



The Law Society of England and Wales  
London, United Kingdom  
For the attention of Mr Simon Davis, President

**21 August 2019**

Dear Mr Davis,

On 18 July 2019, the Law Society made a joint submission to the UN Human Rights Council's Universal Periodic Review on behalf of an international coalition of legal organisations regarding the suspension and arrests of both judges and prosecutors in Turkey. The document details recommendations to be taken to guarantee the independence of the legal profession and the due application of the rule of law and human rights in Turkey.

As a practising lawyer in Turkey, Founding Partner of the law firm Gün + Partners and Founder and Chairman of the Better Justice Association, I have carefully read the submission from the Law Society. I am a passionate advocate for reform in Turkey, believing full democracy is achievable if we first establish a truly independent, accountable and efficient judiciary; on this I believe our views are aligned.

Before I go into some of the details of your submission, I think it is important to consider Turkey's road to democracy and the role the judiciary will play in this. As you no doubt appreciate, achieving full democracy in Turkey has been, and remains, a long journey. It began with the formation of the Turkish Grand National Assembly in Ankara in 1920 that led to the Turkish War of Independence and, later, the formation of the Republic of Turkey. While it is widely agreed that the 1961 constitution was more democratic and liberal than before, Turkey's democratisation journey has been plagued by setbacks, including military interventions. The military dictatorship only ended in 1982 with a rather undemocratic constitution. Insufficient for the ruling of contemporary Turkey, the 1982 Constitution needs to be replaced with one drafted for and by civilians. Since its ratification, several amendments have been made, including changes made in 2010 to the judicial and court structures, purporting to better align them with EU standards. However, the judiciary has never been fully independent, efficient or truly accountable and because of this Turkey still lags in terms of achieving full democracy and its respect for human rights.

As well as trying to educate a wider audience about Turkey's journey towards full democracy, I believe people around the world must be better informed about the reality in Turkey, so that prejudices are not formed based on misinformation. Therefore, whilst I

greatly respect and admire the Law Society and the British legal system, I regard some findings in this report to be inaccurate.

Firstly, the recommendations on the Administration of Justice, including impunity and the rule of law, describe the “closure of Bar Associations and Law Societies” in Turkey. This information is incorrect: no Bar Association has been closed, only one NGO (confusingly called the Konya Bar Association), composed of lawyers linked to the FETÖ organisation, has been closed. All other lawyers in Turkey continue to practice with bar registration.

Moreover, the submission omits background information from before the putsch of 15 July 2017, the very high level of penetration of the judiciary by FETÖ and the wide ranging offences committed by the same organisation, all of which are key to contextualising the problems faced by the Turkish judiciary. From around the 1980s the FETÖ organisation orchestrated a coordinated campaign to enter the judiciary, undermining its independence, utilising it to abuse state and judicial powers and as a means to control the whole. Prosecutors and judges who have been convicted of being members of FETÖ brought about the conviction of 365 innocent army officers on the basis of fabricated evidence. These prisoners were incarcerated in unacceptable conditions for excessive lengths of time and in some cases even deprived of essential cancer treatment. This is set against a wider background of stealing answer codes to various state institution entry exams and mobilising violent bombing campaigns across the country until they were defeated on 16 July 2017.

Secondly, the joint submission asserts there has been “widespread and systematic persecution of members of the legal profession in Turkey”. The seemingly ‘widespread’ nature of these attacks and the implication that these are unwarranted is false. A certain number of lawyers have been convicted – 311 in total – for having links to the FETÖ organisation, not, as the report states, because they were “denouncing...human rights violations”. These 311 individuals make up a small number of Turkish lawyers, with the remaining 126,000 lawyers in Turkey continuing to practice legally and professionally.

Finally, the claim that lawyers are unable to perform their professional duties due to the interference of Emergency Decrees, “thereby undermining the right to representation and other fair trial rights” is not true. Whilst it is true that inefficiencies in the judiciary and in its procedural rules make it almost impossible to ensure fair trials and hearings, especially in large cases where tens or hundreds of accused are tried, this should instead be attributed to the lack of accountability amongst members of the judiciary. This has created a class of powerful and immune people in Turkey who wield political control.



Reform of the judicial system is required to fix this problem.

Turkey needs to undertake serious reforms to establish an efficient and reliable judiciary. First, it is important to remove all Executive interference in the judiciary. Judges must be appointed in a way that is efficient, fully independent and truly accountable so as to restore confidence in the system.

It is also necessary that all judiciary members, including judges and prosecutors, are held accountable for their decisions, predetermined goals and results before a higher authority. On the one hand, this will involve modernising archaic procedures so that procedural rules are capable of coping with the numbers, not least by securing additional funding. On the other hand, its dependence on the executive needs to be addressed and decisions in relation to the judiciary must be appealable before a judicial authority.

There is no doubt that Turkey has a long way to go in developing the human, civil and political rights of its people, however, such developments are possible with reform. I outline some of these necessary reforms in my book, Turkey's Middle Democracy Issues. Some of these insights have been used as guidance in the recent Judicial Reform Strategy booklet released by the Turkish Government in May this year. Though this reform strategy is a statement of commitment from Erdogan's government, I am critical of the fact it doesn't mention key public objections, for example the Executive's ability to determine the composition of the HSK Judicial Council. It also lacks credibility due to not including a detailed action plan or timeline for implementation. We must applaud the will to reform, but without a rigorous plan to enact specific changes it will remain just that.

I feel passionately about the EU and international organisations such as the United Nations not turning their backs on Turkey, but instead continuing to work with the country to push forward the required reforms. Turkey must restructure its judiciary in strict compliance with the fundamental principles stated in decisions 1835-40/32 and 40/146 of the General Assembly of the United Nations.

Organisations like yourselves play an important role in encouraging the global community to find constructive ways to work with Turkey to achieve a truly independent judiciary. As Chairman and Founder of the Better Justice Association, it is my mission to advocate for an independent, efficient and accountable judiciary. This must be done to free Turkey from the power struggle as it continues to mature towards a full democracy. The Law Society and other organisations can engage positively in this process, drawing on the United Kingdom's experience.

I would welcome the opportunity to discuss these issues with you and ultimately work together to champion this need for change. Not only for the betterment of the country and its people, but for the powerful example a genuinely democratic Turkey could set for the region and for the positive role it can play with Europe moving forward.

Yours sincerely,



Mehmet Gün  
Founder and Chairman  
Better Justice Association

CC: Marina Brillman, The Law Society

Merete Smith, The Norwegian Bar Association

Judith Lichtenberg, Lawyers for Lawyers

Schona Jolly QC, Bar Human Rights Committee of England and Wales

Phil Chambers, The International Bar Association's Human Rights Institute

Clive Ansley, Lawyers' Rights Watch Canada

Marie-Pierre Richard, International Association of Lawyers

Victoria Ortega Benito, Consejo General de la Abogacía Española

Niklas Malter Müller, The German Bar Association, Human Rights Committee

Anne Souleliac, The International Observatory of Endangered Lawyers

Caroline Bydzovsky, Geneva Bar Association, Human Rights Commission

Thomas Schmidt, European Association of Lawyers for Democracy & Human Rights

Stéphane Bortoluzzi, Conseil National des Barreaux

Michelle Bachelet Jeria, OHCHR

Yusuf Alatas, International Federation for Human Rights

Bruno Stagno Ugarte, Human Rights Watch

Kutlan Menderes Elmas, Free Judges

Gianni Buquicchio, European Commission for Democracy Through Law