on constitutional amendments aimed at ensuring a greater respect for minorities' rights, that he made speeches on Kurdish rights made before the Parliaments of Belgium, Sweden and the UK, and that he attended a Kurdish Film Festival in Italy.
31. More than 4 years after his arrest, on 12 April 2014, Mr. Erbey was released from pre-trial detention. The next court appearance is scheduled for 7 July 2014.¹⁴

¹³ Human Rights Watch, "Turkey: nine human rights lawyers imprisoned", 22 January 2013, <http://www.hrw.org/news/2013/01/22/turkey-nine-human-rights-lawyers-imprisoned>

Case of Ramazan Demir

32. Mr. Ramazan Demir, a lawyer known for defending journalists and defendants in the Lawyers Trial Lawyers Trial has been prosecuted for words spoken in court in the course of defending his client, a journalist charged with membership in the KCK/PKK and attending meetings and demonstrations in contravention of the law. On July 16, 2013, he was charged with the crime of defamation against a civil authority, i.e. the prosecutor. Pursuant to section 125 of the Criminal Code this offence can be punished with up to two years imprisonment. It is unclear when this case will be tried.¹⁵
33. The prosecution of Mr Demir is only one of several cases in which lawyers face criminal charges for words spoken in court in the course of representing defendants accused of membership in KCK and PKK. These prosecutions are part of a pattern of prosecuting lawyers representing clients in politically sensitive cases and thereby preventing lawyers from fully exercising their legitimate professional activities.
34. The prosecution of Mr Ramazan Demir and his colleagues contravenes Article 20 of the Basic Principles which expressly states that lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before court.

b. Interference with the Istanbul Bar Association

35. Pursuant to Article 24 of the Basic Principles lawyers are entitled to form and join self-governing professional associations to, as far as is relevant here, represent their interests and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
36. Recently, the principle not to interfere with the executive body of the Istanbul Bar Association has not been respected:

Case of the President and the Board of the Istanbul Bar Association

37. In 2013, the President of the Istanbul Bar Association, Ümit Kocasakal, and the Board Members of the Bar Association, were accused of trying to influence the judiciary in the Balyoz-case, also known as the "Sledgehammer"-case. This is a criminal offence based on article 277 of the Turkish Criminal Code, punishable with 2 to 4 years of imprisonment.

¹⁴ FIDH, "Turkey: Muharrem Erbey released after 1.570 days in pre-trial detention", 14 April 2014.

¹⁵ Intervention of the President of the Law Society of England and Wales, 4 December 2013, <http://international.lawsociety.org.uk/files/Turkey%20Mr%20Ramazan%20Demir.pdf>

38. At a court hearing in the Balyoz-case on March 26, 2012, defense lawyers requested the opportunity to speak on behalf of their clients, which request was denied. The lawyers persisted and were expelled from the courtroom. The court asked the President of the Istanbul Bar Association to appoint other defense lawyers, which request was denied. The President and Board Members of the Istanbul Bar Association attended in court and asked the court to recognize and respect the lawyers and the rights of the defense. This provoked an investigation and prosecution of the President and the Board Members, on charges of 'influencing the judge'.
39. Three court hearings of these charges were held at the Heavy Penal Court in Silivri, on May 17 2013, January 7, 2014 and February 24, 2014. At the last hearing, the President and the Board Members were acquitted.¹⁶ The prosecution appealed.
40. The Law Society, L4L, LRWC and FTW urge the Turkish government to ensure that the executive bodies of the bar associations are free to exercise their functions without external interference.

c. Lack of protection against harassment and attacks on lawyers

41. There have also been attempts to harass and disrupt the work of lawyers in Turkey in cases where lawyers are defending human rights or representing persons perceived to be opponents of the Turkish authorities.
42. An example is the reaction of the authorities when 45 lawyers were attending the courthouse in Istanbul in June 2013 in solidarity with and to act on behalf of Gezi Park demonstrators who had been arrested earlier. Lawyers were arrested while issuing a press release relating to the protests. A video published online by Milliyet TV¹⁷ shows the lawyers, in their court robes, being roughly handled; some having their hands strapped behind their backs before being dragged onto a police bus.
43. The European Court of Human Rights (ECtHR) in February 2014 ruled that Turkey had violated Article 3 of the European Convention on Human Rights, regarding the ban of "ill-treatment and torture", in the case of human rights lawyer Gülizar Tuncer.¹⁸ On 16 September 2000, Mrs Tuncer took part in a protest against high security prisons. When she was about to give a press conference, she, together with 29 other lawyers, was arrested and dragged along the ground. As a result of her injuries, Mrs Tuncer was declared unfit to work for five days. The ECtHR ordered the Turkish government to pay Mrs Tuncer the sum of EUR 13,015 for damages and court expenses.
44. The Law Society, L4L, LRWC and FTW recommend that the Turkish government takes all legal and practical steps necessary to prevent that lawyers are threatened,

¹⁶ L4L, "President and board of Istanbul Bar Association acquitted", 26 February 2014, <http://www.advocatenvooradvocaten.nl/8851/nederlands-turkije-deken-en-bestuur-van-orde-van-advocaten-istanbul-vrijgesproken/>

¹⁷ <http://www.milliyet.tv/video-izle/Caglayan-Adliyesi-nde-polis-mudahalesi-nYPunUty07q4.html>

¹⁸ ECtHR, 11 February 2014, app.no. 32696/10, <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-140751>.

intimidated, hindered, harassed or subjected to improper interference while exercising their professional duties, in accordance with article 16 (a) of the Basic Principles.

45. Also, the Turkish government should ensure that crimes, harassment and other violations against lawyers are effectively investigated, publicly condemned at all levels and perpetrators of such acts are prosecuted.

II. IDENTIFICATION OF LAWYERS WITH THEIR CLIENTS OR THEIR CLIENTS' CAUSES CONTRARY TO THE BASIC PRINCIPLES ARTICLE 18

46. Both in the trial of Filiz Kalayci a.o., the Lawyers' Trial and the CHD-trial, the prosecution seems to identify lawyers with their clients or their clients' causes as a result of discharging their functions, contrary to article 18 of the Basic Principles.

47. The Law Society, L4L, LRWC and FTW urge the Turkish government to take all measures necessary to prevent lawyers from being subjected to judicial harassment, wrongful prosecution and arbitrary detention because the state wrongly identifies them with their clients' causes are identified with their clients or their clients' causes, in accordance with Turkey's legal obligations arising from the ICCPR and the Basic Principles.

III. DISRESPECT FOR THE PRINCIPLE OF CONFIDENTIALITY

48. In many of the cases described in this submission, the confidentiality of communications and consultations between lawyers and their clients within their professional relationship has not been respected. Lawyers' offices have been searched, files and computers have been seized, telephones have been tapped.

49. Also, the alleged "proof" in these cases is regularly based on information that stems from clients' files and / or conversations.

50. The Law Society, L4L, LRWC and FTW urge the Turkish government to provide lawyers with all the facilities, rights and privileges necessary for discharging their functions, including the right to consult and communicate with their clients freely and in full confidentiality, in accordance with article 22 of the Basic Principles.