

**Submission to the UN Universal
Periodic Review
of the Republic of Turkey**

*For consideration by the Office of the UN High
Commissioner for Human Rights for the 21st session
of the UPR Working Group in 2015*

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Introduction

1. This submission outlines The London Legal Group's (LLG) concerns in relation to the following human rights and related issues in the Republic of Turkey:
 - (a) Freedom of expression and association;
 - (b) Minorities and their cultural and language rights;
 - (c) Discriminatory practices towards women;
 - (d) Excessive use of force by state authorities and;
 - (e) Torture and ill-treatment of those detained by agents of the state and the conditions of detention
2. The LLG's concerns are based upon Turkey's obligations contained in a number of international treaties and conventions signed and ratified by Turkey, and in domestic legislation, all of which are identified during the course of this submission.

Freedom of expression and association

3. The LLG is particularly concerned by the extent to which the legislative framework in Turkey allows for violations of freedom of expression, despite the fact that Article 25 of the Constitution of the Republic of Turkey guarantees freedom of thought and opinion. However, Article 26(2) states that the exercise of this freedom "may be restricted for the purposes of protecting national security, public order...safety, the basic characteristics of the Republic and safeguarding the indivisible integrity of the State with its territory" which in itself could be used by the authorities as a leeway to escape the essence of Article 26.
4. Turkey is a signatory to the International Covenant on Civil and Political Rights of 1966 (ICCPR). Article 19(2) of the ICCPR entitles "everyone has the freedom of expression" including "the freedom to seek, receive, and impart information and ideas of all kinds." However, the Turkish Penal Code and Anti-terror Law criminalize and unduly punish varieties of expression guaranteed under the Turkish Constitution and the ICCPR.

5. There are continuing concerns about the freedom of expression in Turkey as criminal prosecutions frequently target non-violent dissenting opinions, particularly on controversial political issues and criticism of public officials and institutions.¹ Controversial issues include, “in particular expressing alternative identities (ethnic and religious minorities’ rights, particularly the Kurdish issue, and sexual minorities), and criticising the State and its institutions (the functioning of the institutions, including the independence of the judiciary and the impunity of the State and the army for human rights violations).”²
6. In June 2013 the Turkish authorities charged pianist Fazil Say with allegedly inciting hatred and insulting the values of Muslims over a series of posts on the social networking site Twitter.³ He retweeted the phrase; “I am not sure if you have also realized it, but if there’s a louse, a nonentity, a lowlife, a thief or a fool, it’s always an Allah-ist.”⁴ His sentence is in violation of the right to freedom of expression as the right includes the freedom to provoke, outrage and offend.⁵
7. Human rights activists and lawyers are also being targeted for prosecution, violence and in some instances arbitrary arrest and detention for their non-violent opinions and activities. Lawyers who defend their client’s civil and political rights in politically sensitive cases are frequently subjected to judicial harassment because the state wrongly identifies them with their clients or their clients’ causes. For example, we submitted urgent action letters to the Office of the High Commissioner for Human Rights ‘OHCHR’ in 2011 and 2013 to request their urgent intervention to investigate

² Spain urged Turkey to “Amend articles 301 and 318 of its Penal Code with a view of decriminalizing the explicitly non-violent exercise of freedom of expression” in UPR Recommendation no.138 which was openly rejected by Turkey.

³BBC “Turkish pianist Fazil Say convicted of insulting Islam” 15 April 2013 <http://www.bbc.co.uk/news/world-europe-22151212> Accessed on 14 April 2014

⁴ United States Department of State “Country Reports on Human Rights Practices for 2012” <http://www.state.gov/documents/organization/204558.pdf> Accessed on 14 April 2014

⁵ Article 19 “Turkey: Quash Twitter Pianist sentence in honor of free speech” 16 April 2013 <http://www.article19.org/resources.php/resource/3699/en/turkey:-quash-twitter-pianist-sentence-in-honour-of-free-speech> Accessed 19 May 2014

the unlawful and arbitrary arrest of forty-seven lawyers in 2011 and nine human rights lawyers in 2013 in Turkey;⁶ facing terrorism charges.⁷

8. In April 2013, Parliament passed a series of reforms as part of the “Fourth Judicial Package”, which failed to bring Turkish laws into line with international human rights standards. Contrary to the expectations by human rights organizations the Judicial Package did not abolish the most controversial articles in Turkish Penal Code leading to violations of the right to freedom of expression such as articles 301 (denigration of the Turkish nation), 125 (criminal defamation), 215 (praising a crime or a criminal), 318 (“alienating the public from military service), 216 (insulting religious values) and Article 7/2 of Anti-terror law (making propaganda for a terrorist organization).⁸

9. The Committee to Protect Journalists (CPJ)’s annual prison census in December 2013 illustrated that Turkey leads with at least 40 journalists in prison. Turkey also ranks 154th among 180 countries on the World Press Freedom Index.⁹ In the past year, 24 journalists have been released from Turkish jails, but many still facing charges.¹⁰ The release of journalists came after Turkey introduced changes to its anti-terrorism laws, reducing the term for detention on remand from 10 to five years, and because of judicial reform that eliminated certain courts with special authority.

10. Censorship is a widespread issue in Turkey. Since 2011, the ruling Justice and Development party (AK Party) has increasingly imposed restrictions on freedom of

⁶The lawyers engaged in promoting human rights standards, bringing severe human rights issues to the public attention, representing clients who have been victims of human rights violations particularly police violence. The lawyers detained in 2011 are well-known persons in the country with their certain activities in promoting human rights standards, bringing severe human rights issues to the public attention, representing clients who are tried before Specialised Heavy Penal Courts (the successor of the State Security Courts). The lawyers detained in 2013 are executives and members of the Contemporary Lawyers’ Association (ÇHD), an NGO that is widely known to provide legal assistance for Turkey's most controversial human rights abuse cases

⁷ FIDH “Turkey: Provisional releases and continued judicial harassment of 47 lawyers, one journalist, one legal secretary and two drivers” 20 March 2014 <http://www.fidh.org/en/europe/turkey/14993-turkey-provisional-release-and-continued-judicial-harassment-of-47-lawyers> Accessed on 8 April 2014

⁸ Amnesty International “Turkey: Legal reforms fall short on freedom of expression” 30 April 2013. <http://www.amnesty.org/en/news/turkey-legal-reforms-fall-short-freedom-expression-2013-04-30> Accessed 20 May 2014

⁹ The Guardian “Why Freedom of expression is under threat in Turkey” 27 March 2014 <http://www.theguardian.com/world/2014/mar/27/letters-turkey-freedom-expression> Accessed 19 May 2014

¹⁰ CPJ “Turkey releases 5 more journalists” 12 May 2014 <https://www.cpj.org/2014/05/turkish-authorities-release-five-more-journalists.php> Accessed 19 May 2014

speech, freedom of the press, and internet use as well as television content. This was particularly seen during the Gezi park protests¹¹ where mainstream channels avoided showing live coverage or any content in regards to the protests. The Radio and Television Supreme Council ((RTÜK) issued warnings to a number of television stations which had transmitted live coverage of the Gezi Park protests on the basis that they were “violating the principle of objective broadcasting and fined them for inciting violence”.¹²

11. On the 5th of February 2014, the Turkish Parliament approved a new law tightening government control over the internet. The legislation amends Turkey’s original 2007 Internet Law, allowing Turkey’s Telecommunications Authority (TİB) to block websites without first obtaining a court order. TİB, an executive board under direct control of the PM, has the power to order the blocking of an URL which requires Internet Service Providers to put the block in place within four hours. The telecommunication authority must seek a court order within 24 hours of the request. The URL will remain closed until the court has ruled on the request for an order.¹³
12. Twitter and YouTube have been the first victims of this restrictive Internet Law as they were suspended in March 2014. Stefan Füle¹⁴ stated that "Citizens must be free to communicate and choose freely the means to do it. This obviously includes access to the internet." He also stated that the ban "raises grave concerns and casts doubt on Turkey's stated commitment to European values and standards."¹⁵ Although the ban on Twitter and YouTube has currently been lifted, Turkey continues to block sites they

¹¹ The protests began in Istanbul against the Government’s plan to demolish Gezi Park located in Taksim square, Istanbul. Gezi Park is one of the few remaining green spaces in the center of Istanbul. The park was built on a relatively small area, and it is the only park that members of public can go with their family and enjoy outdoor leisure time in the city centre. The Government’s intention is to redevelop Gezi Park into a complex that will include a replica Ottoman-era barracks and a shopping centre. A small group of environmental activists initiated the protest against the Government’s planned proposals and started to occupy the Park on 27th May 2013. On 29th May 2013, police began to disperse the protesters using disproportionate force, by using tear gas and water cannons and which continued on 30th and 31st May 2013. The police’s swift and brutal response against the protesters escalated and spread the protest throughout Turkey

¹² European Commission, “Turkey 2013 Progress Report” 16 October 2013 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf Accessed on 26 March 2014

¹³The Guardian “ Turkey pushes through new raft of `draconian internet restrictions`6 February 2014 <http://www.theguardian.com/world/2014/feb/06/turkey-internet-law-censorship-democracy-threat-opposition> Accessed 21 May 2014

¹⁴ European Union's commissioner for enlargement

¹⁵ CNN “Turkey's Twitter ban condemned -- even by nation's own president” 24 March 2014 <http://edition.cnn.com/2014/03/21/world/europe/turkey-twitter-ban-condemned/> Accessed on 14 March 2014

view as a threat. It is also quite common for the authorities to block Kurdish-related sites. For example, ozgurluk.org and firatnews.org, as well as Kurdish video and radio web sites, such as medciwan.com were previously blocked on anti-terror grounds.¹⁶

Minorities and their cultural and language rights

13. Accessing education in mother tongue in the public school system for Kurds and other minority groups is still prevented. In September 2013, the Turkish Government launched the democracy package, which among other things gave the Kurds the right to Kurdish education in private schools, and eased but did not completely remove the restrictions on the use of letters q, w and x, which do not exist in the Turkish alphabet, but do in Kurdish. Restrictions remain for their use in official contexts. The reforms fell short of meeting expectations particularly due to financial constraints relating to access to mother tongue education in private schools and the continued limitations on the use of letters in the Kurdish alphabet.¹⁷ Restrictions on the use of mother tongue prevent individuals and communities from living rich and fulfilling lives, and represent a clear contravention of international law provisions, such as Article 27 of the UN International Covenant on Civil and Political Rights (ICCPR) which provides for the free exercise of language, culture and religion.

14. Alevis, the largest religious minority in Turkey, continue to face restrictions to practice their religion and belief. Alevi's are not represented in the Presidency of Religious Affairs (Diyanet İşleri Başkanlığı), the legal obstacles before opening schools where they can train their religious leaders and teachers remain and Alevi houses of worship (Cemevis) have not been given legal status which constitute a serious infringement on the right to freedom of religion or belief and the identity.¹⁸

¹⁶ United States Department of State "Country Reports on Human Rights Practices for 2012" <http://www.state.gov/documents/organization/204558.pdf> Accessed on 14 April 2014

¹⁷ Rudaw "On language day, Kurds Demand Education in Mother Tongue" 16 May 2014. <http://rudaw.net/english/middleeast/turkey/16052014> Accessed 20 May 2014

¹⁸ Norwegian Helsinki Committee "Alevi cem hoses: Freedom of Religion or Belief in Turkey" 2014 http://inancozgurlugugirisimi.org/wp-content/uploads/2014/04/NHCIORG_PolicyPaper_Alevi-final.pdf Accessed 20 May 2014

Discriminatory practices towards women

15. Turkey has taken some legislative steps in order to prevent violence against women. On 8th March 2012, Turkey passed Law No. 6284 Prevention of Violence against Women and the Protection of the Family. This provision was passed in order to overcome the shortcoming of Law for the Protection of the Family No. 4320, by protecting all women “irrespective of their marital status.”¹⁹ On 14th March 2012, Turkey ratified the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence. Nevertheless, the US Country Report of 2013 indicates that the Turkish government has not “effectively enforced” the law on violence against women.²⁰ In its 2013 progress report, the European Commission (EC) also stated that stopping violence against women and in particular honour killings, continues to be a “major challenge” for Turkey especially in the south-east region which is predominantly populated by Kurds.²¹

16. It has been reported that during the first 9 months of the year 2013, 842 women were killed.²² Data released for the first four months of 2014 reveals that 89 women were killed, 19 raped, 200 battered and 19 harassed in that time period²³ These figures illustrate that, human rights violations continue against women systematically and despite improvements through new legal provisions, the situation continues to remain alarming in practice.

¹⁹ Hurriyet Daily News “Female activists make history with new law to protect women” <http://www.hurriyetdailynews.com/female-activists-make-history-with-new-law-to-protect-women.aspx?pageID=238&nID=15649&NewsCatID=339> Accessed on 26 March 2014

²⁰U.S Department of State, “Country Reports on Human Rights Practices for 2013” <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220341#wrapper> Accessed on 26 March 2014

²¹European Commission, “Turkey 2013 Progress Report” 16 October 2013 http://ec.europa.eu/enlargement/pdf/key_documents/2013/package/brochures/turkey_2013.pdf Accessed on 26 March 2014

²²“ Radikal, CHP'den 'Öteki Türkiye' raporu: 2013 yılında 842 kadın öldürüldü”18 November 2014,http://www.radikal.com.tr/politika/chpden_oteki_turkiye_raporu_2013_yilinda_842_kadin_oldu_ruldu-1161457

²³ Bianet “ Men Kill 29 Women in April” 6 May 2014 <http://www.bianet.org/english/women/155487-men-kill-29-women-in-april> Accessed on 7 May 2014

Excessive use of force by state authorities

17. In late May 2013, protests began against an urban development project in Gezi in which the Turkish authorities displayed a blatant disregard for the right to peaceful assembly as set out in international and national law by continuously discrediting the protestors' motives who were labelled as "hooligans" by Prime Minister Recep Tayyip Erdoğan in his speech of June 2013.²⁴ Further, Egemen Bağış, Minister for EU Negotiations, also stated that "the state will have to consider every individual [in Taksim] as members of terrorist organizations".²⁵ Despite the fact that the right to peaceful protest is a recognised as human right in international and national law, the authorities characterised the Gezi Park protests as a threat to democracy that must be stopped; hence employing the use of excessive force to achieve this.
18. The level of police violence and the response of the authorities against the demonstrators were clearly excessive with eight people killed as a result of police action.²⁶ The Turkish Medical Association reported that as of 10 July 2013, more than 8,000 people had been injured at the scene of demonstrations, of which more than 61 were severe injuries. Eleven people were reported by the Association as having lost an eye and 104 as having received serious head injuries.²⁷ Many of the deaths and injuries arose from the repeated and unnecessary use of water cannons were used repeatedly and as a principle means of 'dispersing' protestors. Water cannons and tear gas were also repeatedly used against peaceful demonstrators. The government announced that approximately 130,000 gas canisters²⁸ had been used during the first twenty days.²⁹

²⁴ Human Rights Watch "Turkey: End Incorrect, Unlawful Use of Teargas" 17 July 2013 <https://www.hrw.org/news/2013/07/16/turkey-end-incorrect-unlawful-use-teargas> Accessed on 25 March 2014 He also went onto say "We will not feed our police to them [the protesters]" and, "Should we have left the squares to anarchists and terrorists?"

²⁵ Hurriyet "Egemen Bağış'tan Taksim protestolarıyla ilgili açıklama" 16 June 2013 <http://www.hurriyet.com.tr/gundem/23517868.asp> Accessed on 25 March 2014

²⁶ BBC "Turkey clashes after boy hurt at Istanbul protest dies" 11 March 2014 <http://www.bbc.co.uk/news/world-europe-26526198> Accessed 21 May 2014

²⁷ Amnesty International "Gezi Park Protests" October 2013 <http://www.amnestyusa.org/sites/default/files/eur440222013en.pdf> Accessed on 25 March 2014

²⁸ Milliyet "Devletin gazı 20 günde bitti" 19 June 2013 <http://gundem.milliyet.com.tr/devletin-gazi-20-gunde-bitti/gundem/detay/1724846/default.htm> Accessed on 25 March 2014

²⁹ This is equivalent to a years supply.

19. The excessive use of violence also continued in 2014. Two men were killed on 31st May 2014 during the anniversary of Gezi Park protest. Human Rights Association (IHD) announced 11 were injured during the protest.³⁰ Two Kurdish men were also killed on 7th June 2014 after the soldiers in Lice, Diyarbakir opened fire against protestors who were demonstrating against government plans to build new military barracks.³¹

Torture and ill-treatment of those detained by agents of the state and the conditions of detention

20. The period between 2002 and now saw a raft of legislative reforms in Turkey designed to bring the state's human rights provisions in line with international human rights standards and the Copenhagen Criteria for EU Accession in particular, the 'zero-tolerance policy' against torture. Notwithstanding these developments, the conduct of law enforcement officials remains a source of important human rights concerns in Turkey.

21. Turkey finally ratified the Optional Protocol to the UN Convention against Torture (OPCAT) on 27th September 2011. The Turkish Parliament adopted an Act on the establishment of the Turkish Human Rights Institution³² on 21 June 2012. However both the establishment process and the statute of this Institution were subject to intense criticism by civil society organisations, in particular on the grounds of non-compatibility with the Paris Principles. The civil society organizations criticized government for controlling appointments to the national institution's board and claimed that the Institution lacked guarantees for the independence and impartiality of the members of the Human Rights Board; the fact that the personnel of the Institution would be subject to ordinary legislation on personnel and recruitment of civil servants, without the necessary additional guarantees for independence; and the extensive

³⁰ Axis of Logic "Protests in Turkey" 2 June 2014 http://axisoflogic.com/artman/publish/Article_66685.shtml
Accessed on 11 June 2014

³¹ BBC News "Two Kurds die in protest over new Turkish army posts" 8 June 2014
<http://www.bbc.co.uk/news/world-europe-27753043> Accessed 11 June 2014

³² The tasks of the Human Rights Institution include: activities for the protection and promotion of human rights and prevention of violations; fight against torture and ill-treatment; investigation of complaints and applications and follow-up of the results; activities for the resolution of identified human rights problems and education activities for this purpose; research and investigation in order to monitor and assess human rights developments.

powers of the President and the Vice-President of the Human Rights Board (elected by the Board members directly), as opposed to a more collegial approach favoured by civil society.³³

22. Despite procedural and legislative change implementation of the prohibition against torture and inhuman and degrading treatment remains ineffective, the problem of impunity for rights violations against prisoners in particular continues. The LLG has sent a number of Urgent Action letters to the Office of the High Commissioner for Human Rights UN Special Rapporteurs urging them to investigate situations of prisoners' in Turkish prisons all of which have been tortured and or ill treated by the authorities.

23. An urgent action letter was sent to OHCHR (see paragraph 7) for the arbitrary arrest of nine human rights lawyers³⁴; “The lawyers were subjected to ill- treatment during their arrests and detention. Some of the lawyers were beaten by police while they were being arrested while others were forcibly made to lie down on the floor for a body search by riot police officers. Police used force and dragged them along the floor while taking their fingerprints, blood and saliva samples. They were deprived of water and not allowed to use the toilets for 24 hours following their detention.”³⁵

24. Urgent Action letters were also sent to OHCHR in regards to torture and ill-treatment of children in Pozanti,³⁶ Sakran³⁷ and Sincan³⁸ Juvenile Prisons. Switzerland urged Turkey to “take all necessary steps to comply with the pertinent norms and principles in the area of juvenile justice” in recommendation 147 of the UPR which was accepted

³³ Report by Nils Muižnieks Commissioner for Human Rights of the Council of Europe, Following his visit to Turkey from 1 to 5 July 2013, 26 November 2013
<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2395759&SecMode=1&DocId=2079692&Usage=2> Accessed 21 May 2014

³⁴ Submitted to OHCHR on 11 February 2013

³⁵ Ibid.

³⁶ Urgent Action letter was submitted to OHCHR on 31 October 2012 in relation to abuses and rape suffered by Kurdish children in Pozanti Prison, Adana, Turkey

³⁷ Urgent Action letter was submitted to OHCHR on 18 December 2013 in relation to allegations of torture and ill-treatment suffered by children in Sakran Prison, Izmir, Turkey

³⁸ Urgent Action letter was submitted to OHCHR on 5 March 2014 in relation to allegations of torture and ill-treatment suffered by children in Sincan Prison, Ankara

by Turkey.³⁹ However serious problems remain especially since the recent allegations of torture in Sincan juvenile prison. Kurdish children in general continue to face prosecution under anti-terrorism laws with charges carrying heavy penalties.

25. Further, prison conditions in Turkey lack the proper facilities needed to accommodate ill prisoners. A number of urgent action letters were submitted to OHCHR with regard to seriously ill-prisoners⁴⁰ who are not released despite the severity of their illness and their inability to endure the conditions of prison life. In March 2013 the European Court of Human Rights (ECtHR) found Turkey guilty of violating the ECHR for “failing to accord an inmate proper access to health services in prison prior to her death from cancer in 2001”.⁴¹ However urgent action letters submitted to the OHCHR by the LLG illustrate that, despite the aforementioned decision, Turkey continues to overlook the needs of seriously ill prisoners. The European Commission stated that reform of the “prison system continued, with improved detention condition but further reforms remain necessary”.⁴² The LLG remains concerned about conditions of detention and imprisonment, including unsatisfactory access to medical care for prisoners and arbitrary and unfair disciplinary proceedings.

Conclusion

26. The human rights situation in Turkey remains a matter of serious concern despite earlier recommendations from the UPR and opportunities for improvement. It is clear that there is still a very long way to go before it can claim to meet the human rights standards set out in the international human rights instruments it is a party to. Reforms are necessary at constitutional level to bring its national legislation in line with its obligations under international law.

³⁹ <http://www.upr-info.org/followup/index/country/turkey>

⁴⁰ Urgent action letters were submitted to OHCHR on 17 September 2012 in relation to irreparable risk to health of 47 severely ill-prisoners; on 19 November 2013 in relation to immanent death and irreparable risk to health of Hasan Kacar in Metris R Type Prison; on 5 March 2014 in relation to Immanent death and irreparable risk to health of Salih Tuğrul in Siirt E Type Prison in Turkey.

⁴¹ European Commission, *Turkey 2013 Progress Report*, 16th October 2013, at p.51, available at http://www.abgs.gov.tr/files/strateji/tr_rapport_2013_en.pdf

⁴² *Ibid.* p. 13

27. Investigations must be made particularly with regard to allegations of torture and ill treatment against those who are detained as well as gender based violence perpetrated against females. Those who commit crimes should be held accountable and effective remedies should be provided to victims. Furthermore, protection for journalists and human rights lawyers should be provided as well as the general public in terms of exercising their freedom of expression.

28. The LLG recommends that Turkey improves its stance in regards to freedom of expression, its treatment of those who are detained as well as its treatment towards women.