

EXPERIENCE IN TURKEY

- 1 I have been actively engaged in human rights protection in Turkey from 1992 to the present.
- 2 In 1992 I participated in the founding of the Kurdish Human Rights Project (KHRP)¹, together with the late Professor Kevin Boyle and Professor Francoise Hampson of Essex University, and their former LLM student Kerim Yildiz, a Kurdish lawyer who became and still is Executive Director of the Project. Until 2012 when KHRP was closed, I was a member of KHRP's Advisory Group. At that time I was a Senior Lecturer in Law at the University of East London. KHRP worked in partnership with human rights organisations in Turkey, especially the IHD² (İnsan Hakları Derneği, Human Rights Association), and the TİHV³ (Türkiye İnsan Hakları Vakfı, Human Rights Foundation of Turkey).
 1. In 1993 I was a founder and am now the President of the European Association of Lawyers for Democracy and Human Rights (ELDH)⁴, which has members in 21 European countries, including in Turkey the leading progressive lawyers organisations ÇHD (*Çağdaş Hukukçular Derneği*, Progressive Lawyers Association), and ÖHP (*Özgürlükçü Hukukçular Platformu*, Platform of Lawyers for Freedom), which have several thousand lawyer members throughout Turkey.⁵
 2. In England the ELDH member association is the Haldane Society of Socialist Lawyers, whose leading members have included Lord Justice Sedley, Mr Justice Blake, Mrs Justice Lang, Baroness Helena Kennedy, the former DPP Keir Starmer QC, and whose President is Michael Mansfield QC.⁶ I am the International Secretary of Haldane.
 3. Starting at about that time I represented the applicants in a large number of complaints against Turkey at the European Court of Human Rights. For obvious reasons I did not visit Turkey at that time, save for in-country fact-finding hearings

¹ <http://www.khrp.org/index.php>

² <http://www.ihd.org.tr/> (accessed on 22 September 2018) – in Turkish

³ <http://www.tihv.org.tr/index.php?english-1> (accessed on 22 September 2018) – in English

⁴ <http://www.eldh.eu/about/> (accessed on 22 September 2018) – in English

⁵ <http://www.chd.org.tr/> (accessed on 22 September 2018) – in Turkish

⁶ www.haldane.org

in Ankara mentioned below. Otherwise, I would have been a most unwelcome visitor.

4. Some of my more important cases were the following.
5. In *Özgür Gündem v. Turkey*⁷ I represented Gurbetelli Ersöz, Fahri Ferda Çetin and Yasar Kaya, and Ülkem Basın ve Yayıncılık Sanayi Ticaret Ltd, the editors and publisher of *Özgür Gündem*, a Turkish Kurdish daily paper. Until the paper was forced to close, seven journalists had been murdered by “unknown perpetrators”, and the paper had suffered many attacks on distributors and others, the blowing up of its building, and prosecution by the state of almost every issue. I drafted proceedings in 2003 and represented the applicants before the Commission and Court of Human Rights.
6. On 16 March 2000 the Court held (para 71) that Turkey had failed to take adequate protective and investigative measures to protect *Özgür Gündem*'s exercise of its freedom of expression and that it had imposed measures on the newspaper, through the search-and-arrest operation of 10 December 1993 and through numerous prosecutions and convictions in respect of issues of the newspaper, which were disproportionate and unjustified in the pursuit of any legitimate aim. As a result of these cumulative factors, the newspaper ceased publication. Accordingly, there had been a breach of Article 10 of the Convention. The Court awarded substantial compensation.
7. In *Aktaş v. Turkey*⁸ I represented the brother of Yakup Aktaş, who died in police custody on 25 November 1990, at the age of 26, leaving a young widow. I drafted proceedings in 1994, and represented the family at an in-country fact-finding hearing in Ankara in November 1997, when three members of the European Commission on Human Rights sat in the Supreme Court library and heard witnesses for the applicant and Turkey. The Turkish government denied that the brother's death had anything to do with ill-treatment or torture. Indeed, the Turkish Government indulged in some quite extraordinary behaviour during the proceedings and in the oral hearing, all documented in the judgment.

⁷ Application no. 23144/93, judgment of 16 March 2000.

⁸ Application no. 24351/94, judgment of 24 April 2003

8. I obtained the assistance of Dr Chris Milroy, the leading Consultant Clinical Pathologist.
9. The Court held in 2003 that in the light of Dr Milroy's evidence, the Government having provided no evidence to the contrary, Yakup Aktaş had been murdered by the Turkish Government, violating Article 2. No investigation had been carried out, violating the positive duty under Article 2.
10. As to torture the Court held (paras 318-9):

... The Court is left with no alternative but to find that Yakup Aktaş was the victim of inhuman and degrading treatment within the meaning of Article 3 of the Convention.

319. There can be no doubt that the maltreatment was particularly serious, since it resulted in Yakup Aktaş's death. Moreover, as is borne out by the expert opinion of Dr Milroy and the evidence given by Professor Kolusayın to the Commission's Delegates, the marks on the body – and in particular the cyanosis – are consistent with mechanical asphyxiation such as would result from pinioning the chest so as to prevent breathing, crucifixion or “Palestinian hanging”. The Court has no difficulty drawing the inference that the suffering inflicted on Yakup Aktaş was particularly severe and cruel. Finally, since it is not in dispute that Yakup Aktaş was interrogated and since Major Dursun Şeker recorded statements by several gendarmerie officers that Yakup Aktaş had confessed to supplying money and rifles to the PKK, the Court considers it reasonable to infer that the purpose of the perpetrators was to obtain information or a confession of guilt. It is therefore appropriate to find that Yakup Aktaş was tortured.
11. The Court awarded a record amount, € 226,065, in just satisfaction for the widow and daughter of the deceased, and payments for the applicant.
12. I am afraid to say that this case was particularly bad, but otherwise typical of the activities of the Turkish government.
13. In *İpek v. Turkey*⁹ I represented Mr. Abdurrezak İpek, born in 1942, a shepherd, who alleged that on 18 May 1994 Turkish government forces burned down his village named Çaylarbaşı (Dahlezeri in Kurdish) and took away two of his sons Servet and İkrâm İpek. They were never heard of again. It was a disgrace that the case took ten years until judgment, and this was mainly due to the extraordinarily obstructive and

⁹ Application no. 25760/94, judgment of 17 February 2004

mendacious behaviour of the Turkish government. By the time of the oral hearing of ten children of the applicant one remained.

14. In view of the total denial of the Turkish authorities that there ever was such a village the Court again ordered an in-country fact-finding hearing, which again took place in the Library of the Supreme Court in Ankara, in November 2002. Three judges, including Judge Costa, now President of the Court, heard oral evidence, and I represented the family.
15. The Court held that the Turkish Government had murdered the two sons, violating both limbs of Article 2 (para 168).

taking into account that no information has come to light concerning the whereabouts of the applicant's sons for almost nine and a half years, the Court is satisfied that Servet and İkrâm İpek must be presumed dead following their unacknowledged detention by the security forces. Consequently, the responsibility of the respondent State for their death is engaged. Noting that the authorities have not provided any explanation as to what occurred following the İpek brothers' apprehension, and that they do not rely on any ground of justification in respect of any use of lethal force by their agents, it follows that liability for their death is attributable to the respondent Government ... Accordingly, there has been a violation of Article 2 on that account.

16. The Court also held that the applicant had suffered “distress and anguish as a result of the disappearance of his two sons and of his inability to find out what had happened to them”, so that there was also a violation of Article 3.
17. The Court ordered just satisfaction of more than €50,000, including compensation for the destruction of the applicant’s home and livestock by Turkey. This was one of many “village destruction” cases, in which Turkey despite its denials was found to have deliberately destroyed many Kurdish villages with no justification.
18. These are just three of many cases in which I represented Kurdish applicants. As may be seen, I visited Turkey as an advocate in 1997 and 2002. I have never been to Turkey as a tourist, and I do not have other than minimal Turkish language.
19. In 2002 I obtained €1 million from the European Commission and founded the European Human Rights Advocacy Centre (EHRAC) together with the former KHRP lawyer Professor Philip Leach who became EHRAC Director, and the former

KHRP Project Manager, Tina Devadasan. I am now Chair of EHRAC and have since 2000 until the present day taken many cases against Russia and other Council of Europe states including Azerbaijan, Estonia, Georgia and Latvia.

20. However, I have maintained my contacts and interest in Turkey, not least through my constant contacts with the ÇHD (and now also the ÖHD).
21. In 2004, in view of my experience in Turkish torture cases at Strasbourg, I was invited to take part with Tim Otty QC in a training workshop in Ankara organised by the International Bar Association's Human Rights Institute, to promote their manual 'Combating Torture: A Manual for Judges and Prosecutors' in Ankara. According to the IBA web-site.¹⁰

The workshop was well attended by judges, magistrates, prosecutors and representatives from the Human Rights Commission and Turkish Bar Associations.

Training included practical guidance on dealing with torture and case studies demonstrating the application of international and regional standards.

The main objectives of the workshops were identified as follows:

- To introduce participants to the application, enforcement and implementation of the prohibition of torture in domestic, regional and international law
- To provide guidance on the role of lawyers and prosecutors when there have been allegations of torture
- To provide guidance in how to deal with suspected victims of torture
- To raise awareness of torture prevention

22. The Turkish participants in the workshop were very forthcoming and I learned a great deal about the problems of the use of torture in Turkey.
23. On 28-29 September 2013 I attended and spoke at a seminar organised by ÇHD.
24. My colleagues in ÇHD regularly represent defendants and complainants who have been the victims of torture, as well as unlawful arrest and detention, malicious prosecution, and unfair trial. ÇHD members attend the twice-yearly meetings of the ELDH Executive Committee and keep me and my colleagues up to date with the situation in Turkey. As I show below, many of my Turkish colleagues have now been arrested and detained for long periods.

¹⁰ http://www.ibanet.org/Human_Rights_Institute/Work_by_regions/Europe/Turkey.aspx (accessed on 13 April 2013)

25. On 13-15 January 2017 ELDH organised a conference in Ankara, the capital of Turkey, *The judicial system under the state of emergency in Turkey*.
26. We organised the conference because the activities of our Turkish member organisations the Progressive Lawyers Association (*Çağdaş Hukukçular Derneği*), CHD, several thousand strong with offices all over Turkey, and the Platform of Lawyers for Freedom (*Özgürlükçü Hukukçular Platformu*), ÖHP, which unites progressive Kurdish lawyers, were suspended for three months by the Ankara Governorship on 11 November 2016. They were totally banned by the Decree Law no. 677 on 22 November 2016.
27. The conference was attended by nearly 200 delegates from all over Turkey as well as international representatives. Co-organisers of the conference included, in their official capacity, the Bar Associations of Adana, Adıyaman, Ağrı, Ankara, Batman, Bingöl, Bitlis, Diyarbakır, Hakkari, Muş, Siirt, Şanlıurfa, Şırnak, Tunceli, and Van, as well as the Democratic Judges Associations and the Syndicat of Judges, the Bar Associations of Antalya, Bursa, Gaziantep, Iğdır, Kars-Ardahan, and Mardin, and Lawyers and Human Rights Defenders Without Borders in Turkey, the Association of Forensic Science Experts, and the Platform of Lawyers Against State of Emergency.
28. The Final Declaration of the conference, which I read out, was based on discussions of approximately five hundred decisions, reports, records, action and application sheets and experiences that were reviewed in six simultaneous workshops and single day studies by 179 lawyers, forensic experts and clinical psychologists who are experts on their own fields and on 22 declarations that were presented in six different sessions on two days.
29. The Declaration concluded: “It is necessary to put an end to the State of Emergency that was declared on 20 July 2016 and to retrospectively remove all the legal regulations and administrative practices that widely violate the fundamental rights and freedoms.”
30. In November 2017 I presented a paper at the first International Human Rights Academy of the Aegean, held near Izmir, organised by the ELDH member, Platform of Lawyers for Freedom (*Özgürlükçü Hukukçular Platformu*), ÖHP.

31. On 7 to 9 September 2018, there was a second conference in Istanbul, entitled “The normalization of the state of emergency and the situation of judiciary in Turkey, 2nd International Conference in Turkey”.¹¹ The conference was held at the Istanbul Bar Association Conference Hall, and sponsored by ELDH and other European lawyers organisations. I delivered a paper on 9 September.
32. On 10 September 2018 I and about 30 lawyer colleagues from Austria, Belgium, England, France, Germany, Greece, Italy, Japan, The Netherlands, and U.S.A., observed the first day of the trial 20 practising lawyers at the Istanbul Heavy Penal Court, all of them members of ÇHD, among them the ÇHD President and advocate practising in Istanbul, Selçuk Kozagagaçlı.¹² 17 of them had been kept in pre-trial detention for almost 12 months, Selçuk for 10 months. They are all charged with membership in a terrorist organisation (DHKP-C). Two of them are accused of directing this organisation. The prosecutor argued that all of them are working in the Peoples Law Bureau, HHB, and that this law office takes mainly clients who accused of membership in DHKP-C. It follows, says the prosecutor, that this law office is part of the structure of DHKP-C. Indeed, because I was representing the Turkish Kurdish newspaper *Özgür Gündem* at the ECtHR as noted above, the Turkish government agent denounced me in front of the judges as a Terrorist and a Member of the terrorist PKK.
33. I note that it is alleged that the DHKP-C recruits mainly from the Alevi community.
34. I returned to Turkey in November 2018 for the second, organised by the Platform of Lawyers for Freedom (*Özgürlükçü Hukukçular Platformu*), ÖHP, and presented a paper, together with lawyer colleagues from several countries.¹³ This conference was followed by the ELDH Executive Committee, which was attended by representatives of my member organisations in Belgium, England, France, Germany, Greece, Italy, Russia, Spain, Turkey, and Ukraine.

¹¹

<http://www.eldh.eu/events/event/dark-side-of-the-moon-2-the-normalization-of-the-state-of-emergency-and-the-situation-of-judiciary-in-turkey-307/>

¹²

<https://eldh.eu/en/2018/11/28/the-state-of-emergency-is-over-stop-political-trials-against-lawyers-release-lawyer-s-from-pre-trial-detention/>

¹³ <https://eldh.eu/en/2018/08/21/international-human-rights-regime-in-crisis/>

35. In November 2019 I again participated in the third International Human Rights Academy of the Aegean and delivered a paper.
36. Since the C-19 outbreak ELDH has been holding its Executive Committee meetings online on a monthly basis. These are always attended by representatives of ÇHD and ÖHD, and we have been organising many campaigns and actions, for example with the Law Society of England Wales, on Turkey¹⁴. On 9 June 2020 ELDH with the Law Society and others organised “Lawyers at risk: Online Conference on the Persecution of Lawyers in Turkey.”¹⁵

¹⁴ <https://eldh.eu/en/2020/06/25/solidarity-with-turkish-bar-associations/>

¹⁵

<https://communities.lawsociety.org.uk/lawyers-at-risk/online-conference-on-the-persecution-of-lawyers-in-turkey/6001104.article>