

Observatory for the Protection of Human Rights Defenders (FIDH/OMCT)
Human Rights Association (IHD)
International Association of Lawyers (UIA)
Conférence Internationale des Barreaux de Tradition Juridique Commune
(CIB)
European Democratic Lawyers (EDL / AED)
Lawyer's Rights Watch Canada (LRWC)
Lawyers for Lawyers (L4L)
Conseil National des Barreaux (CNB)
Syndicat des Avocats de France (SAF)
Barreau de Grenoble
Barreau de Montpellier
Barreau de Paris
Barreau de Rennes
Institut des droits de l'Homme du Barreau de Grenoble
Institut des Droits de l'Homme du Barreau de Montpellier
Ordre français des Avocats du Barreau de Bruxelles

**Attn. Ms. Gabriela Carina
Knaul de Albuquerque e Silva**
UN Special Rapporteur on the
independence of judges and
lawyers

Attn. Ms. Margaret Sekaggya
UN Special Rapporteur on the on
the situation of human rights
defenders

Paris-Geneva-Brussels,
July 11, 2012

NEEDING IMMEDIATE ATTENTION

Re : Ongoing judicial harassment against lawyers in Turkey, jeopardizing their independence.

Dear Ms. Knaul de Albuquerque e Silva, Dear Ms. Sekaggya,

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), the Human Rights Association (*Insan Haklari Dernegi* - IHD), the International Association of Lawyers (*Union internationale des avocats* – UIA), the Conférence internationale des Barreaux de Tradition Juridique Commune (CIB), the European Democratic Lawyers (EDL), Lawyer's Rights Watch Canada (LRWC), Lawyers for Lawyers (L4L), the Conseil National des Barreaux (CNB – France), the Syndical des Avocats de France (SAF – France), the Grenoble Bar Association (France), the Montpellier Bar Association (France), the Paris Bar Association (France), the Rennes Bar Association (France), the Human Rights Institute of the Grenoble Bar Association, the Human Rights Institute of the Montpellier Bar Association and the French-Speaking section of the Brussels Bar Association, hereby have the honour to submit to you the following information with regard to the ongoing judicial harassment against lawyers in Turkey, and kindly urges you to take action in relation to this case.

On the basis the report published by the UN Special Rapporteur on the independence of judges and lawyers in May 2012 following the mission conducted to Turkey in October 2011 (ref. A/HRC/20/19/Add.3) we conclude that you are both fully aware of the situation in the country, and in particular of the arrest, detention and prosecution of lawyers under terrorism-related charges for defending individuals accused of terrorism-related crimes.

In Turkey, cases of judicial harassment against lawyers for merely defending their clients' rights in politically sensitive cases are not new but, during the past years, they have become frequent. As you know, many lawyers suffer judicial harassment because they are identified with their clients or the cause they defend. Notably, lawyers who represent clients in anti-terrorism cases, in turn face prosecution for terrorism on the basis of the vague provisions on "membership", "support" or "propaganda". This practice blatantly violates international human rights law¹. Other lawyers have also suffered harassment due to their involvement in the promotion of universal human rights standards, as has been the case for İHD members and lawyers Mr. Muharrem Erbey, Mr. Hasan Anlar, Ms. Filiz Kalaycı, Mr. Halil İbrahim Vargün, and Mr. Murat Vargün. This trend is particularly problematic in that it constitutes a serious obstacle to the strengthening of the rule of law.

We fear that justice is misused as a weapon to repress, intimidate and punish lawyers, through criminal proceedings that blatantly violate the right to a fair trial. Lawyers are an important component in the functioning of the justice system and play a crucial role in defending the Rule of Law.

In addition, the lawyers' rights to defence are infringed upon, as prolonged pre-trial detention is used very frequently and may be seen as a form of punishment *per se*, independently of the outcome of the trial. Over the past years, the Anti-Terrorism Law (ATL) has been particularly used against human rights defenders, including lawyers, which entails the application of a set of rules less protective of the rights of the defence: obstacles to the access of evidence against defendants, excessive length of criminal proceedings, impossibility to counter examine some witnesses, etc.

Finally, we are concerned that during such investigations, the principle of confidentiality of communications and consultations between lawyers and their clients in the framework of their professional relationship has been violated (Principle 22 of the Havana Principles). Indeed, communications between the lawyers and their clients were intercepted, law offices were searched, etc.

The vague definition of terrorism and its interpretation by the courts has made it possible for prosecutors and judges to consider that the mere criticism of the authorities for their human rights record may in itself be construed as a form of support to terrorist groups or evidence of membership in terrorist groups. In this context, those who defend or take a stand for the promotion or protection of human rights are particularly vulnerable to judicial harassment.

Regarding the harassment of lawyers defending clients in terrorism-related cases, defence lawyers of imprisoned Kurdistan Workers' Party (PKK) leader, Mr. Abdullah Öcalan, have been particularly at risk². Indeed, after 2005, when the Grand Chamber of the ECtHR

¹ The 1990 Havana Basic Principles on the Role of Lawyers indicate that "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions" (Principle 18) and Article 9.3 of the UN Declaration on Human Rights Defenders provides that "everyone has the right, individually and in association with others, *inter alia*, (...) "to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms".

² It is notably the case of Abdulhamit Arslanlar, Ahmet Avcı, Ali Maden, Asya Ülker, Aydın Oruç, Ayla Ata Akad, Ayşe Batumlu, Aysel Tuğluk, Baran Doğan, Baran Pamuk, Bekir Benek, Bekir Kaya, Cemal Demir, Cengiz Çiçek, Deniz Büyük, Devrim Barış Baran, Doğan Erbaş, Ebru Günay, Feridun Çelik, Fethi Gümüş, Filiz Köstak, Fırat Aydınkaya, Fuat Coşacak, Hadice Korkut, Hakan Bozyayla, Hüseyin Cangir, İ. Akmeşe, İbrahim Bilmez, İlhami Sayan, İnan Poyraz, İrfan Dündar, M. Ali Birand, M. Eraslan, M. Rollas, Mahmut Şakar, Mahmut Vefa, Mehmet Ayata, Mehmet Bayraktar, Mehmet Deniz Büyük, Mehmet Erbil, Mehmet Kaya, Mehmet Nuri Deniz, Mehmet Sabırtaş, Mizgin Irgat, Muhammed Serdar Özer, Muharrem Şahin, Muhti Öztüzün, Mustafa Eraslan, Muzaffer Akad, Muzaffer Demir, Muzaffer Kutay, Nezahat Paşa Bayraktar, Niyazi Bulgan, Okan Yıldız, Ömer Güneş, Osman Aktaş, Osman Çelik, S. Tanrikulu, Selim Kurbanoglu, Serkan Akbaş, Servet Demir, Servet Özen, Sevil Küçükkoşum, Süleyman Kaya, Süleyman Özbayhan, Türkan Aslan, Yalçın Sarıtaş and Zeynal Değirmenci.

condemned Turkey for violation of the rights of defence of Mr. Öcalan³, more than one hundred criminal cases were opened, against at least dozens lawyers who had acted in legal representation of Mr. Öcalan for “*complicity with a terrorist organisation*”, based on the violation of Article 314 of the Turkish Penal Code (TPC) and Articles 6 and 7 of the Anti-Terrorism Law.

This systematic judicial harassment against these lawyers appeared to exclusively aim at weakening and sanctioning the rights of the defence by punishing defence lawyers for the mere exercise of their legitimate professional activities. The charges were based on tape records between Mr. Öcalan and his lawyers during their meetings in the İmralı prison, press articles, interviews in the media and public declarations made by his lawyers. The court found some of them not to be guilty. Nonetheless, further criminal cases were launched against those same lawyers, as well as others under the same charges in violation of the principle “*Non bis in idem*”. Furthermore, several lawyers were sentenced to a ban to exercise their profession for one year, and nine lawyers were sentenced to imprisonment.

In November 2011, the pattern of judicial harassment against lawyers marked a new unprecedented step with the mass arrests of several dozens lawyers under the same investigation process. On November 22, 2011, a broad campaign of arrests was launched in 16 cities targeting 46 lawyers, 3 staff working for a legal firm and one journalist in the context of an anti-terrorism operation. This operation was publicly presented as intending to dismantle an alleged terrorist network - the Kurdish Communities Union (KCK) - an organisation said by the authorities to be the “urban branch” of the armed PKK. Since 2008, several operations of this kind have been launched, targeting mostly executives and members of the Kurdish political party Peace and Democracy Party (BDP), İHD members, members of trade unions, lawyers and journalists, who have been advocating for a peaceful resolution of the Kurdish issue.

The lawyers were taken into custody in Istanbul for their alleged membership in KCK under charges of “*membership in an illegal organisation*” and “*being executives of an illegal organisation*”. 36 of them were remanded into custody between November 26 and December 7 pending the end of the investigation after they had been interrogated at the Beşiktaş (Istanbul) Heavy Penal Court No. 11. They are currently detained in İstanbul Bakırköy Closed Prison for Females or Kocaeli Kandıra F Type Closed Prison No. 2 for men⁴. All of them have been involved in the legal representation of Abdullah Öcalan and have been accused of “*passing orders of Abdullah Öcalan*”. Some of them were already the subject of judicial harassment on the same basis (see above). Those arrested also included defence lawyers who are engaged in the main KCK trial handled by the Diyarbakır High Penal Court No. 6. The lawyers took a stance against the Kurdish language ban during defence before the Diyarbakır courts as a matter of principle and stated that they would not be able to defend their clients. Both the lawyers and the Diyarbakır Bar Association were warned several times by the court and the prosecutors about “*committing a crime*”.

On April 18, 2012, the court accepted the indictment order submitted to it on April 6 but did not schedule a hearing for the case. The lawyers were charged with “belonging to a criminal organisation” under Article 314 of the Turkish Penal Code.

This case, which is known as the “*Lawyers trial*” is due to open on July 16-18, 2012, and therefore needs your immediate attention.

The signatory organisations express their deepest concern about the ongoing judicial harassment against the above mentioned lawyers, whose aim appears to exclusively punish them for merely exercising their legitimate professional activities, in disregard of the Turkish obligation to comply with the international standards regarding the independence of the judiciary, the statute of the lawyers as well as the protection of human rights defenders (in

³ See ECtHR judgment, Öcalan vs. Turkey, May 12, 2005.

⁴ The list is annexed herein-below.

addition to the International Covenant on Civil and Political Rights, see the 1990 Havana Basic Principles on the Role of Lawyers the Declaration on Human Rights Defenders, adopted on December 9, 1998 by the United Nations General Assembly).

In view of the gravity of this situation, we hereby kindly urge you to take action in the framework of your mandates so that the charges against the 50 lawyers, legal workers and the journalist be dropped and, more generally, that judicial harassment targeting lawyers stop, as they are baseless and seem to only aim at punishing them for their defence activities.

We hope that you will be able to take action in the framework of your mandate, and remain at your entire disposal should you need any further information.

Yours sincerely,

Antoine Bernard
Chief Executive Officer, FIDH

Gerald Staberock
Secretary General, OMCT

Öztürk Türkdöğän
President, IHD

Driss Chater
President, UIA

Mario Stasi
Secretary General, CIB

Frédéric Ureel,
Chairman, EDL

Gail Davidson,
Executive Director, LRWC

Adrie van de Streek
Executive Director, L4L

Christian Charrière Bournazel
President, Conseil National des Barreaux (France)

Pascale Taelman
President, Syndicat des Avocats de France

Jean-Yves Balestas
President, Grenoble Bar Association

Michelle Tisseyre
President, Montpellier Bar Association

Christiane Féral-Schuhl
President, Paris Bar Association

Maryvonne Lozach'meur
President, Rennes Bar Association

Clémentine Frances

President, Human Rights Institute of the Grenoble Bar Association

Georges Peridier

President, Human Rights Institute of the Montpellier Bar Association

Jean-Pierre Buyle

President, French Speaking Section of the Brussels Bar Association

Attached documents :

1. Turkey – Human rights defenders, guilty until proven innocent – International Fact-Finding Mission – Report, Observatory for the Protection of Human Rights Defenders (FIDH - OMCT), May 2012: <http://www.fidh.org/IMG/pdf/obsrapportro5062012eng.pdf>

Annexes:

1. List of lawyers detained

	Names	Bar Association	Place of detention	Charge
01	Şaziye ÖNDER	Ağrı	Bakırköy Kapalı Kadın Cezaevi / İSTANBUL	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
02	Yaşar KAYA	Ardahan	Kandıra 2 Nolu F Tipi Cezaevi/ KOCAELİ	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
03	Mehdi ÖZTÜZÜN	Batman	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
04	Mehmet Deniz BÜYÜK	Bursa	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
05	Faik Özgür EROL	Diyarbakır	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
06	Muharem ŞAHİN	“	Kandıra 1 Nolu F Tipi Cezaevi /KOCAELİ	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
07	Osman ÇELİK	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
08	Serkan AKBAŞ	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
09	Fuat COŞACAK	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
10	Mehmet AYATA	“	Silivri 2 Nolu L Tipi Kapalı Cezaevi /İSTANBUL	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

11	Mehmet Nuri DENİZ	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
12	Aydın ORUÇ	Denizli	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
13	Davut UZUNKÖPRÜ	Hakkari	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
14	İbrahim BİLMEZ	İstanbul	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
15	Mustafa ERASLAN	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
16	Emran EMEKÇİ	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
17	Cengiz ÇİÇEK	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
18	Asya ÜLKER	“	Bakırköy Kapalı Kadın Cezavi	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
19	Doğan ERBAŞ	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
20	Hatice KORKUT	“	Bakırköy Kapalı Kadın Cezaevi	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
21	Hüseyin ÇALIŞCI	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
22	Ömer GÜNEŞ	“	Kandıra 2 Nolu	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
23	Mehmet Sani KIZILKAYA	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
24	Mehmet BAYRAKTAR	İzmir	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
25	Servet DEMİR	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
26	Mizgin IRGAT	“	Bakırköy Kapalı Kadın Cezaevi	“member of a criminal organisation” under Article 314(2) of the

27	Mahmut ALINAK	Kars	Kandıra 2 Nolu	Turkish Penal Code “member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
28	Bedri KURAN	Mersin	Kandıra 2 nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
29	Mensur IŞIK	Muş	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
30	Şakir DEMİR	Siirt	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
31	Mehmet Sabır TAŞ	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
32	Veysel VESEK	Şırnak	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
33	Hakzan SADAK	“	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
34	Cemo TÜYSÜZ	Urfa	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
35	Sabahattin KAYA	Van	Kandıra 2 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
36	Cemal DEMİR	“	Kandıra 1 Nolu	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

2. Other lawyers prosecuted:

	Names	Bar Association	Status	Charge
01	Ümit SİSLİGÜN	Istanbul Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
02	Erdal SAFALI	Hakkari Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
03	Ayşe BATUMLU KAYA	Bursa Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
04	Nevzat ANUK	Hakkari Bar Association	On provisional release	“member of a criminal organisation” under

				Article 314(2) of the Turkish Penal Code
05	Baran PAMUK	Diyarbakir Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
06	Ergün CANAN	Hakkari Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
07	Nezahat PAŞA BAYRAKTAR	Izmir Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
08	Meral ATASOY ATAN	Diyarbakir Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
09	Fırat AYDINKAYA	Istanbul Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
10	Yalçın SARITAŞ	Van Bar Association	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code

3. Non-lawyers prosecuted in the same case:

	Names	Occupation	Status	Charge
2	Cengiz KAPMAZ	Journalist	Detained in Kandira F Type Prison.	“executive of a criminal organisation” under Article 314(1) of the Turkish Penal Code”
3	Sabahat Zeynep ARAT	Legal secretary of Asrin Law Firm	Detained in Bakirkoy Kadin Kapali Cezaevi.	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
4	Hüseyin KARASU	Driver in Asrin Law Firm	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code
	Sıdık BAL	Driver in Asrin Law Firm	On provisional release	“member of a criminal organisation” under Article 314(2) of the Turkish Penal Code