# Report of an Independent International Fact-finding Mission to Turkey

## Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings

## 6-10 November 2023

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# Table of Contents

# 1. Introduction

Between 6 and 10 November 2023, an international delegation representing 27 law societies, bar associations, human rights groups and legal groups (see annex 1 for the list of participating organisations) undertook a fact-finding mission to Turkey to interview eight lawyers who have been arrested and detained in circumstances that raise a range of human rights concerns. The delegation also observed two court hearings, the first concerning the criminal proceedings against twelve lawyers who are members of the Association of Libertarian Jurists (ÖHD) and the second a review hearing for the pre-trial detention of Ms Gülhan Kaya, a prominent human rights lawyer.

The aim of the mission was to gather first-hand information on the circumstances of the arrest, imprisonment and trial of the lawyers, and their conditions and treatment in detention, and to assess these against Turkey's obligations under international human rights law and customary law. The delegation also paid their respects at the grave of Ebru Timtik—a lawyer who died in detention in 2020 during a hunger strike in pursuit of the right to a fair trial.

The mission was undertaken due to concerns that lawyers in Turkey have faced interference when practicing their profession and have been identified with their clients and their client's causes. This has resulted in many lawyers being subjected to intimidation, harassment, arbitrary arrest and detention, unfair trials, torture and other ill-treatment. This has taken place in the context of a crackdown on human rights by the government in the aftermath of a failed military coup attempt in July 2016. Following this event, the government declared a state of emergency, lasting two years, during which it suspended, detained, or fired nearly one-third of the judiciary, who were accused of affiliation with the Gülen movement alleged to have been behind the attempted coup.

The Government has been using overly-broad anti-terror laws to restrict a range of fundamental human rights including the rights to freedom of expression, peaceful assembly and association. Lawyers and human rights defenders have found themselves targeted under these laws, including being charged with terrorism offences when taking on human rights cases and conducting their professional duties and advocacy.

The lawyers interviewed during the mission are part of a larger group of lawyers who have been prosecuted on various charges including "being a member of a terrorist organisation" and making "terrorist propaganda". These lawyers are members of Çağdaş Hukukçular Derneği (ÇHD) - the Progressive Lawyers Association, whose legal services involve human rights cases, including the representation of clients who are critical of the government of Turkey. ÇHD was dissolved by governmental decree on 22 November 2016, however the association members remained active. In October 2019 it was reopened, but a case was initiated to close it once more. The ÇHD was finally re-established in 2022. Most have also worked at the Halkın Hukuk Bürosu (HHB) - the Peoples` Law Office. The lawyers have been prosecuted in mass trials commonly known as the ÇHD I and ÇHD II trials.

The ÇHD I trial started in 2013, when 22 lawyers, who were ÇHD members, were arrested and charged with offences under anti-terrorism legislation. In 2017, a second criminal case was filed, the ÇHD II trial, against 20 lawyers. Eight of the lawyers in the second trial, namely Oya Aslan, Naciye Demir, Günay Dağ, Şükriye Erden, Barkın Timtik, Selcuk Kozağaclı, Ebru Timtik, and Özgur Yılmaz, had also faced prosecution in the first trial. Both cases are based on the same evidence and charges, raising concerns that these trials violate the *ne bis in idem* principle - the right not to be tried repeatedly on the basis of the same offence, act, or facts.

On 29 April 2021, an individual application was lodged at the European Court of Human Rights on behalf of Selçuk Kozağaçlı, Özgür Yılmaz, Barkın Timtik, Engin Gökoğlu, Aycan Çiçek and Aytaç Ünsal, whom the international delegation interviewed, as well as the following lawyers – Yaprak Türkmen, Behiç Aşçı, and Ahmet Mandacı. The application details violations of their rights to freedom of expression, assembly and association, protected under Articles 10 and 11 of the European Convention on Human Rights (ECHR); their right to liberty and security, protected under Article 5 of the Convention; and Article 18 of the Convention, which prohibits the misuse of power. Similar applications to the European Court of Human Rights have been submitted on behalf of all lawyers mentioned in this report.

This report details the objectives and findings of the fact-finding mission. The first section provides information on the detained lawyers who were interviewed, providing details of their work, their membership in professional associations, and the circumstances of their arrest, detention and sentences. The second section sets out Turkey's obligations under international law. The third section details the observations and findings of the delegation gained through the interviews conducted. The fourth section sets forth the findings from the two court hearings that were observed. The final section provides a series of recommendations drawing on the findings.

## 1.1. Methodology and agenda of the mission

The mission took place over five days and involved teams conducting semi-structured interviews with each of the eight detained lawyers. A set of questions was prepared to guide the interviews and facilitate the collection of information on their conditions and treatment in detention. These questions were based on international standards for the treatment of persons deprived of their liberty, including those set out in the International Covenant on Civil and Political Rights (ICCPR) and the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Teams also observed two court hearings taking place at the Istanbul Çağlayan Justice Palace.

The international delegation was supported by local lawyers and translators and would like to thank them for their time and commitment to the mission.

**Agenda**

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|---|---|
| 6 November 2023 | □ Visit to Edirne prison to interview Aytaç Ünsal.<br>□ Visit to Tekirdağ prison to interview Engin Gökoğlu, Süleyman Gökten and Özgür Yılmaz. |
| 7 November 2023 | □ Visit to Kandıra prison to interview Aycan Çiçek.<br>□ ÖHD hearing at Çağlayan Courthouse.<br>□ Press conference. |
| 8 November 2023 | □ Visit to Silivri prison to interview Oya Aslan, Selçuk Kozağaçlı, and Barkin Timtik. |

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| 9 November 2023 | □ Visit to Ebru Timtik's grave.<br>□ Pre-trial detention hearing of Gülhan Kaya at Çağlayan Courthouse. |
| 10 November 2023 | □ Meeting of the French delegation and a representative of the Istanbul Bar with the Consul General of France in Istanbul.<br>□ Meeting with the defence team for the ÇHD I and ÇHD II cases. |

## 1.2. Background information on the lawyers

### □ Oya Aslan

Oya Aslan is a member of ÇHD who worked in the HHB on high profile criminal and human rights cases. Oya Aslan was arrested in December 2019 on terrorism charges. During her trial, she reported being subjected to torture during her detention, but no action was taken by the Court or authorities on this complaint.

In November 2022, the İstanbul 18th Heavy Penal Court sentenced her to 10 years and 6 months imprisonment for the alleged offences of "membership of a terrorist organisation" and "making propaganda for a terrorist organisation". The case file is still before the Supreme Court of Turkey.

She was held in Silivri prison at the time of the fact-finding mission.

### □ Aycan Çiçek

Aycan Çiçek is a member of ÇHD who worked in the HHB on prominent criminal and human rights cases.

She was arrested on 12 September 2017 on terrorism charges but released on 14 September 2018. She was subsequently re-arrested mere hours later. On 20 March 2019, she was sentenced to nine years imprisonment for the alleged offence of "membership of a terrorist organisation". This conviction and sentence were upheld by the Istanbul Regional Court of Appeals on 8 October 2019. This conviction and sentence were also upheld by the Supreme Court on 3 September 2020.

She was held in Kandira prison at the time of the fact-finding mission.

### □ Engin Gökoğlu

Engin Gökoğlu is a member of ÇHD who worked at HHB on high profile criminal law and labour law cases. He was the lawyer of jailed activists Nuriye Gulmen and Semih Ozakca, who went on a hunger strike to protest unlawful dismissals under the state of emergency rule.

In September 2017 he was arrested on terrorism charges. He was released on 14 September 2018 but was re-arrested mere hours later. On 20 March 2019, he was sentenced by the İstanbul 37th Heavy Penal Court to 10 years and six months imprisonment for the alleged offences of "membership of a terrorist organisation". These convictions and sentences were

upheld by the Istanbul Regional Court of Appeals on 8 October 2019. This conviction and sentence were also upheld by the Supreme Court on 3 September 2020.

He was held in Tekirdağ Prison at the time of the fact-finding mission.

While peacefully protesting in detention Engin Gökoğlu was subjected to violence by prison officials resulting in a broken arm.

- Süleyman Gökten

Süleyman Gökten is a member of ÇHD who worked at the HHB on high profile labour law cases.

He was arrested on 12 September 2017 on terrorism charges. He was released on 14 September 2018, but re-arrested on 26 June 2020. On 20 March 2019, he was sentenced by the İstanbul 37th Heavy Penal Court to 10 years and 6 months for the alleged offences of "membership of a terrorist organisation" and of "making propaganda for a terrorist organisation". These convictions and sentences were upheld by the Istanbul Court of Appeals on 8 October 2019 and by the Supreme Court on 3 September 2020.

He was held in Tekirdağ Prison at the time of the fact-finding mission.

- Gülhan Kaya

Gülhan Kaya is a lawyer associated with the Istanbul law firm Ezilenlerin Hukuk Bürosu (EHB), which is literally translated as the "Law Office of the Oppressed", as week as a member of the Lawyers for Freedom Association (ÖHD), an association which provides legal support to victims of human rights violations.

Ms Kaya was arrested and detained on 10 June 2023, and is accused of being "a member of a terrorist organisation" and "making propaganda for a terrorist organisation". She was held in pre-trial detention immediately upon her arrest. The international delegation observed a hearing to determine whether she should remain in pre-trial detention or be released pending trial.

- Selçuk Kozağaçlı

Selçuk Kozağaçlı is one of the lawyers prosecuted in the ÇHD I and ÇHD II trials. He is the president of ÇHD and a prominent human rights lawyer who has been the recipient of awards for his human rights activities .

In 2013, he was arrested on suspicion of "support, membership and leadership of a terrorist organisation (the Revolutionary People's Liberation Party DHKP/C)". He spent one year and three months in prison before being released on 21 March 2014.

He was subsequently re-arrested on 13 November 2017. On 14 September 2018, he was released but was re-arrested mere days later. In March 2019, he was convicted by the İstanbul 37th Heavy Penal Court of terrorism offences and sentenced to 11 years and three months. These convictions and sentences were upheld by the Istanbul Regional Court of Appeals on 8 October 2019, however the Supreme Court reversed the judgement against Kozağaçlı on 3 September 2020.

On 11 November 2022 the Istanbul 18th Heavy Penal Court sentenced him to 13 years in prison for the alleged offences of “membership of a terrorist organisation” and of “making propaganda for a terrorist organisation”. The case file is still before the Supreme Court of Turkey.

He was held in Silivri prison at the time of the fact-finding mission.

- Barkın Timtik

Barkin Timtik was a member of the Board of Directors of ÇHD who worked in the HHB on high profile human rights cases.

She was among the lawyers arrested on terrorism charges in 2013**.** She spent one year and three months in prison before being released on 21 March 2014.

On December 15, 2016, Timtik was arrested while attending a funeral dinner to pay tribute to one of her clients, shot dead by the police. She was detained at Esenyurt Police Station for four days and reports that she was beaten while in detention.

On 12 September 2017 she was arrested on suspicion of “being a manager of an armed terrorist organisation.” On 14 September 2018 she was released, along with her co-accused, but was re-arrested on 26 February 2019. On 18 March 2019 she was sentenced to 18 years and nine months in prison for allegedly “founding and managing a terrorist organisation”. These convictions and sentences were upheld by the Istanbul Regional Court of Appeals on 8 October 2019, however the Supreme Court reversed the judgement against Timtik on 3 September 2020.

On 11 November 2022 the Istanbul 18th Heavy Penal Court sentenced her to 18 years in prison for the alleged offences of “membership of a terrorist organisation” and of “making propaganda for a terrorist organisation”. The case file is still before the Supreme Court of Turkey.

Barkın’s sister, Ebru Timtik, was arrested and detained on the same charges and was a co-defendant. Sadly, Ebru subsequently died while on hunger strike protesting the systematic fair trial violations in Turkey.

Barkın Timtik was held in Silivri prison at the time of the fact-finding mission.

- Aytaç Ünsal

Aytaç Ünsal is a member of the ÇHD who worked in the HHB on high profile human rights cases.

He was arrested on 12 September 2017 on terrorism charges. He was released on 14 September 2018 but was re-arrested mere hours later. On 20 March 2019, he was sentenced by the İstanbul 37th Heavy Penal Court to 10 years and six months imprisonment for the alleged offences of “membership of a terrorist organisation”.

On 3 February 2020 he started a hunger strike to protest the lack of fair trial guarantees. He was temporarily released from prison on medical grounds on 3 September 2020 but was returned to prison on 10 November 2020 while undergoing medical treatment.

His convictions and sentences were upheld by the Istanbul Regional Court of Appeals on 8 October 2019 and by the Supreme Court on 3 September 2020.

He was held in Edirne prison at the time of the fact-finding mission.

- Özgür Yilmaz

Özgür Yilmaz is a member of ÇHD who worked at the HHB on prominent human rights cases.

He was arrested on 12 September 2017 on terrorism related charges. He was released on 14 September 2018 but was re-arrested on 26 June 2020. He was reportedly tortured while under arrest in Istanbul.

On 20 March 2019, he was sentenced by the İstanbul 37th Heavy Penal Court to 13 years and six months for the alleged offence of “membership of a terrorist organisation”. These convictions and sentences were upheld by the Istanbul Court of Appeals on 8 October 2019 and by the Supreme Court on 3 September 2020.

In November 2022, Özgür Yilmaz was sentenced to an additional 1 year in prison for “making propaganda for a terrorist organisation”. These conviction and sentence are still before the Supreme Court.

He was held in Tekirdağ prison at the time of the fact-finding mission.

# 2. Overview of Turkey's obligations under international and regional human rights law

Turkey has ratified core international and regional human rights treaties that together provide a framework to respect, protect and fulfil human rights and promote the rule of law. Of particular relevance to the aims of the fact-finding mission, Turkey has ratified the ECHR, the ICCPR, which sets out fundamental civil and political rights, and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which details the obligations to prohibit and prevent these forms of abuse.

As well as its obligations under international treaties, Turkey must also adhere to a range of international instruments, such as the Nelson Mandela Rules, the UN Basic Principles on the Role of Lawyers (the Basic Principles), the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and the Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders (the Bangkok Rules). These international instruments represent international consensus on standards applicable to all states. Such instruments elaborate measures to be taken for the realisation of rights reflected in international human rights treaties.

The objectives and focus of the fact-finding mission predominantly focused on the following human rights:

## 2.1. The right to liberty

Under international law everyone has the right to personal liberty.[1] This is a fundamental right which recognises the right of everyone to personal freedom, enabling them to live their lives without arbitrary and undue interference. Protection against unlawful or arbitrary deprivation of liberty, namely on improper grounds or with improper procedures, is prohibited under numerous international treaties and is considered a peremptory norm of international law, meaning that no derogations from it are permitted.[2]

Article 9(1) of the ICCPR states: "[e]veryone 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 procedure as are established by law."

Article 5 of the ECHR also recognises the right to liberty and security of the person and details the specific, limited circumstances when this right can be restricted in accordance with procedures prescribed by law.

Any restrictions on the right to liberty must conform not only to national law but international standards. Consequently, deprivation of liberty that is permitted under national law may be considered arbitrary under international standards, for example if the law is vague or overly broad, or incompatible with other human rights. Furthermore, even if the initial deprivation of

1 See for example Article 3 of the Universal Declaration on Human Rights, Article 9 of the ICCPR, and Article 5 of the European Convention on Human Rights.

2 UN Working Group on Arbitrary Detention Deliberation No.9, UN Doc. A/HRC/22/44 (2012), paras. 37-76.

liberty is in conformity with domestic and international law, it may become arbitrary, for example if there are subsequent violations of fair trial rights.[3]

When individuals have been deprived of their liberty on criminal charges, Article 9(3) of the ICCPR permits pre-trial detention solely as an exceptional measure.[4] The Tokyo Rules on alternatives to non-custodial measures require that pre-trial detention is used only as a means of last resort in criminal proceedings and shall last no longer than necessary. It must also be administered humanely and with respect for dignity.[5] In accordance with international standards, pre-trial detention is legitimate only where there is a reasonable suspicion of the person having committed the offence, and where detention is necessary and proportionate to prevent them from absconding, committing another offence, or interfering with the course of justice during pending procedures.[6]

## 2.2. The right to a fair trial

Everyone has the right to be presumed innocent until proven guilty according to law.[7] In the determination of innocence or guilt, the right to a fair trial is a fundamental element of a just legal system that safeguards the rule of law and protects individuals from unlawful or arbitrary interference with their right to liberty. It ensures that no-one is convicted without following a fair and just process by an independent and competent tribunal.

The right to a fair hearing lies at the heart of the concept of a fair trial. This is enshrined in Article 14(1) of the ICCPR as follows:

> "[a]ll persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

This right is mirrored in Article 6 of the ECHR.

A fair hearing requires respect for the principle of "equality of arms". This is an essential guarantee to ensure that the accused is placed on a footing equal to that of the prosecution by having a genuine opportunity to prepare and present their defence and contest the evidence presented by the prosecution.

To ensure respect for the right to fair trial, and equality of arms, a range of due process guarantees for the accused are stipulated in Article 14 of the ICCPR as follows:

- To be informed promptly and in detail in a language the accused understands of the nature and cause of the charge against them.[8]
- To have adequate time and facilities for the preparation of a defence and to communicate with counsel of their own choosing.[9]
- To be tried without undue delay.[10]

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3 Ibid para. 38; UN Human Rights Committee General Comment no. 35, para.17.

4 Article 9(3) of the ICCPR.

5 United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), UN Doc GA Res 45/110, 14 December 1990, paras. 6(1) and 6(2).

6 Rule 5(1) of the Tokyo Rules.

7 Article 14(2) of the ICCPR; Article 6(2) of the ECHR, Article 11(1) of the Universal Declaration on Human Rights.

8 Article 14(3)(a) of the ICCPR.

9 Article 14(3)(b) of the ICCPR.

10 Article 14(3)(c) of the ICCPR.

- To be present when tried and to defend themselves in person or through legal assistance of his own choosing.[11]
- To be provided with legal assistance where necessary in the interests of justice, and without payment if the accused does not have sufficient means to pay for it.[12]
- To examine, or have examined, witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them.[13]
- To have the free assistance of an interpreter if they cannot understand or speak the language used in court.[14]
- Not to be compelled to testify against themselves or to confess guilt.[15]
- To be permitted to appeal a conviction to a higher court.[16]

Similar obligations are set out under Article 6 of the ECHR.

## 2.3. The right not to be subjected to torture and other ill-treatment

Under international law, no-one may be subjected to torture or other forms of cruel, inhuman or degrading treatment or punishment (hereinafter torture and other ill-treatment). As well as being prohibited by numerous treaties and instruments, such as the UNCAT, Article 7 of the ICCPR and Article 3 of the ECHR, the prohibition of torture and other ill-treatment is recognised as a rule of customary international law, meaning it is binding on all States. The prohibition also has the rare status of being considered a peremptory norm of international law (*jus cogens*), which means that it is an absolute right that cannot be derogated from at any time, including armed conflict, public emergency, or threats to national security.

This status of the prohibition of torture and other ill-treatment under international law is due to the express link with the concept of the inherent dignity of human beings. The UN Human Rights Committee, which monitors implementation of the ICCPR, has stated that the aim of the prohibition of torture and other ill-treatment under Article 7 of the ICCPR "is to protect both the dignity and the physical and mental integrity of the individual".[17]

As well as the general prohibition of torture and other ill-treatment enshrined in the ICCPR and ECHR, Turkey is a party to the UNCAT, which sets out a range of obligations for states to prohibit and prevent torture and other ill-treatment. This includes ensuring torture is a specific crime under domestic law,[18] that any statement gained under torture is not submitted as evidence in any proceedings,[19] and that interrogation rules, instructions, methods and practices, as well as the arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment are systematically reviewed to prevent torture and other ill-treatment.[20]

Article 13 of the UNCAT ensures that any person who alleges they have been subjected to torture or other ill-treatment has the right to complain to, and to have their case promptly and impartially examined by, competent authorities. Furthermore, even if no complaint has been

11 Article 14(3)(d) of the ICCPR.
12 Article 14(3)(d) of the ICCPR.
13 Article 14(3)(e) of the ICCPR.
14 Article 14(3)(f) of the ICCPR.
15 Article 14(3)(g) of the ICCPR.
16 Article 14(5) of the ICCPR.
17 UN Human Rights Committee General Comment No. 20, para 2.
18 Article 4 of the UNCAT.
19 Article 15 of the UNCAT.
20 Article 11 of the UNCAT.

made, as a party to the UNCAT, the authorities in Turkey must ensure that a prompt and impartial investigation is conducted wherever there are reasonable grounds to believe that an act of torture or other ill-treatment has been committed.[21] To be effective, an investigation must be undertaken by an independent body as a matter of urgency and be capable of determining the facts and leading to the identification and punishment of those responsible.[22]

## 2.4. The right to humane conditions of detention

When individuals are deprived of their liberty they must be held in humane conditions and treated with dignity. Article 10 of the ICCPR stipulates that all persons deprived of their liberty must be treated "with humanity and with respect for the inherent dignity of the human person". This right is absolute and cannot be restricted under any circumstances.[23]

Furthermore, the Human Rights Committee has underscored that whatever the resource constraints within a country, it is essential that governments afford people deprived of their liberty certain basic necessities to ensure respect for their inherent dignity.[24]

Poor or harsh conditions of detention can amount to cruel, inhuman or degrading treatment. If imposed intentionally and purposefully this can constitute torture.[25]

The Nelson Mandela Rules detail the minimum standards that must be met to ensure that persons deprived of their liberty are treated with respect and held in humane conditions. They provide comprehensive guidance on all aspects of prison management and treatment of detainees. This includes measures and procedures to ensure and facilitate access to the outside world, including lawyers and family members; guidance on hygiene and dietary requirements; access to healthcare; and the opportunity for recreational and work activities; as well as guidance on personal searches, disciplinary measures and the use of restraint and force.

## 2.5. Protection for lawyers

The crucial role lawyers play in promoting and protecting human rights and the rule of law is recognised under international law. The rights to liberty, fair trial and freedom from torture, summarised above, all recognise that lawyers play a vital role in protecting the rights of their clients, promoting equality before the law and enabling access to justice. Consequently, lawyers figure prominently in measures and procedures to secure compliance with those rights.

As well as the rights lawyers – like all people everywhere – are entitled, international standards have been agreed to protect the independence of the legal profession and ensure lawyers can practice their profession without hindrance. These guarantees for lawyers to practice and

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21 Article 12 of the UNCAT.

22 *Assenov and Others v Bulgaria,* European Court of Human Rights Application no. 24760/94 (1998), para 102.

23

24 UN Human Rights Committee General Comment No. 21, para. 4.

25 See for example the Concluding Observations of the UN Committee against Torture on the Periodic Report of Spain, UN Doc. CAT/C/CR/29/3 (2002) para11(d); and the UN Human Rights Committee decisions: Buffo v Uruguay, UN Doc. CCPR/C/OP/1 (1984) para. 63; Carmen Amendola Masslotti and Graciela Baritussio v Uruguay, UN Doc. Supp. No. 40 (A/37/40) (1982) para.187; Hiber Conteris v Uruguay, UN Doc. Supp. No. 40 (A/40/40) (1985) para. 196.

represent their clients, are necessary for the realisation and protection of the rights to liberty and a fair trial.

The UN Basic Principles on the Role of Lawyers is the fundamental universal instrument that sets out the principles that underlie and safeguard the practice of the legal profession. As well as detailing standards for the qualification and training of lawyers and the professional duties of lawyers, the Basic Principles reiterate key treaty-based rights for individuals' access to a lawyer at all stages of criminal proceedings to protect their rights and to defend them.

Crucially, the Basic Principles also detail key guarantees to ensure lawyers can fulfil their professional duties. Chief among these guarantees is Principle 16, which stipulates that governments must ensure lawyers:

> "(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;
>
> (b) are able to travel and to consult with their clients freely both within their own country and abroad; and
>
> (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

In addition, Principle 17 states that "[w]here the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities."

Also of relevance to the fact-finding mission is Principle 18 that stipulates that "[l]awyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

In addition, Principle 20 provides that "[l]awyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority."

Linked to the above guarantees, the Basic Principles also recognise the freedom of expression and association of lawyers. Principle 23 recognises that:

> "[l]awyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession."

Accordingly, the Basic Principles provide fundamental guarantees for lawyers to conduct their legal services free from interference. As such, along with the human rights reflected in international and regional treaties, the Basic Principles formed a central part of the fact-finding mission, which examined the extent to which the Principles had been adhered to in relation to the detained lawyers interviewed by the international delegation.

# 3. Findings from the interviews

## 3.1. Torture and other ill-treatment

The delegation is concerned that at least five of the lawyers, specifically Oya Aslan, Engin Gökoğlu, Barkin Timtik, Aytaç Ünsal and Özgür Yilmaz, have reported being subjected to torture and other ill-treatment while in detention. In 2017 it was reported that Özgür Yilmaz was tortured while in police detention in Istanbul. In 2016 Barkin Timtik reported being beaten while being transferred from prison. Oya Aslan made a complaint during her trial that she had been tortured following her arrest in 2019, but no action was taken by the Court or other authorities. Engin Gökoğlu's arm was broken by prison officers during a transfer from one facility to another. He submitted a complaint about his injury to the authorities, but this has led to him being charged with an additional offence of resisting a public officer and facing a further trial. In 2018, Aytaç Ünsal reported being beaten while being transferred to the prison. He made an individual application to the Constitutional Court. On 14 December 2023, the Court accepted the application and announced that the state violated the prohibition of torture and ill-treatment.

As detailed above, torture and other ill-treatment are absolutely prohibited under international law. Turkey has an obligation to ensure that no-one is subjected to torture and other ill-treatment and, in accordance with Article 13 of the UNCAT, where a complaint has been made the Turkish authorities have an obligation to conduct a prompt and impartial investigation. Furthermore, Article 13 of the UNCAT requires that "steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

In addition, it has been determined under international law that for injuries occurring while in detention the burden is on the State to account for them and provide a satisfactory and convincing explanation as to how the injuries occurred.[26]

Under international law, the use of force is permitted only when strictly necessary and, even then, it must be appropriate and reasonable to the situation. Rule 82(1) of the Nelson Mandela Rules requires that prison staff shall not use force "except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director." Rule 43 also states that instruments of restraint must never be used as a sanction for disciplinary offences.

The injuries sustained by Oya Aslan, Engin Gökoğlu, Barkin Timtik and Aytaç Ünsal while in detention indicate violations of Article 3 of the ECHR, Article 7 of the ICCPR and the UNCAT. The authorities have also failed to carry out an effective investigation into the allegations of torture and other ill-treatment, and regarding the complaint made by Engin Gökoğlu, he has faced reprisals in violation of Article 13 of the UNCAT.

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[26] Mammadov (Jalaloglu) v Azerbaijan, European Court of Human Rights Application no. 34445/04 (2007), para. 62.

## 3.2. Conditions of detention

### 3.2.1. Small group isolation

All the lawyers interviewed were being held in small group isolation with extremely limited contact with other individuals.

Aycan Çiçek, Aytaç Ünsal, Engin Gökoğlu, Süleyman Gökten, and Özgür Yilmaz are held in Kandira¸ Edirne, and Tekirdag prisons, which are all F-type high security prisons. F-type prisons are designed around people being held in either single-person or three-person cells that include a very small 'yard' exclusive to those cells.

A similar small isolation group system is also implemented in Silivri high security prison where Oya Aslan, Selçuk Kozağaçlı, Behiç Aşçı and Barkin TImtik are detained.

F-type prisons, and this type of small group isolation practice, have been criticised for the isolating environment and lack of communal activities for prisoners outside of the cells.[27] Turkey is a party to the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which authorises the European Committee for the Prevention of Torture (CPT), an independent expert body, to monitor conditions and treatment of detainees in states party. The CPT has stated, specifically in relation to F-type prisons in Turkey, that "smaller living units for prisoners must under no circumstances be allowed to lead to a generalised system of small group isolation."[28]

The international delegation was informed by the detained lawyers that the isolating conditions are one of the most difficult and distressing aspects of their detention. Aycan Çiçek is held in a two-person cell, while the others are held in three-person cells. They all have extremely little opportunity to socialise with individuals outside of their cell. Although the prison rules provide that prisoners may be allowed to spend a couple of hours periodically with a few people from neighbouring cells (the numbers and regularity varied between prisons), we were informed that in practice this rarely happens. Contact with other prisoners is frequently denied or restricted as a disciplinary measure.

One of the lawyers interviewed informed the delegation that, although prisoners should be able to have contact with up to 5 people for two hours at least once a month, this contact has been denied and they had not had any contact with others outside of their cell for a couple of months. They stated that the only means to communicate with other prisoners was via a small hole in the cell door.

Similar reports were provided by other lawyers interviewed. Communication with other prisoners is frequently denied or severely restricted, and the lawyers use small ventilation holes to communicate with other individuals either verbally or by other means. Another lawyer informed the delegation that although they should be entitled to 10 hours of contact per week

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[27] See for example Human Rights Watch, *Small Group Isolation in F-type Prisons and the Violent Transfers of Prisoners to Sincan, Kandira, and Edirne Prisons*, 19 December 2000; Immigration and Refugee Board of Canada, Report on Turkey, *Prison conditions and the treatment of prisoners in civilian and F-type prisons, including the prevalence of torture and the state response to it (2006-2007)*, 7 June 2007, TUR102517.E; Amnesty International, *Memorandum to the Turkish Government,* 14 January 2008, Index Number: EUR 44/001/2008.

[28] Preliminary observations of the European Committee for the Prevention of Torture (CPT) on its December 2000/January 2001 visit to Turkey.

with up to 10 people, they had this time restricted to 2 hours per week due to disciplinary measures being applied.

Opportunities for time out of their cells and communicating with other prisoners by participating in recreational activities and exercise have also been denied to the lawyers interviewed (see 3.2.2 below).

These conditions constitute a violation of Article 10 of the ICCPR, which requires that persons be held in humane conditions. Independent research has shown that the detrimental effects of small group isolation are comparable to those of solitary confinement, such as a deterioration in prisoners' mental health.[29]

### 3.2.2. Access to recreational and cultural activities and exercise ies

Not only are the lawyers being confined in conditions that are unduly and impermissibly isolating, but, in addition, they are being denied adequate access to recreational and cultural activities, as well as adequate facilities for exercise.

The type of cells the lawyers are held in have a very small area, around 6m$^2$, adjacent to their cell, which is their only space for exercise. As well as being inhumane, and consequently a violation of Article 10 of the ICCPR, this similarly violates the Nelson Mandela Rules. Rule 23 of the Nelson Mandela Rules stipulates that:

> "1. Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.
>
> 2. Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end, space, installations and equipment should be provided."

Furthermore, Rule 42 of the Nelson Mandela Rules requires that the general living conditions addressed in the rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners *without exception*" (emphasis added).

Similarly, the lawyers have been denied access to other recreational activities. Rule 4(2) of the Nelson Mandela Rules sets out the requirement to provide a range of activities as follows:

> "[…] prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners."

Similarly, Rule 105 reiterates that "[r]ecreational and cultural activities shall be provided in all prisons for the benefit of the mental and physical health of prisoners."

The lawyers informed the international delegation that while they have some access to a limited number of books (though no magazines), they had very limited access to other

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[29] Sharon Shalev, *Sourcebook on Solitary Confinement,* Mannheim Centre for Criminology London School of Economics and Political Science, October 2008.

recreational and cultural activities. One of the lawyers reported that they had some access to materials to knit. One of the other lawyers interviewed noted that, together with their cellmate, they try and make their own activities. They are denied access to art materials, including paintbrushes and coloured paper and therefore have used nuts and vegetables to dye paper and use a shaving brush as a paint brush to be creative and pass the time. They also sing and write poems to try and make their own entertainment and occupy themselves. The international delegation was informed that another prisoner had been denied her musical instrument and therefore fashioned one out of discarded items.

The delegation was also informed that, for New Year and other holidays, some of the lawyers use ventilation holes to sing with other prisoners. In addition, to recognise the birthday of the late lawyer Ebru TImtik, who died in detention whilst on hunger strike, the lawyers have made a rudimentary cake from nuts, grain and any available fruit as the focus for a small collective remembrance.

The international delegation is gravely concerned that the highly restrictive regime and lack of time out of the cells is having a severely detrimental effect on the mental and physical health of the lawyers detained. The harsh and extensive restrictions on access to recreational and cultural activities, as well as exercise, fundamentally flouts international standards for the treatment of prisoners.

### 3.2.3. Access to the outside world

In accordance with international standards, prisoners must have access to family members and friends. Rule 58(1) of the Nelson Mandela Rules requires that prisoners be allowed, under necessary supervision, to communicate with their family and friends at regular intervals. This includes by corresponding in writing and using, where available, telecommunication, electronic, digital and other means, as well as receiving visits.

Rule 59 of the Nelson Mandela Rules also states that "[p]risoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation." This rule must be read together with Rule 3, which states that "[i]mprisonment and other measures that result in cutting off persons from the outside world are afflictive by the very fact of taking from these persons the right of self-determination by depriving them of their liberty. Therefore, the prison system shall not, except as incidental to justifiable separation or the maintenance of discipline, aggravate the suffering inherent in such a situation." Thus, the authorities must facilitate access to family members and friends.

Rule 4 of the Bangkok Rules also requires that female prisoners be "allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services."

The European Court of Human Rights has held that locating a prisoner far away from their home, making visits very difficult or even impossible may, in some circumstances, amount to interference with the right to a family life, under Article 8 of the ECHR.[30]

All the lawyers interviewed by the international delegation are detained in prisons that are based in more remote locations, away from main urban areas, making it difficult for family members and friends to visit regularly.

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30 *Vintman v. Ukraine*, European Court of Human Rights Application no. 28403/05 (2014), para. 78.

In addition, any family visit must be of a reasonable length to make it meaningful. One of the lawyers interviewed reported that the length of their family visits is shorter than other prisoners. They have one hour per month for a visit, and their family must travel a very long distance to visit. Another lawyer reported that they had not been able to receive a visit from their mother for over a year and a half, due to disciplinary measures being applied that repeatedly deny visits, and the distance their mother must travel. A further lawyer stated that they can only see their child twice a year. In addition, they can only name three visitors who are authorised to visit without restriction; other visits are restricted and are subject to decisions on a case-by-case basis.

Under the circumstances outlined above, the lawyers are being denied access to their family and friends to which all prisoners everywhere are entitled.

## 3.3. Disciplinary measures

The international delegation is concerned that disciplinary measures are being applied in what appears to be a disproportionate and unreasonable manner. In accordance with international standards, prison authorities should take reasonable measures to avoid disciplinary sanctions.

Rule 36 of the Nelson Mandela Rules states that "[d]iscipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well ordered community life."

To avoid disciplinary measures, Rule 38 states that prevention, mediation or any other alternative dispute resolution mechanism should be actively encouraged to prevent disciplinary offences or to resolve conflicts.

Rule 39 of the Nelson Mandela Rules also states that disciplinary sanctions must be applied with respect for the principles of fairness and due process. No-one is to be sanctioned twice for the same act or offence. In addition, considering the principles of fairness and due process, prison administrators shall ensure proportionality between a disciplinary sanction and the offence for which it is imposed.

All of the lawyers interviewed have been subject to disciplinary measures. In accordance with the Law No. 5275 on the Execution of Criminal and Security Measures, prisoners may be granted conditional release after serving a set period of time. However, if prisoners have three or more disciplinary measures while in detention, the opportunity for conditional release is lost and they must serve their full term. The lawyers interviewed have been the subject of numerous disciplinary measures and are therefore ineligible for conditional release and must serve their full sentences.

The international delegation is concerned that disciplinary measures have been imposed disproportionately, and seemingly deliberately, to deny conditional release, and for actions, such as chanting slogans, which are legitimate exercises of the lawyers' right to freedom of expression under international law, including Article 19 of the ICCPR and Article 10 of the ECHR. The European Court of Human Rights has held that, save for the right to liberty, prisoners continue to enjoy all fundamental rights, including the right to freedom of expression, while detained.[31]

As noted above, the international delegation is also concerned that disciplinary measures are being imposed that prevent access to family members in violation of international standards. Rule 43 of the Nelson Mandela Rules forbids disciplinary sanctions or restrictive measures

[31] European Court of Human Rights, *Guide on the case-law of the European Convention on Human Rights,* 31 August 2022, para. 4.

that prohibit family contact. Pursuant to Rule 43, family contact may be restricted only for a limited time and then only as strictly required for the maintenance of security and order.

In addition, under Rule 41 of the Nelson Mandela Rules, prisoners must be allowed to defend themselves when facing disciplinary sanctions and to seek judicial review of any disciplinary sanctions that are imposed. The international delegation noted that there are only limited opportunities for the lawyers to challenge disciplinary sanctions. Furthermore, in one particularly troubling instance, when one of the lawyers successfully sought judicial review, overturning six sanctions, the judge in the case was subsequently removed from her post.

## 3.4. Personal searches

Although international standards permit personal searches of prisoners, such searches must be conducted in a manner consistent with Article 10 of the ICCPR and respectful of the inherent dignity and privacy of the person being searched.[32] Searches must not be used to harass, intimidate or unnecessarily intrude upon a prisoner's privacy.[33]

In addition, Rule 52(1) of the Nelson Mandela Rules stipulates that intrusive searches are permissible only if absolutely necessary, and that alternatives are encouraged. Intrusive searches must also be undertaken by trained staff of the same sex as the prisoner.

While the lawyers interviewed confirmed that personal searches were undertaken by staff of the same sex as themselves, the international delegation is concerned that personal and intrusive searches are being undertaken frequently, and, for some, whenever they have a visitor.

The international delegation is concerned that searches are being conducted with excessive frequency and disproportionately so as to interfere with the dignity and privacy of prisoners in contravention of Article 10 of the ICCPR, Rule 52(1) of the Nelson Mandela Rules and other international standards.

## 3.5. Access to medical services and treatment

While in detention, the authorities are responsible for the healthcare of all prisoners.[34] Rule 24 of the Nelson Mandela Rules states that prisoners are entitled to enjoy the same standards of healthcare that are available in the community and must have access to necessary healthcare services free of charge, without discrimination on the grounds of their legal status. Furthermore, healthcare services should be organised in close relationship to the general public health administration to ensure continuity of treatment and care.[35]

A failure to provide appropriate medical care may amount to torture or ill-treatment, and a violation of Article 3 of the ECHR, Articles 7 and 10 of the ICCPR and Articles 1 or 16 of the UNCAT.

The international delegation was informed that when prisoners require medical treatment outside of the prison, the vehicle used to transport them is one which has extremely small individual 'cells' that restrict the movement of the prisoners. These compartments are so small that the individual inside cannot move, and their arms are 'pinned' to their sides. There is also poor ventilation in these vehicles. This causes physical suffering and, for some, can trigger

32 Rule 50 of the Nelson Mandela Rules.
33 Rule 51 of the Nelson Mandela Rules.
34 Rule 24(1) of the Nelson Mandela Rules.
35 Rule 24(2) of the Nelson Mandela Rules.

migraines or claustrophobia. Due to the physical suffering caused by this mode of transport, the international delegation was told that the lawyers, and other prisoners, are deciding not to be seen at healthcare facilities outside of the prisons, and consequently are not receiving necessary treatment and services.

International standards require that persons deprived of their liberty be transported in humane conditions. Rule 73(2) of the Nelson Mandela Rules states that "[t]he transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited."

Similarly, some of the lawyers reported that, if they are outside of the prison, they have remained handcuffed for the entirety of their medical examination and treatment. One individual reported that they remained in handcuffs while being treated for a neurological condition.

Pursuant to international standards, instruments of restraint, such as handcuffs, must be used only when no lesser form of control would be effective to address the risks posed by unrestricted movement.[36] When used, the method of restraint must be the least intrusive method that is necessary and reasonably available to control the prisoner's movement, based on the level and nature of the risks posed, and shall be imposed only for the time period required.[37]

The CPT has expressed concern about restraining individuals when receiving a medical consultation or intervention except in exceptional cases.[38] Likewise, the European Court of Human Rights has also expressed concern about the practice of handcuffing prisoners during medical treatment, which in certain circumstances may amount to a violation of Article 3 or Article 8 of the ECHR. For example, the European Court has held that handcuffing a physically weak, sick prisoner while taking him to a hospital was a violation of Article 3 of the ECHR.[39]

The international delegation is also concerned that some of the lawyers are required to attend mandatory psychological consultations. A failure to attend will result in a loss of privileges and disciplinary measures. Rather than being a measure designed to benefit the mental health of prisoners, the international delegation is concerned that this requirement is applied as a potentially punitive measure. The obligation to provide healthcare to prisoners must be implemented in a way that respects the doctrine of informed consent.

## 3.6. Special requirements for female detainees

International standards require prison authorities to take a gender-sensitive approach to reflect the specific characteristics and needs of female prisoners.

The international delegation was informed that some of the female lawyers do not have easy access to toiletries and sanitary products because some of the prisons cater to the personal hygiene needs of male prisoners only. The international delegation is concerned that the availability of essential feminine hygiene products, such as tampons and sanitary pads, is problematic, whether because they are not in stock or because they are too expensive.

The UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) are a set of universally agreed standards to meet the specific

36 Rule 48(1)(a) of the Nelson Mandela Rules.

37 Rule 48(1)(b) and (c) of the Nelson Mandela Rules.

38 CPT visit report to the Slovak Republic, CPT/Inf (2010) para.105.

39 *Mouisel v France*, European Court of Human Rights Application no. 67263/01 (2003), para. 47.

needs of women who are deprived of their liberty. Rule 5 requires that women prisoners shall have facilities and materials required to meet their specific hygiene needs, including sanitary towels, which should be provided free of charge.

Rule 18(1) of the Nelson Mandela Rules also set out a general requirement that prisoners are be provided with “such toilet articles as are necessary for health and cleanliness.”

The international delegation is concerned that the personal hygiene needs of the female lawyers are not being met, contrary to international standards.

# 4. Observation of court proceedings

## 4.1. ÖHD hearing

On 6 November 2023, a team from the international delegation attended a hearing in the case of eight lawyers arrested on 16 March 2016. Seven of them are members of the Özgürlük için Hukukçular Derneği (ÖHD) - the Lawyers for Freedom Association, which provides legal support to victims of human rights violations. The eighth lawyer (Tamer Doğan) is a member of the Progressive Lawyers Association (ÇHD). ÖHD, like many others, was banned under the state of emergency declared in 2016.

The lawyers in this case are accused of participation in a terrorist organisation. The hearing was short and focused on the illegality of telephone tapping and the advisability of hearing a witness at a future hearing.

During the hearing, the defence stated that the wiretaps do not contain any incriminating evidence. Furthermore, the defence argued that the wiretaps are illegal on two main grounds – first, because proceedings have been initiated against the magistrate who issued the order for the wiretaps, who has since been challenged in several other similar cases based on the magistrate’s political connections; and, second, because the wiretaps were extended for an excessive duration.

Regarding the request for a hearing, the defence explained that the hearing would concern an anonymous witness who was heard only during the police procedure, such that the accused had not had an opportunity to examine the witness. The defence team also argued that the veracity of the witness’s testimony is suspect, because authorities regularly obtain such statements in exchange for the dismissal of criminal charges against the person making the statement, under a “repentants” procedure.

The case was adjourned until 8 February 2024 to allow the hearing of the witness.

The international delegation noted that the facts which led to criminal proceedings against the lawyers fall within the scope of their professional practice, since they are accused of being associated with terrorist organisations based on their work providing legal advice for clients alleged to be members of such organisations.

Pursuant to Principle 16 of the Basic Principles, lawyers must be able to perform all their professional functions without intimidation, hindrance, harassment or improper interference, and are not to suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. Furthermore, Principle 18 enshrines the recognised principle that lawyers must not be identified with their clients or their clients' causes as a result of discharging their functions. The court hearing that the international delegation observed raises concerns that these Principles are not being respected in practice.

The international delegation is also concerned about the fundamental fairness of the trial proceedings. Specifically, doubts have been raised about the impartiality of the judge who ordered the wiretapping on which the prosecution relies. In addition, the fact that the defence team was denied the right to examine a witness for the prosecution constitutes a grave violation of the six defendant lawyers' right to equality of arms. Article 14(3)(e) of the ICCPR and Article 6(3)(d) of the ECHR require that persons being tried be permitted to examine, or have examined, the witnesses against them.

## 4.2. Pre-trial detention hearing for Gülhan Kaya

On 9 November 2023, the international delegation observed a court hearing considering the pre-trial detention of Gülhan Kaya. As noted above, Ms Kaya was detained immediately upon her arrest on 10 June 2023 and remained in detention at the time of the 9 November hearing. Together with Gülhan Kaya, three other lawyers, Sezin Uçar, Özlem Gümüştaş and Ali Haydar Doğan are also defendants in this case.

Because the judge assigned to the trial was not available, a different judge was brought in on short notice to preside over the hearing. Unsurprisingly, the judge appeared to be unfamiliar with the case and during an exchange between the prosecutor and the defence team the judge had to take a recess to consider the file and consult on matters of law.

During the hearing the international delegation observed that there was a lack of compelling evidence of criminal activity and a reliance on secret testimony, as well as a failure to follow national procedures for the submission of witness testimony. The latter point prompted the prosecution to call for Ms Kaya's release pending trial, which the judge granted. Ms Kaya was released in the evening of 9 November 2023.

Ms Kaya is charged with "being associated with a terrorist organisation" and "terrorist propaganda". During the hearing, the prosecution summarised their case against Ms Kaya, which is based on a witness statement from an unidentified individual. This statement alleges that Ms Kaya did not ask for payment for her legal services, that she was organising payments through her clients to an organisation in Syria deemed to be a terrorist organisation, and that she recommended that a client go on hunger strike as a means of protest. The prosecution did not present any evidence beyond this witness statement although they mentioned that there had been phone calls between Ms Kaya and individuals who have been arrested on terrorism charges, and that Ms Kaya had attended a funeral of a client accused of being a member of terrorist organisation.

During the pre-trial hearing, Ms Kaya and her defence lawyer stated that this secret witness statement had been presented at an earlier trial in 2017 and that the same statement is being presented repeatedly at different trials. Ms Kaya denied any involvement or association with a terrorist organisation. She denied handling money for an organisation in Syria and denied recommending that a client go on a hunger strike. Ms Kaya acknowledged that she had visited a client who 5 days later went on hunger strike, but her defence team argued there is no causal link between her visit to provide legal services to her client and the action later taken by the individual. Ms Kaya denied recommending her client take that action. Ms Kaya noted that, as a lawyer, she makes many phone calls to different people including, of course, clients and their families, and that no evidence had been presented that these calls were linked with the commission of any offence. It was also stated that it is not a crime to go to a client's funeral.

The charges against Ms Kaya appear to be linked to her legitimate work as a lawyer providing advice to clients. The international delegation is concerned that the arrest and detention of Ms. Kaya are due to her work for Ezilenlerin Hukuk Bürosu (EHB), literally translated as the "Law Office of the Oppressed". Ms Kaya is also a member of the ÖHD. Through her work at the EHB, she has worked on range of human rights cases, including representing the families

of people who have died in Syria while fighting the Islamic State. Ms. Kaya, and her colleagues, have faced a series of criminal charges and trials since 2016 because of their human rights and public interest work.

Accordingly, the case against Ms Kaya raises concerns that Principles 16 and 18 of the Basic Principles are being violated. Under Principle 16 of the Basic Principles, lawyers must be able to perform all their professional functions without intimidation, hindrance, harassment or improper interference; and must not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognised professional duties, standards and ethics. Furthermore, as noted above, Principle 18 enshrines the recognised principle that lawyers must not be identified with their clients or their clients' causes as a result of discharging the lawyers' professional functions. The international delegation is concerned that both principles are being violated in the case of Gülhan Kaya, as well as her colleagues who face similar charges.

Furthermore, Ms Kaya and her defence lawyer reported that they were being denied access to some of the evidence being presented against her. The principle of equality of arms is an inherent element of a fair trial. In accordance with Article 14 of the ICCPR, and Article 6 of the ECHR, accused persons must have adequate facilities to prepare a defence. Principle 21 of the Basic Principles also stipulates that the authorities must ensure that lawyers have access to appropriate information, files and documents in the authorities' possession or control in sufficient time to enable defence lawyers to provide effective legal assistance to their clients. It is also a basic principle of a fair hearing that an accused person must know the evidence against them. Accordingly, this guarantee of access to information and facilities to prepare a defence is a fundamental element of the right to a fair trial. The lack of full disclosure by the prosecution in the case of Gülhan Kaya, and others, is in violation of international fair trial standards. Similarly, the challenges faced by the defence to examine witnesses for the prosecution is also in violation of Article 14(3)(e) of the ICCPR, and Article 6(3)(d) of the ECHR.

## 4.3. Lack of independence of the judiciary

Although Turkish law provides for an independent judiciary, in practice the executive branch dominates the Council of Judges and Prosecutors, the body responsible for assigning judges and prosecutors to the country's courts and for their discipline. Out of the 13 judges who sit on the Board, the president directly appoints six. Although the constitution provides tenure for judges, the Board of Judges and Prosecutors controls the careers of judges and prosecutors through appointments, transfers, promotions, and discipline, including reprimands and expulsions.

Immediately following the 2016 coup attempt, the government suspended, detained, or fired nearly one-third of the judiciary, who were accused of affiliation with the Gulen movement alleged to be behind the attempted coup.

The lack of judicial independence is evidenced by events occurring during the fact-finding mission which constitute the greatest constitutional crisis in the history of the country. Specifically, on 8 November 2023, judges from the Court of Cassation filed a criminal complaint against judges from the Constitutional Court. This incident was sparked by a Constitutional Court decision in the case of Mr Can Atalay, a prominent human rights lawyer and activist who was elected to Parliament as an opposition MP in May 2023, while serving an 18-year prison sentence. In a decision issued on 25 October 2023, the Constitutional Court ruled that Mr Atalay should be released from prison. Turkish law provides that a convict who is eligible to run in parliamentary elections and who is elected must be released from prison to serve in Parliament, but must return to serve the remainder of their prison sentence after their term in Parliament ends. The Constitutional Court held that Mr Atalay's continued detention infringed his rights to "engage in political activities" as an MP, and instructed the

Court of Cassation to reverse its earlier ruling ordering that Mr Atalay remain in prison. Subsequently in a decision dated 8 November 2023, the 3rd Criminal Chamber of the Court of Cassation refused to comply with the Constitutional Court's decision, and, remarkably, filed a criminal complaint against those members of the Constitutional Court who had ruled in favour of Mr Atalay's release.

Commentators have widely characterized the Court of Cassation's decision as more political than legal, and have emphasized that the Court of Cassation's decision on its face appears to contravene Article 153 of the constitution, which provides that "The decisions of the Constitutional Court "are binding on the legislative, executive and *judicial organs*, administrative authorities, real and legal persons." (emphasis added)

As of early February 2024, the impasse between the Constitutional Court and the Court of Cassation continues. In the meantime, majority loyalists ejected Mr Atalay from Parliament on 30 January 2024. Mr Atalay's opposition party has appealed that action to the Constitutional Court.

# 5. Conclusion and recommendations

The international delegation welcomes the opportunity provided to interview lawyers in detention and to observe two court hearings during the fact-finding mission. The findings of the mission indicate that there is a worrying pattern of violations of international human rights law and standards, and a blatant disregard for the protection of lawyers.

The lawyers interviewed in detention have all been convicted and sentenced following manifestly unfair trials. The violations of fair trial rights during their court proceedings have been extensively documented by previous fact-finding missions and trial observations.[40]

The international delegation's observations of the court hearings on 6 and 9 November 2023, mirror the findings of previous fact-finding missions and a failure to comply with the principle of equality of arms under international law. The delegation observed that the defendants lack the opportunity to examine some witnesses for the prosecution, in violation of Article 14(3)(e) of the ICCPR and Article 6(3)(d) of the ECHR. The failure of the prosecution to provide access to appropriate information, files and documents to enable lawyers to provide effective legal assistance to their clients violates the right to adequate time and facilities for the preparation of a defence, enshrined in Article 14(3)(b) of the ICCPR, Article 6(3)(b) of the ECHR and Principle 21 of the Basic Principles.

The reported use of illegal phone tapping and the repeated criminal prosecution of lawyers who are providing legal services illustrates a pattern of harassment and intimidation against lawyers simply for carrying out their professional duties. Such action is in violation of Principles 16 and 18 of the Basic Principles.

The Anti-Terrorism Law (No: 3713) sets out an ambiguous definition of terrorism and terrorist offences punishable under the Turkish Penal Code. The crimes the lawyers interviewed have been charged with stem from these anti-terrorism offences, which are so broad and vague

[40] See for example: International Observatory of Lawyers, *Mission Report to Turkey*, April 2021, https://protect-lawyers.org/en/item/turkey-report-on-the-observation-mission-of-the-oiad-ohd-chd-i-trials/; European Association of Lawyers for Democracy & World Human Rights, *Report of the Fact-finding mission on CHD's Trials,* October 2019 https://eldh.eu/en/2020/06/final-report-fact-finding-mission-on-chds-trials-october-2019-istanbul/; International Association of Democratic Lawyers, *Trial Observation Report*, 16 February 2017.

that they lack sufficient legal certainty, rendering the lawyers' arrests and detention arbitrary and a violation of the right to liberty under Article 9 of the ICCPR and Article 5 of the ECHR.

Furthermore, the international delegation is concerned that the lawyers have been arrested and detained because of their professional associations and human rights advocacy. Articles 19 and 22 of the ICCPR and Articles 10 and 11 of the ECHR set out the general right to freedom of expression and association. Principle 23 of the Basic Principles also guarantees the right to freedom of expression, belief, association and assembly of lawyers.

In relation to the condition and treatment of the lawyers in detention who were interviewed. A series of violations of international law were identified.

The international delegation is gravely concerned about the reports and physical evidence that Oya Aslan, Engin Gökoğlu, Barkin Timtik, Aytaç Ünsal and Özgür Yilmaz have been subjected to torture or other ill-treatment while in detention, in violation of the UNCAT, Article 7 of the ICCPR and Article 3 of the ECHR. The authorities' failure to conduct an independent and impartial investigation of the lawyers' reports of torture and ill-treatment is also a violation of Article 12 of the UNCAT; and the reprisal against Engin Gökoğlu for making a complaint violates Article 13 of the UNCAT, as well as the right to an effective remedy under Article 14 of the UNCAT, Article 2(3) of the ICCPR and Article 13 of the ECHR.

The international delegation is also concerned that the imprisoned lawyers are all subject to a strict isolation regime that limits access to regular and meaningful contact with others, including not only other prisoners but also their family members and friends. The lawyers are being denied access to recreational, cultural and exercise activities contrary to Rules 4(2), 23, 42 and 105 of Nelson Mandela. Such restrictive conditions can be considered inhumane and a violation of Article 10 of the ICCPR. They may also amount to a violation of the UNCAT, Article 7 of the ICCPR and Article 3 of the ECHR.

Limited contact with the outside world is exacerbated by the lawyers' detention in prisons located in remote areas, rendering access for family members difficult, contrary to Rule 59 of the Nelson Mandela Rules and, in relation to the female lawyers, Rule 4 of the Bangkok Rules as well.

The disciplinary measures applied to the lawyers have prevented access to family members, in violation of Rule 43 of the Nelson Mandela Rules. In addition, the inability to effectively challenge disciplinary measures amounts to a violation of Rule 41 of the Nelson Mandela Rules.

Disciplinary measures have also been applied for actions which are legitimate exercises of the right to freedom of expression, such as chanting slogans, and are therefore a violation of Article 19 of the ICCPR and Article 10 of the ECHR. As noted in section 3.3. above, the lawyers are being repeatedly targeted with disciplinary measures, seemingly for the purpose of rendering them ineligible for conditional early release.

The international delegation is concerned that the lawyers are regularly subjected to personal searches. The delegation considered that personal searches are being conducted with unreasonable frequency and disproportionately, and constitute a violation of Article 10 of the ICCPR and Rule 52(1) of the Nelson Mandela Rules.

In relation to access to health care, the poor conditions within which the lawyers, and other prisoners, are transported when requiring medical assessment or treatment, as well as the systematic and blanket use of handcuffs during medical examinations and treatment, may amount to torture or other ill-treatment, and consequently a violation of Article 3 of the ECHR, Articles 7 and 10 of the ICCPR and Articles 1 or 16 of the UNCAT.

In relation to access to health care, the lawyers and other prisoners are subjected to poor conditions whenever they are transported for medical assessment or treatment. Together with the authorities' systematic and blank use of handcuffs during medical examinations and treatment, this may amount to torture or other ill-treatment, in violation of Article 3 of the ECHR, Articles 7 and 10 of the ICCPR and Articles 1 or 16 of the UNCAT. The poor conditions of transport and the unwarranted use of handcuffs during medical examinations and treatment similarly violate Rule 73(2) of the Nelson Mandela Rules.

Lastly, the failure to provide the female lawyers with access to feminine hygiene products, such as tampons and sanitary pads, as required and for free, violates Rule 5 of the Bangkok Rules and Rule 18(1) of the Nelson Mandela Rules.

Considering its findings, the international fact-finding delegation urges the Turkish government to take the following actions:

- To immediately and unconditionally release Oya Aslan, Aycan Çiçek, Engin Gökoğlu, Süleyman Gökten, Selçuk Kozağaçlı, Barkin Timtik, Aytaç Ünsal and Özgür Yilmaz.
- Pending the release of the lawyers to ensure that they are held in conditions that are in conformity with international standards for the treatment of prisoners.
- To drop all charges against Gülhan Kaya, and her colleagues, and cease all acts of intimidation and harassment, including arbitrary arrest and detention, against lawyers in Turkey.
- To conduct an independent and impartial enquiry into the alleged torture and other ill-treatment of Oya Aslan, Engin Gökoğlu, Barkin Timtik and Aytaç Ünsal and bring any suspected perpetrators to justice in fair trials.
- To ensure that lawyers in Turkey are not identified with their clients and clients' causes.
- To ensure that all lawyers in Turkey can conduct their legitimate professional activities without fear of reprisals and free of undue interference.

# Annex 1

## List of participating organisations

1. Bologna Bar Association
2. Bordeaux Bar Association
3. Brussels Bar Association
4. Catalan Association for the Defence of Human Rights
5. Defense Sans Frontiere - Avocats Solidaires
6. European Association of Lawyers for Democracy and World Human Rights (ELDH)
7. European Democratic Lawyers (AED)
8. Fédération des Barreaux d'Europe (FBE)
9. Grenoble Bar Association Human Rights Institute
10. International Association of Democratic Lawyers (IADL)
11. International Observatory of Lawyers (OIAD)
12. Lawyers for Lawyers
13. Law Society of England and Wales
14. Legal Centre Lesvos
15. La Conférence des Bâtonniers – France
16. Le Syndicat des Avocats de France
17. Le Syndicat des Avocats pour la Démocratie, Belgium
18. Marseille Bar Association
19. Nantes Bar Association
20. New York City Bar Association
21. Rennes Bar Association
22. Rotterdam Bar Association
23. The Association of Legal Aid Lawyers in Amsterdam (VSAN)
24. The Center of Research and Elaboration on Democracy/ Legal international Intervention

Group (CRED, GİGİ)

25. The Defence Commission of the Barcelona Bar Association
26. The Order of the French- and German-speaking Bars of Belgium
27. Union Internationale des Avocats – Institute for Rule of Law (UIA-IROL

# Annex 2


# Joint Statement

## Widespread mistreatment of lawyers in Turkey

This week, a delegation of 21 bar associations, human rights organisations and legal groups representing eight countries gathered in Turkey for a fact-finding mission on the Turkish government's treatment of criminal law and human rights lawyers. *

A joint statement by the delegation said:

"As the mission draws to a close, we are distressed that lawyers in Turkey continue to face ongoing harassment, arbitrary detention, unfair trials, torture and ill-treatment.

"Lawyers in Turkey are arrested, detained and imprisoned simply due to their legal work - including clients they represent and professional bodies to which they belong.

“Many of the lawyers we visited in prison are members of the Progressive Lawyers Association (ÇHD) and the People's Law Office (HHB). They have practised in criminal and human rights law for many years and prove that the Turkish government is systemically targeting lawyers who defend the fundamental human rights of the people of Turkey.

“Furthermore, when these lawyers find themselves detained, they are denied the right to a fair trial. Many have been held since 2017/2018, following unfair trials and ineffective legal assistance.

“We are also gravely concerned about the conditions of their detentions, which violate internationally-accepted standards for prisons, including the U.N. Standard Minimum Rules for the Treatment of Prisoners. Detentions continue to be arbitrary and are prolonged with little justification or explanation. They have restricted access to family members and are held in isolating conditions, often able to interact with only two or three other detainees. Disciplinary measures are being applied to deny the lawyers’ conditional release. We are extremely concerned that at least two of the lawyers, Mr. Ünsal and Mr. Gökoğlu, have reported being subjected to torture.

“The mistreatment of lawyers, from arbitrary detention to unfair trials and torture, is a clear violation of Turkey’s legal obligations to the international community.

“The Turkish government’s intimidation tactics have a chilling effect on the rule of law and Turkish citizens’ access to justice. They foster a climate of fear and insecurity for lawyers working in criminal law and human rights defence.

“We demand the Turkish government halt all acts of intimidation and harassment targeting lawyers and respect the independence of the legal profession, in accordance with international law, including the U.N. Basic Principles on the Role of Lawyers.

“We will continue to monitor the situation of lawyers in Turkey and ensure the Turkish government complies with the standards of international human rights.”

**Notes to editors**

- *The delegation visited Turkey between 6 and 9 November 2023. Members of the delegation include:

1. Bologna Bar Association
2. Bordeaux Bar Association
3. Brussels Bar Association
4. Catalan Association for the Defence of Human Rights
5. Defense Sans Frontiere - Avocats Solidaires
6. European Association of Lawyers for Democracy and World Human Rights (ELDH)
7. European Democratic Lawyers (AED)
8. Fédération des Barreaux d’Europe (FBE)
9. Grenoble Bar Association Human Rights Institute

10. International Association of Democratic Lawyers (IADL)
11. International Observatory of Lawyers (OIAD)
12. Lawyers for Lawyers
13. Law Society of England and Wales
14. Legal Centre Lesvos
15. La Conférence des Bâtonniers – France
16. Le Syndicat des Avocats de France
17. Le Syndicat des Avocats pour la Démocratie, Belgium
18. Marseille Bar Association
19. Nantes Bar Association
20. New York City Bar Association
21. Rennes Bar Association
22. Rotterdam Bar Association
23. The Association of Legal Aid Lawyers in Amsterdam (VSAN)
24. The Center of Research and Elaboration on Democracy/ Legal international Intervention Group (CRED, GİGİ)
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