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Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them
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BY AIRMAIL

President of Turkey
Mr. Abdullah Gül
Cumhurbaşkanlığı Genel Sekreterliği
06689 Çankaya
ANKARA, **TURKEY**

Monday, January 28, 2013

Re: New mass arrest of Turkish lawyers

Your Excellency,

The Dutch Lawyers for Lawyers (L4L) Foundation ("Stichting Advocaten voor Advocaten"), Lawyers Rights Watch Canada (LRWC) and Fair Trial Watch (FTW) are independent and non political foundations that seek to promote the proper functioning of the rule of law by pursuing freedom and independence of the legal profession. These organizations do this by supporting lawyers worldwide who are threatened or suppressed in the execution of their profession.

According to our information, 15 lawyers were arrested on 18 January 2013 during raids that were carried out by police forces in seven big cities in Turkey. Amongst those arrested are the Istanbul branch head of Çağdaş Hukukçular Derneği (ÇHD, Progressive Lawyers' Association) Taylan Tanay, and also ÇHD executives Güray Dağ, Efkân Balaç, Günay Dağ, Gülvin Aydın, Ebru Timtik, Barkın Timtik, Naciye Demir, Güçlü Sevimli en Sükriye Erdem. The head of the ÇHD, Selçuk Kozağaçlı, and an executive board member, Oya Aslan, were abroad at the time of the raids but were arrested on their return to Turkey on 21 January 2013. We understand that the offices of ÇHD in Istanbul and Ankara and of the People's Law Office, as well as several lawyers' houses, were searched.

Most lawyers that were taken into custody reportedly worked for the People's Legal Aid Bureau and all lawyers are known for their work on human rights and torture issues. As we understand it, these arrests are part of a campaign against the lawyers' clients. The arrests do not appear to be properly based on reasonable grounds to suspect the lawyers of any involvement in criminal activity.

After the November 22, 2011, arrest of 46 lawyers who are accused of transmitting orders of Abdullah Öcalan to KCK-members, this is the second mass arrest of lawyers in a short period of time.

L4L, LRWC and FTW are deeply concerned by these mass arrests that prevent our colleagues from performing their professional duties. These mass arrests indicate that judicial harassment against lawyers in Turkey has become large-scale and systematic. Lawyers defending clients accused of terrorism-related offences or otherwise involved in defending universal human rights standards are at risk.

On 24 January 2013, four Ankara lawyers, Ms Filiz Kalayci, Mr. Hasan Anlar, Mr. Halil Ibrahim Vargün and Mr. Murat Vargün were sentenced to imprisonment for 6 years and 3 months up to 7 years and 6 months for membership of a terrorist organization. L4L and FTW have closely followed this case and attended most trial hearings. Our observation of the case confirmed most of the concerns about the interpretation and application of the Turkish Anti-Terrorism Act (Act. No. 3713) and certain provisions of the Turkish Criminal Code (TCC)¹, notably Article 220 dealing with criminal organizations set out in the reports by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe. This strengthens our fear that criminal proceedings are being misused to repress, intimidate and punish lawyers. This practice results in arbitrary detentions, discourages lawyers from representing clients involved in politically sensitive cases and undermines the right to be legally represented and thus constitutes a serious violation of the rule of law and Turkey's international law obligations.

We again urge the Turkish government to:

- recognize the valuable role played by lawyers in a democratic society as the Republic of Turkey;
- ensure the independence and safety of lawyers in their professional and personal capacities in compliance with international law duties arising from the United Nations *International Covenant on Civil and Political Rights (ICCPR)* and the *European Convention on Human Rights (ECHR)*.

L4L, LRWC and FTW are concerned that these arrests violate Turkey's international law obligations to:

- ensure and protect the right and duty of lawyers to vigorously represent their clients free from interference and reprisals from state agents and others; and,
- protect and ensure for all, rights protected by the Universal Declaration on Human Rights (*UDHR*), the *ICCPR* and the *ECHR* including the right to liberty and to the presumption of innocence.

The United Nations *Basic Principles on the Role of Lawyers*² (the "*Basic Principles*") are particularly relevant. The objective of the *Basic Principles* is to elaborate on the

¹ Reports of the Commissioner for Human Rights following his visit to Turkey from 10 to 14 October 2011 <https://wcd.coe.int/ViewDoc.jsp?id=1892381> and following his visit from 27 to 29 April 2011 <https://wcd.coe.int/ViewDoc.jsp?id=1814085>

² *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at

State's duty to guarantee the proper role and functioning of lawyers, to the end of fulfilling the fundamental requirement that all persons have effective access to legal services and to justice. Unanimously adopted by the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba (7 September 1990), the *Basic Principles* build on the premise that adequate protection of the rights of individuals is dependent on all persons having access to legal services for the purpose of accessing justice. The UN General Assembly subsequently endorsed the *Basic Principles* and "urged States to respect them and to take them into account within the framework of their national legislation and practice". The *Basic Principles* are broadly accepted in their own right by the international community, and are also reflected in binding human rights instruments such as the ICCPR, the UN Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment.³

According to the *Basic Principles*, governments must ensure that lawyers "are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference".⁴ Further to the obligation of States to protect the security of human rights defenders, the *Basic Principles* state that "where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities".⁵

In the same vein, the ICJ's *Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* ("Geneva Declaration" or "Declaration") addresses threats to human rights protection and establishes the key respective responsibilities and roles of judges, the legal profession and States, in situations of crisis. For this reason, the ICJ's *Geneva Declaration* is particularly relevant to Turkey and the *Declaration* affirms that during times of political or social crisis, increased vigilance must be accorded to the respective roles of lawyers, judges and States.⁶

Principle 7 of the *Geneva Declaration* addresses the State's obligation to ensure that lawyers are protected against human rights threats and insulated from impediments to their independent functioning. This is consistent with Principle 7 of the *Basic Principles*:⁷

Since the protection of human rights may be precarious in times of crisis, lawyers should assume enhanced responsibilities both in protecting the rights

118 (1990), available at: <http://www2.ohchr.org/english/law/lawyers.htm>.

³ The *Basic Principles* are considered to be a soft-law instrument. However, the rights included in the *Basic Principles* are largely included in binding international or regional human rights treaties, for instance the International Covenant on Civil and Political Rights, the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Economic, Social and Cultural Rights, the European Convention on Human Rights, the US Convention on Human Rights and the African Charter on Human and Peoples' Rights. The preamble states that they "should be respected and taken into account by Governments within the framework of their national legislation and practice".

⁴ *Basic Principles on the Role of Lawyers*, Principle 16(a).

⁵ Ibid at Principle 17.

⁶ The International Commission of Jurists *Geneva Declaration on Upholding the Rule of Law and the Role of Judges and Lawyers in Times of Crisis* is a soft law instrument adopted by the World Congress of that influential international body of jurists which is dedicated to ensuring respect for international human rights standards through the law. Information about the International Commission of Jurists available at: <http://www.icj.org/>.

⁷ *Geneva Declaration*, at Principle 7.

of their clients and in promoting the cause of justice and the defence of human rights. All branches of government must take all necessary measures to ensure the protection by the competent authorities of lawyers against any violence, threats, retaliation, de facto or de jure discrimination, pressure or any other arbitrary action as a consequence of their professional functions or legitimate exercise of human rights. In particular, lawyers must not be identified with their clients or clients' causes as a result of discharging their functions. The authorities must desist from and protect against all such adverse actions. Lawyers must never be subjected to criminal or civil sanctions or procedures which are abusive or discriminatory or which would impair their professional functions, including as a consequence of their association with disfavoured or unpopular causes or clients. (emphasis added)

In particular, we draw your attention to paragraphs 16 and 17 of the United Nations' Basic Principles on the Role of Lawyers, that state that the government is under an obligation "to ensure that lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference". According to paragraph 18 "lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions".

Article 9 of the *ICCPR*, that states that "everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law."

Articles 9 and 10 of the *UDHR*, which state that no one shall be subjected to arbitrary arrest, detention or exile and that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The arrested lawyers are entitled to the presumption of innocence (*ICCPR*, article 14(2), *ECHR*, article 6 (2)) and to their liberty (*ICCPR* articles 9 (1) (2), *ECHR* article 5) pending determination by an independent and impartial tribunal of any charges against them. Both the *ICCPR* and the *ECHR* prohibit arbitrary detention. The United Nations Human Rights Committee has determined that,

..."arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law. As the Committee has observed on a previous occasion, this means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.⁵ Remand in custody must further be necessary in all the circumstances, for example, to prevent flight, interference with evidence or the recurrence of crime.⁸

⁸*Albert Womah Mukong v. Cameroon* (458/1991), at para. 9.8, reaffirmed, *inter alia*, in *Abdelhamid Taright, Ahmed Touadi, Mohamed Remli and Amar Yousfi v. Algeria* (1085/2002), at para. 8.3, and *Rafael Marques de Morais v. Angola* (1128/2002), at para. 6.1.

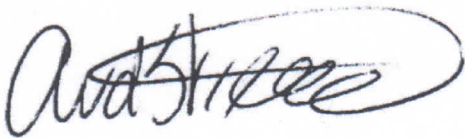
LRWC, L4L and FTW call on the government of Turkey to honour its international human rights obligations and to:

1. immediately release the arrested lawyers who are in detention; and,
2. ensure the personal and professional safety of lawyers to carry out their professional duties including their vigorous representation of people accused of terrorism or other criminal activities aimed at the government; and,
3. provide police and judicial officers with education and training about the rights guaranteed by the ICCPR and ECHR and Turkey's legal obligations to ensure effective protection of those rights for all.

We thank you for your attention to this very important matter.

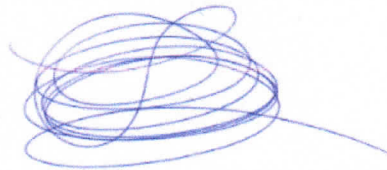
Sincerely,

Lawyers for Lawyers



Adrie van de Streek
Executive director

Lawyers Rights Watch Canada



Gail Davidson
Executive Director

Fair Trial Watch



Neval Çiftçi
President

c.c. Prime Minister of Turkey, Mr Recep Tayyip Erdoğan
Ministry of Justice, Mr Sadullah ERGİN
Ministry of Foreign Affairs, Prof. Dr. Ahmet Davutoğlu
Minister for EU Affairs, mr. Egemen Bağış
Council of Europe Commissioner for Human Rights, Mr. Nils Muižnieks
UN Special Rapporteur on the Independence of Lawyers and Judges, Ms Gabriela Knaul