FINAL REPORT ON

THE TRIAL OF FILIZ KALAYCI

No. 4 ANKARA HEAVY PENAL COURT

20 MAY 2003

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I. Executive Summary

This is the final report of the trial of **Filiz Kalayci**, a Turkish lawyer, who was charged with "insulting the Ministry of Justice" and "professional misconduct" on account of an article that she wrote in a national newspaper regarding F-Type prisons in Turkey. Her comments were published in the Cumhuriyet newspaper on 15 January 2002.[1]

The Centre for the Independence of Judges and Lawyers (CIJL) of the International Commission of Jurists (ICJ) appointed an observer, Mr. Paul Richmond, Barrister of England and Wales, to monitor and report on Ms. Kalayci's trial before No. 4 Ankara Heavy Penal Court, which took place on 20 May 2003.

The ICJ/CIJL is satisfied that the charges against Ms. Kalayci were dismissed on 20 May 2003. Nevertheless, it is concerned that the charges were ever brought at all and were pending for almost 15 months. The ICJ/CIJL is of the opinion that the charges were a manifestation of state-sponsored harassment and intimidation of a member of the Turkish legal profession who had sought to exercise her internationally guaranteed right to non-violent freedom of expression. The ICJ/CIJL is of the view that the criminal proceedings against Ms. Kalayci were in fact brought for a political purpose. As such, they were brought in order to punish an individual lawyer who had sought to defend the human rights of Turkish citizens detained in F-Type prisons and also as a means of intimidating both her and her fellow members of the legal profession into refraining from expressing similar opinions in the future.

The ICJ/CIJL finds that although several aspects of the right to a fair trial were respected during the course of the criminal proceedings against Ms. Kalayci, serious concerns persist in relation to others such as **the right to be tried by an independent tribunal** and **the right to be tried without undue delay**.

The ICJ reminds the Turkish Government of its international obligations to guarantee freedom of expression[2] and allow lawyers to perform their professional functions without intimidation, hindrance, harassment or prosecution.[3]

II. The Trial

1. The Charges Against Filiz Kalayci

Filiz Kalayci was charged with "insulting the Ministry of Justice", a criminal offence pursuant to Article 159 of the Turkish Penal Code, and "professional misconduct", a criminal offence pursuant to Article 240 of the Turkish Penal Code. The

[1] The full text of the article, together with translation, is reproduced in Annex C.
[2] Article 10, European Convention on Human Rights.
[3] Principles 16 and 18, Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 19990. G.A. Res. 45/121. 45th Sess.

charges stemmed from an interview that she gave to Cumhuriyet newspaper regarding the situation of F-Type prisons in Turkey. Her comments were published in the 15 January 2002 edition of the newspaper.

Article 159 of the Turkish Penal Code creates a criminal offence of insulting, "Turkishness, the Republic, the Grand National Assembly, the spiritual personality of the government, ministries, the military, security forces or judiciary of the state."

According to the indictment dated 12 April 2002, the particulars of the alleged offence under Article 159 were that in the 15 January 2002 edition of the Cumhurriyet newspaper, Filiz Kalayci made statements such as "The Minister of Justice is causing prisoners to go on death strikes … He is in a way issuing an invitation for new deaths … He does not give prisoners any other alternatives and therefore provokes the action".

Article 159 of the Turkish Penal Code is just one of a number of laws that have been widely criticised as criminalising freedom of expression in Turkey.[4] Prosecutors bring dozens of such cases to court each year, which constitute a form of harassment against writers, journalists and political figures who express ideas contrary to the ideals of the Turkish state, although judges have reportedly dismissed many charges brought under these laws.

Legislative amendments introduced in February 2002 as part of Turkey's programme towards E.U. accession initiated two important changes to Article 159. First, whereas the Penal Code previously imposed a maximum six-year term of imprisonment for any person found guilty of an offence under Article 159, the maximum punishment was reduced to three-years imprisonment. Second, speech or writing that was intended to merely criticise, but not insult, state institutions was made no longer illegal.[5] While the limitation upon the scope of Article 159 and the reduced penalty for violators is to be welcomed, humanitarian NGO's maintain that the law still restricts non-violent expression in a manner and to a degree that is incompatible with the standards of a modern liberal democracy.

Article 240 of the Turkish Penal Code provides as follows:

> Apart from situations written in the Act, whatever the reason may be, if a public servant abuses or misuses their duty/responsibility, depending on the degree of the offence, they shall be imprisoned for three years. In the event of any mitigating circumstances the penalty shall be between six months to one year imprisonment,

[4] Other laws criticised for limiting freedom of expression in Turkey include Article 8 of the 1991 Anti-Terror Law (disseminating separatist propaganda; Penal Code Articles 312 (incitement to racial, ethnic, or religious enmity); 160 (insulting the Turkish Republic); 169 (aiding an illegal organization): the Law to Protect Ataturk; and over 150 articles of the Press Law (including a provision against commenting on ongoing trials).

[5] Other revisions to Turkish laws in recent months have included amending Article 8 of the Anti-Terror Law so that political activity is not illegal if it is not intended to disrupt the unity of the state, and amending Article 312 of the Turkish Penal Code so that incitement can only be punished if it presents 'a possible threat to public order'.

and in both circumstances there shall be a heavy financial penalty as punishment. Furthermore, there shall also be suspension or dismissal from being a public employee.

Article 240 of the Turkish Penal Code, as set out above, creates a criminal offence of professional misconduct. The failure of any public employee to act in accordance with his/her duty is a serious offence punishable by a term of imprisonment, a heavy fine and dismissal from public service.

The observer was informed that Article 240 of the Turkish Penal Code was originally enacted in order to provide a complaint mechanism for Turkish citizens dissatisfied with the conduct of any *public employee* instructed to act on their behalf. The observer was also informed that the courts do have experience of criminal prosecutions of lawyers on charges of professional misconduct. However, the criminal proceedings have usually been commenced following a complaint made by an ordinary citizen against a lawyer instructed to act on their behalf rather than at the instigation of the Office of the Public Prosecutor of its own motion.

In addition to the foregoing, the observer was informed that according to the Rules of the Bar Association, whenever a criminal investigation is commenced against a lawyer under Article 240 of the Turkish Penal Code, the lawyer is also subjected to a disciplinary investigation by his/her Bar Association. The Observer was informed that a criminal conviction will usually, but not automatically, result in the lawyer concerned being disbarred for life.

2. Other applicable law, decrees or regulations

Articles 58 and 59 of the Law on Lawyers are relevant in so far as they outline the conditions of inquiry for lawyers accused of offences committed during the course of their professional duties. Article 58 provides as follows:

"All investigations concerning offences committed by lawyers during the course of their duty shall be carried out by the Public Prosecutor, responsible for the area, following the grant of permission by the Minister of Justice. The offices and homes of lawyers may only be searched with a court order, and under the supervision of a Public Prosecutor and a representative of the Bar Association. Such a search may only be undertaken in respect of the matter in relation to which the court order was obtained. Lawyers should not be subjected to body searches, unless they are suspected of offences requiring heavy sentencing."

Article 59 of the Law on Lawyers provides as follows:

"the file in respect of an investigation carried out in pursuance of Article 58 shall be sent to the Under-Secretary of the Minister of Justice responsible for Heavy Penal matters. Following their investigation, if it is decided that legal action is necessary then the file will be sent to the Public Prosecutor of the Heavy Penal

Court nearest to where the offence was committed. Within five days, the Public Prosecutor shall prepare an indictment and pass it to the Heavy Penal Court to decide whether there are grounds for a final investigation or not.

A copy of the indictment shall, in accordance with the Procedure Rules of the Penal Court, be given to the lawyer against whom there is an investigation. Following receipt of the indictment, the lawyer may, within the time period set by law, request that further evidence be obtained. If the request is acceptable it is taken into consideration and, if necessary, the judge will order further, more detailed investigation.

The trial of a lawyer against whom it is decided to open an investigation will be held at the Heavy Penal Court nearest to where the offence was committed. The Bar Association of which the lawyer is a registered member will be notified of the prosecution."

3. The nature of the prosecution case

The trial of Filiz Kalayci before No. 4 Ankara Heavy Penal Court was based upon the contents of an interview that she gave to Cumhuriyet newspaper published on 15 January 2002. The sections of the interview that were selected as the basis for the prosecution were as follows:

"The Minister of Justice is causing prisoners to go on death strikes … He is in a way issuing an invitation for new deaths … He does not give prisoners any other alternatives and therefore provokes the action"

"The prisoners should be able to communicate to each other during breaks for which the prison administration must be responsible [to create the] necessary possibilities. Something above this and a regime tighter than this cannot be accepted. It is not correct that the F-Type prison system is suitable to the international standards. This is a completely self-made Turkish-type prison system."

"This new proposal, 3 doors 3 locks, has been prepared by many NGO's, including the major Bar Association. The Minister of Justice cannot simply ignore it. If he does refuse it only means issuing invitation to new deaths. It is not correct that it would cost the State a fortune to introduce this system. That is a government made speculation. It would be well enough to turn the keys and open some of the doors, letting people of the strict isolation."

"This proposal is refused because the State wants to continue with the isolation cell system. The isolation cannot be accepted in terms of the life conditions and health of the prisoner. It is very damaging."

On 18 January 2002, the Istanbul Public Prosecutor's Office initiated an investigation into Ms. Kalayci's comments on the basis of a potential contravention of Article 159 of the Turkish Penal Code. However, on the same day, it decided that the investigation ought more properly be conducted by the Ankara Public Prosecutor's Office and so it referred the case to the Ankara Public Prosecutor's Office. On 5 February 2002, the Ankara Public Prosecutor's Office commenced its investigation. Ms. Kalayci received a telephone call inviting her to the Public Prosecutor's Office. Once at the office she was shown the complaint by the Istanbul Public Prosecutor, together with the newspaper article. This was the first occasion upon which she became aware that she was being investigated in respect of a possible criminal offence. Ms. Kalayci was informed that the accusation against her was that she had contravened Article 159 by insulting the Ministry of Justice. She was invited to make a statement in her defence. She was neither accused of violating Article 240 nor invited to make representations in relation to any accusation of professional misconduct.

On 23 March 2002, the Ankara Public Prosecutor's Office, having completed its investigation, prepared an Indictment. The indictment charged Ms. Kalayci with "insulting the Ministry of Justice" pursuant to Article 159 of the Turkish Penal Code. The indictment further intimated that Ms. Kalayci was guilty of "professional misconduct" but did not expressly include a count alleging a contravention of Article 240 of the Turkish Penal Code.

On 3 April 2002, in accordance with Articles 58 and 59 of the Law on Lawyers, approval of the Ministry of Justice for the continuance of the prosecution was sought. The Ministry of Justice approved the prosecution of Filiz Kalayci.

On 12 April 2002, in accordance with procedures governing the prosecution of lawyers laid down in Articles 58 and 59 of the Law on Lawyers, the case file was sent to the nearest Heavy Penal Court to where the offence was allegedly committed, the Kirikkale Heavy Penal Court. Because the indictment in existence at this time did not contain a count alleging a contravention of Article 240, Ms. Kalayci's legal representatives argued that the court had no jurisdiction to determine any allegation of "professional misconduct". The Kirikkale Heavy Penal Court did not decide this issue. Instead it decided to transfer the case to the Ankara Heavy Penal Court.

On 7 June 2002, a hearing took place at the Ankara Heavy Penal Court. Ms. Kalayci submitted a defence statement. Ms. Kalayci's legal representatives repeated their submission regarding the absence of any count charging a contravention of Article 240. The Ankara Heavy Penal Court considered that since the indictment contained only a single count alleging a contravention of Article 159, a matter normally tried before a First Instance Penal Court, it had no jurisdiction to hear the case. The matter was adjourned in order for the court to consider whether or not it had jurisdiction.

On 27 June 2002, a hearing took place at the Ankara Heavy Penal Court. The Court decided that since the indictment raised an allegation under Article 159 but not

Article 240, it had no jurisdiction to hear the case against Ms. Kalayci and so referred the case to the First Instance Penal Court.

On 30 October 2002, a hearing took place at the First Instance Penal Court No. 2. Ms. Kalayci submitted her written defence statement to the court. The Court considered that the indictment properly raised alleged contraventions of both Article 159 and Article 240 of the Turkish Penal Code and since Article 240 could only be tried before a Heavy Penal Court, it had no jurisdiction to hear the case. The matter was adjourned in order for the court to consider whether or not it had jurisdiction.

On 7 November 2002, a hearing took place at the First Instance Penal Court No. 2. The court decided that it did not have jurisdiction to hear the case because the indictment did contain a properly drafted count alleging a contravention of Article 240. Given the conflict between the Heavy Penal Court and the First Instance Penal Court, it was decided that the jurisdiction of the case should be determined by the Court of Cassation.

On 22 January 2003, a hearing took place before the 5th Chamber of the Court of Cassation in order to determine jurisdiction. The Court of Cassation decided that the indictment contained two alleged offences, an offence of "insulting the Ministry of Justice" pursuant to Article 159, which was expressly pleaded, and an offence of "professional misconduct" pursuant to Article 240, which, although the particular statutory provision was not pleaded in the indictment, was pleaded with sufficient clarity for their to be a charge to be determined. The Court of Cassation proceeded to find that in light of the contents of the indictment, the case against Ms. Kalayci should be tried before the Heavy Penal Court.

On 7 March 2003, the Ankara Heavy Penal Court No. 4 determined, without an oral hearing, that in light of the decision of the Court of Cassation, it had jurisdiction to try the case.

On 8 April 2003, a hearing took place before the Ankara Heavy Penal Court No. 4. The Public Prosecutor applied for an adjournment in order to give him more time to give his opinion on the merits of the case. The matter was adjourned to 20 May 2003.

On 20 May 2003, the final hearing took place before Ankara Heavy Penal Court No. 4. The Public Prosecutor gave his opinion that no crime had been committed. He submitted that, in his opinion, Ms. Kalayci had, by her comments, intended to criticise, but not insult, the Ministry of Justice and accordingly, in line with recent legislative amendments, no crime had been committed under Article 159 of the Penal Code. If no offence had been committed under Article 159 then there was no professional misconduct pursuant to Article 240. The Public Prosecutor invited the court to acquit Ms. Kalayci.

4. The nature of the defence case

In her defence statement, Filiz Kalayci maintained that she was not guilty of insulting the Ministry of Justice and not guilty of professional misconduct, rather she had simply sought to exercise her internationally guaranteed right to non-violent freedom of expression.

The observer noted that Ms. Kalayci was promptly provided with information relating to both the nature and cause of the charge of insulting the Ministry of Justice. Due to a lack of precision in the drafting of the indictment, information relating to the charge of professional misconduct was less readily forthcoming, however, Ms. Kaycili was aware of both the legal description of the offence and the facts upon which the allegation was based well in advance of the start of the trial. At no stage of the proceedings was Ms. Kalayci excluded from observing the proceedings against her. She was able to hear the prosecution case in full. No restrictions were placed upon her choice of legal representatives or her ability to defend herself in person had she so wished. Having decided to instruct legal representatives, no restrictions were placed upon her ability to communicate with them in confidence. In court, Ms. Kalayci benefited from the right to be presumed innocent until proven otherwise and the standard of proof imposed upon the prosecution was "beyond reasonable doubt". Ms. Kalayci was able to put forward her defence by way of written submission and she was able to refute the prosecution's evidence. Equally, she was afforded the right to remain silent if she so wished. The court authorities complied with their duty to notify Ms. Kalayci of the date and location of each of the hearings in her case and no restrictions were placed upon the possibility of public attendance at the hearings.

The Observer received no complaint to the effect that Ms. Kalayci had been denied full access to all appropriate information, files and documents necessary for the preparation of her case, however, as to the timeliness of that access, the observer was informed that Ms. Kalayci was only afforded access to the prosecution file on the day of the first hearing on 7 June 2002. The observer also received an allegation that Ms. Kalayci had been prevented from putting forward her defence by way of oral submissions, instead being required to rely solely upon the contents of her written defence statement. The observer received a further complaint that at the outset of the first hearing, Ms. Kaycili was asked to state in open court whether she had any previous convictions and that the attitude of the presiding judge at the first hearing had been less than impartial. The observer also received a complaint to the effect that proceedings against Ms. Kalayci had not been concluded within a reasonable time given the restrictions that the pending prosecution imposed upon her professional activities.

5. The role of the prosecution and defence counsels

The prosecution was represented by Public Prosecutor Ali Celik. The Observer understands that Mr. Celik was not specifically selected to prosecute Ms. Kalacay, rather,

the case was randomly allocated to No. 4 Ankara Heavy Penal Court. The case was then assigned to Mr. Celik because he is responsible for prosecuting all cases in Court No. 4.

The Observer attempted to organise a meeting with Mr. Celik but unfortunately he was away from his office when the observer called upon him.

Ms. Kalayci was represented by 9 members of the Contemporary Lawyers Association ("CLA"). She was able to appoint lawyers of her own choosing. Since Ms. Kalayci remained on bail, her lawyers were not restricted in their ability to communicate with her in confidence. They were not subjected to any form of harassment or intimidation on account of the representation that they provided. The Observer received no complaint to the effect that Ms. Kalayci's lawyers had been denied full access to all appropriate information, files and documents necessary for the preparation of the case, however, as to the timeliness of that access, the observer was informed that the lawyers were only afforded access to the prosecution file on the day of the first hearing on 7 June 2002. Notwithstanding this fact, Ms. Kalayci's lawyers were confident that they had been afforded adequate time to prepare the defence case since the allegation was not complex and the only item of prosecution evidence was the newspaper article. In court, the nominated spokesperson for the lawyers was able to address the court by way of full oral submissions and during the said submissions was afforded an effective opportunity to challenge the prosecution case and advance his client's own case. The Observer is not able to report directly upon the ability of counsel for Ms. Kalayci to call and effectively examine witnesses since none were called by either party during the course of the proceedings.

6. Violation of the Principle of "Equality of Arms"

The Observer is concerned that the principle of "equality of arms" was not fully respected in so far as the prosecutor's submissions were entered directly into the court record in his own words, whilst the defence lawyers and defendant were barred from dictating their own defence submission directly into the record. Instead, the defence had to rely upon the judge to summarise the statements of the defendant and argument of counsel before it was enter into the court record. The Observer considers that this procedure, which is common to all criminal trials in Turkey, fails to comply with the principle of "equality of arms" in so far as it places the defence at a substantial disadvantage vis-à-vis the prosecution.

The Observer is concerned that the procedure for recording defence submissions in Turkey potentially fails defendants in three key respects. First, during the course of the trial it risks creating the impression that defence submissions are not as important as those made by the prosecutor. Second, it may prevent defendants from arguing on appeal matters advanced on their behalf during the course of their trial. Third, the procedure as presently followed could be said to deprive appellate courts, whose role is to scrutinise the fairness of trial proceedings, of any accurate record of the proceedings in the lower court. In the opinion of the Observer, these matters serve to place the defence at a

substantial disadvantage vis-à-vis the prosecution during the course of criminal proceedings in Turkey.

As a result of information obtained from interviewees, the Observer understands that although during the hearing the defence can object to the judge's summary, acceptance of this objection is within the judge's discretion. After the hearing is over, the defence lawyer has no right to object to how his/her argument is summarised in the record. In the hearing observed, the defence counsel did not seek to challenge the judge's summary at any stage of the proceedings.

7. The conduct of the presiding judge

The presiding trial judge requested that the Observer withhold his name from the final report on the trial observation. The Observer was informed that this request was made because Turkish law prevents a judge from commenting on a case until the case has been finally determined and the case against Filiz Kalayci will not be finally determined until the Public Prosecutor has exhausted his appeal rights. In light of the presiding judge's request, the Observer has decided, out of an abundance of caution, to also withhold the names of the other two judges responsible for hearing the case against Filiz Kalayci.

The observer did receive an allegation that the presiding judge had refused to hear oral evidence from Ms. Kalayci on the basis that she had already prepared a written defence statement. The observer was informed that this occurred at the first hearing. The observer himself witnessed that the judge refuse to hear any oral submissions from Ms. Kalayci at the hearing on 20 May 2003, although this was after the public prosecutor had requested an acquittal.

The observer also received a single complaint regarding the attitude of the presiding judge towards Ms. Kalayci at the first hearing when she was allegedly ordered to remove her hands from the bench that she was sitting on. It was alleged that this demonstrated that the presiding judge had been less than impartial.

8. Judgement

At the hearing on 20 May 2003, the Public Prosecutor invited the court to acquit Ms. Kalayci. The Public Prosecutor gave his opinion that Ms. Kalayci had, by her comments, intended to criticise, but not insult, the Ministry of Justice and accordingly, in line with recent legislative amendments, no crime had been committed under Article 159 of the Penal Code. The judges unanimously ruled that since there was no evidence that Ms. Kalayci had actually intended to insult the Ministry of Justice, rather than merely criticise it, no offence had been committed under Article 159.

III. Evaluation of the fairness of the proceedings

The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) is the primary binding regional instrument to have actually been ratified by Turkey.[6] In addition, relevant persuasive non-treaty standards include the Universal Declaration of Human Rights of 1948 (UDHR), UN Basic Principles on the Independence of the Judiciary of 1985[7] and the UN Basic Principles on the Role of Lawyers of 1990.[8]

1. Compliance with international fair trial standards

Based on his observation of the hearing on 20 May 2003 and subsequent interviews, the Observer is pleased to report that, in his opinion, the prosecution of Filiz Kalayci was conducted largely in accordance with international fair trial guarantees. The observer makes the following observations:

a. The right to be tried by a competent tribunal established by law

Ms. Kalayci was tried before a court that was established in advance of and independently of the case before it. The judicial panel was not specifically chosen to hear the case, rather, the case was randomly assigned to Court No.4 which had legal jurisdiction to hear the case. It was most apparent that the court was presided over by competent personnel who were experienced with the subject-matter of the proceedings. The judges hearing the trial of Ms. Kalayci were experienced with the subject-matter of the proceedings and in command of the issues before them. On the basis of the foregoing, the observer concludes that Ms. Kalayci was tried by a competent tribunal established by law in accordance with Article 6(1) of the ECHR and Principle 5 of the Basic Principles on the Independence of the Judiciary.

b. The right to a public hearing

Ms. Kalayci was afforded a public oral hearing. No restrictions were imposed in relation to the possibility of attendance by the public and press. Adequate facilities were provided for public attendance in the form of a large public gallery within the courtroom. At the conclusion of each hearing, the time and venue of the next hearing was publicly announced. The judgment in the case was also made public. In light of the foregoing, the observer is of the opinion that Ms. Kalayci's right to a public hearing as guaranteed

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[6] Turkey has been a State Party since 1954.

[7] Basic Principles on the Independence of the Judiciary, adopted by Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan 1985, endorsed by General Assembly Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985. See G.A. Res. 40/32, UN GAOR, 40th Sess., Supp. No. 53, at 204, UN Doc. A/40/53 (1985); Res. 40/146, UN GAOR, 40th Sess., Supp. No. 53, at 254, UN Doc. A/40/53 (1985).

[8] Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana in 1990, and welcomed by the General Assembly in Resolution 45/121 of Dec. 14, 1990. G.A. Res. 45/121, 45th Sess.

by Article 6(1) of the ECHR was respected throughout the course of the proceedings against her.

c. The right not to be compelled to testify or confess guilt

No restrictions were placed upon Ms. Kalayci's right to remain silent. No complaints were received of her having been coerced to testify or to confess. In the opinion of the observer therefore, Ms. Kalayci was afforded her right not to be compelled to testify or confess guilt in accordance with the European Court's interpretation of Article 6 of the ECHR.

d. The right to adequate time and facilities to prepare the defence

The Observer was informed that Ms. Kalayci and her legal representatives were only able to access the prosecution file containing the evidence against her on the day of the first hearing on 7 June 2002. In the opinion of the observer such a restriction could potentially constitute a violation of the right to adequate facilities for the preparation of the defence, however, whether that is in fact so will depend upon the circumstances of the individual case. In the circumstances of the present case, the Observer was informed by both Ms. Kalayci and her legal representatives that there was no prejudice occasioned because prior to the first hearing they knew that the prosecution case was based solely upon the newspaper article (a copy of which they had) and, from their experience, they concluded that access to the prosecution file would not have revealed any further relevant information. This conclusion transpired to be accurate.

The Observer understands that in cases falling under the jurisdiction of the Heavy Penal Court, there is no restriction in Turkish law upon defence access to the prosecution file prior to commencement of trial, however, in practice it is often difficult to access such documentation because the public prosecutor is not readily available. In the opinion of the observer, there are likely to be cases where late discovery of the evidence to be relied upon by the prosecution will prejudice the defence in the preparation of their case. However, in the circumstances of the present case, the observer is satisfied that the defence was not so prejudiced.

The Observer notes that a little over 12 months elapsed between the indictment being preferred and the start of the trial. A further 6 weeks then elapsed between the start of the trial and its conclusion, a period of time during which only two short hearings were held. The case against Ms. Kalayci was not especially complex. She faced only two charges and the prosecution evidence comprised solely the article published in the Cumhuriyet newspaper. She was represented by 9 lawyers whom she appointed at the earliest stage of the proceedings. She was on bail throughout the proceedings and therefore no restrictions were placed upon her ability to communicate in confidence with her legal representatives. Defence counsel were satisfied that they had had adequate preparation time. In view of the foregoing, the observer concludes that Ms. Kalayci and her legal representatives were afforded adequate time and facilities for the preparation of

the defence in accordance with Article 6(3)(b) of the ECHR and Principle 21 of the Basic Principles on the Role of Lawyers.

e. The right to be presumed innocent until proven guilty

The Observer was informed that formally the burden of proof lay with the prosecution throughout the entire trial and the standard of proof was "beyond reasonable doubt". However, any analysis of the degree to which the right to be presumed innocent until proven guilty was applied in practice requires an assessment of the degree to which the public authorities refrained from prejudging the outcome of the trial, invoking the guilt of the accused and/or treating the accused as if she was already guilty.

The Observer did receive a complaint from the lawyers representing Ms. Kalayci to the effect that, in practice, courts in Turkey often look to the defendant to prove his or her innocence. In the instant case, the observer was informed that having made the written allegation against Ms. Kalayci, the public prosecutor did not speak once during the course of the proceedings. Instead, the court looked to the defence to prove that no offence had been committed. The observer does not consider that this procedure constitutes a violation of Ms. Kalayci's right to be presumed innocent until proven guilty. It appears to the observer that in conducting its fact-finding process, the court simply accepted the prosecution's case as being the contents of the indictment and the newspaper article before then inviting the defence to make its representations in relation to the allegations raised. Such representations would include submissions on whether the prosecution had discharged the burden of proof upon them in light of the evidence they had submitted. The observer does not consider that this procedure can properly be said to be inconsistent with the right to be presumed innocent.

The Observer did receive a single complaint regarding the attitude of the presiding judge towards Ms. Kalayci at the first hearing when she was allegedly ordered to remove her hands from the bench that she was sitting on. The presiding judge was not prepared to comment upon any aspect of the case against Ms. Kalayci, however, even in the absence of any comment from the judge, the observer is of the opinion that the actions of the judge cannot in any sense properly be said to indicate that he had prejudged the outcome of the trial, invoked the guilt of the accused or treated the accused as if she was already guilty. On the basis of the hearing observed and the absence of any other complaints, the Observer is satisfied at the judge's attitude and approach towards the prosecution and defence.

Notwithstanding the foregoing, the Observer is concerned about the fact that at the outset of the first hearing on 12 April 2002, the Court asked Ms. Kalayci to declare whether she had any previous convictions. The Observer was informed that this is a standard practice in Turkish courts and that the comments of the defendant in relation to their previous convictions are checked against records held by the Ministry of Justice. The Observer was further informed that, in some cases, the prosecution file also contains a list of previous investigations that have been conducted in relation to an accused, irrespective of the ultimate outcome of those investigations.

Whilst the Observer recognises that the European Commission has expressed its view in several cases that informing decision-makers of a person's prior convictions before a verdict is reached does not necessarily violate fair trial guarantees, including the presumption of innocence enshrined by Article 6(2) of the ECHR,[9] the Observer nevertheless considers that the practice of requiring a defendant to declare his/her criminal record at the outset of a criminal trial, prior to the determination of guilt or innocence, is not a practice that should be encouraged. Similarly, the observer can see no valid reason for retaining a record of previous investigations against a defendant on a file which is made available for the judges to read prior to their determination on the issue of guilt or innocence. The Observer considers that if justice is to be not only done, but also seen to be done, such practices ought properly to be abolished.

In the instant case, however, Ms. Kalayci was able to declare that she had no previous convictions and the prosecution file did not contain any record of previous investigations. Accordingly, the observer concludes that Ms. Kalayci's right to be presumed innocent until proven guilty under Article 6(2) ECHR was respected.

f. The right to be informed of the charge

The observer notes that prior to the commencement of the trial in the Ankara Heavy Penal Court on 8 April 2003, there were protracted legal arguments surrounding the issue of jurisdiction and these arguments appear to have centred upon whether or not the authorities had complied with their duty to provide Ms. Kalayci with sufficient information as to a charge of professional misconduct in order for it to be included in the indictment.

Although on 5 February 2002, during her meeting with the Public Prosecutor, Ms. Kalayci was promptly informed of the exact legal description of the alleged offence contrary to Article 159 of the Turkish Penal Code and the facts upon which the allegation was based, on this occasion she was neither accused of violating Article 240 nor invited to make representations in relation to any accusation of professional misconduct. Subsequently, the indictment preferred against her clearly charged her with "insulting the Ministry of Justice" pursuant to Article 159 of the Turkish Penal Code, however, it did not, however, expressly include a count alleging a contravention of Article 240 of the Turkish Penal Code. In short, while Ms. Kalayci was informed of the facts upon which the allegation of professional misconduct was based, she was not provided with information on the specific law and its provisions as required for the purposes of compliance with her right to be informed of the charge against her.

[9] *X v. Austria*, 3 April 1967, 23 Coll. Dec. 31 (presiding judge disclosed details of the accused's previous convictions to lay judges before a verdict was reached on a burglary charge); *X v. Austria*, 1 April 1966, 19 Coll. Dec. 95 (accused's previous convictions for theft were referred to during the course of trial); *X v. Denmark*, 14 December 1965, 18 Coll. Dec 44 (the public prosecutor informed the court of the accused's numerous previous convictions before the jury reached a verdict on a rape charge).

Whilst it is regrettable that the original indictment was not drafted with greater precision, in the opinion of the observer, this is not sufficient to conclude that the authorities have thereby failed to comply with their duty to provide Ms. Kalayci with information relating to the basis of the charges against her. Ultimately, at the commencement of her trial on 8 April 2003, Ms. Kalayci was in full knowledge as to the fact that she faced two counts on the indictment. She had been provided with information as to the specific laws and their provisions and she was informed of the date, time and place when the alleged offences were committed. Indeed, she was aware of the possibility of there being a charge of professional misconduct on the indictment as early as March/April 2002 and was therefore not prevented from preparing a defence in this regard. In the opinion of the observer, therefore, Ms. Kalayci was afforded her right to be informed of the charges she faced in accordance with Article 6(3)(a) ECHR.

g. The right to defence

The observer received a complaint that Ms. Kalayci had been prevented from putting forward her defence by way of oral submissions, instead being required to rely solely upon the contents of her written defence statement. Again, the presiding judge was not prepared to comment on any aspect of the proceedings against Ms. Kalayci. In the opinion of the observer, although regrettable, the fact that Ms. Kalayci was prevented from making oral submissions would not be sufficient to constitute a violation of the right to defence. The observer notes that at no stage was Ms. Kalayci excluded from observing the proceedings against her. She was present throughout the trial, able to hear the prosecution case in full and put forward her defence by way of written submissions. The Observer notes that Ms. Kalayci was represented by no less than 9 lawyers and no restrictions were placed upon her choice of legal representatives. She was able to communicate in confidence with them and advise them in the presentation of her case. Ms. Kalayci's lawyers were not subjected to any form of harassment or intimidation on account of the representation that they provided. In view of the foregoing, the Observer concludes that overall Ms. Kalayci was provided with a satisfactory opportunity to present her defence and accordingly her right to make a defence in accordance with Article 6(3)(c) of the ECHR was respected.

2. Concerns relating to compliance with international fair trial standards

a. The right to be tried by an independent and impartial tribunal

The observer is pleased to report that in several respects, the judges charged with determining the charges levelled against Ms. Kalayci demonstrated that they were impartial. The judges had not taken part in the proceedings in any prior capacity. No information was received to suggest that they had any personal interest in the outcome of the case. They had not commented on the case in public prior to or during the trial. The judges did not appear to have any pre-formed opinion that could have weighed on their decision.

Nevertheless, the Observer does have continuing concerns relating to the extent of the independence of the judiciary. These concerns centre on the make up of the ruling body of the judiciary, the High Council of Judges and Prosecutors and its potential to exert undue pressure on members of the judiciary. Established by Article 159 of the Constitution, the High Council is responsible for appointing, transferring, promoting, disciplining and dismissing judges. The Council is chaired by the Minister of Justice, a Minster of Justice Under-Secretary and five judges selected by the President. The Minister of Justice and the Under-Secretary of the Minister of Justice each retain voting rights in the High Council and therefore there is executive influence in the process of judicial appointment, promotion, transfer and discipline. Decisions of the Council are not open to judicial review. Discussion within the Turkish government about possible changes to the High Council suggest that the government is aware that it is not satisfactory.[10]

The observer is fortified in his conclusion that the tribunal hearing the case against Filiz Kaycili was not truly independent of the executive as a result of the meeting that he conducted with the presiding judge. The presiding judge was not prepared to enter into any discussion regarding the case against Filiz Kaycili, he was not prepared to discuss the extent of the independence of the judiciary generally in Turkey and he requested that his name be removed from the present report. In the opinion of the observer, these are not the actions of an independent judicial officer who is able to freely express his opinions regarding the legal system in Turkey. Rather, they are the actions of a cautious judicial officer who, because of the likely repercussions for himself, was not prepared to risk being accused of criticising the Ministry of Justice in front of the international community.

This influence of the Ministry of Justice is particularly worrying in the present case since, in accordance with Articles 58 and 59 of the Law on Lawyers, both the preliminary investigation and the prosecution of Filiz Kalayci was approved, not only by the Public Prosecutor's Office, but more significantly, by the Minister of Justice and the Under-Secretary of the Minister of Justice, respectively. The judges seized of the trial of Ms. Kalayci were thus left in the invidious position of knowing that individuals capable of exercising a profound influence over their entire judicial career had already found there to be a prima facie case to answer. In such circumstances, the observer is of the opinion that judicial independence was compromised.

Given his concerns relating to the degree to which the judges charged with hearing the case against Ms. Kalayci could be said to be truly independent, the observer is satisfied at the decision of the judges to acquit Ms. Kalayci on the basis that no offence had been made out despite the fact that this was done on the recommendation of the public prosecutor.

[10] For a detailed discussion see Chapter VII of *The Independence of Judges and Lawyers in the Republic of Turkey: Report of a Mission, 1999*, published by the Centre for the Independence of Judges and Lawyers, Geneva, Switzerland.

b. The right to be tried without undue delay

Ms. Kalayci was informed that the Office of the Public Prosecutor was taking steps to investigate her with regards to a potential prosecution on 5 February 2002. She was acquitted on all counts on 20 March 2003. The Observer understands that the Public Prosecutor has a further 14 days in which to seek leave to appeal the decision of the Heavy Penal Court but that since the public prosecutor in fact sought the acquittal of Ms. Kalayci, an appeal is unlikely to be forthcoming. Assuming that no appeal is pursued, upon expiry of the period in which leave to appeal may be sought, the decision of the Heavy Penal Court will become final.

The Observer is deeply concerned at the fact that Ms. Kalayci was the subject of criminal proceedings for a period of almost 15 months before the public prosecutor sought her acquittal on the basis that no offence had in fact been committed. In terms of the charges faced and the nature of the evidence involved, the case against Ms. Kalayci was not a complex one. She faced only two charges, she was the only defendant and the only evidence against her constituted a single article in one newspaper. Legal argument relating to jurisdiction undoubtedly rendered the case more complex than it would otherwise have been, however, in the opinion of the observer, the Turkish court system failed Ms. Kalayci by taking a total of 11 months (April 2002 – March 2003) to determine this one issue. The alleged offences were serious and, if convicted, Ms. Kalayci faced the possibility of a prolonged period of imprisonment and disbarment for life. The criminal proceedings were undoubtedly a source of considerable personal concern for her and she may well have been subjected to a degree of stigmatisation among certain sections of society. In such circumstances, there was a compelling need to determine guilt or innocence as expeditiously as possible. In the opinion of the Observer, therefore, the competent authorities ought properly to have acted with a greater degree of efficiency in order to bring the trial of Filiz Kalayci to a conclusion within a reasonable time in accordance with Article 6(1) of the ECHR, Principle 27 of the Basic Principles of Lawyers and Principle 17 of the Basic Principles on the Independence of the Judiciary.

IV. Conclusion

Any comment on the trial of Filiz Kalayci must necessarily extend beyond an analysis of the fairness of the proceedings in the courtroom to include the overall context within which the criminal charges against her arose. It is through this optic that the Observer reports his profound concern that the criminal charge against Filiz Kalayci was in reality a form of harassment of a lawyer who had sought to exercise her legitimate right to non-violent freedom of expression.

In the opinion of the observer, three key facts support this position: the content of the newspaper article, Turkey's record of criminalising freedom of expression and the fact that Ms. Kalayci was the subject of criminal proceedings for a period of almost 15 months before the public prosecutor sought her acquittal on the basis that no offence had in fact been committed.

Regarding the content of the newspaper article, the Observer notes that Ms. Kalayci's comments addressed the issue of reform of the strict regime in F-Type prisons in Turkey. The Observer is aware that prison conditions have been a subject of intense debate in Turkey in recent years as prisoners, their families and many human rights defenders and other civil organizations have expressed concern that F-Type prisons increase the risk of torture or ill-treatment in detention. The Turkish authorities meanwhile have been anxious to deflect criticism of the F-Type prison system as they pursue their ambition of E.U. accession. The subject matter of Ms. Kalayci's article was therefore politically sensitive.

Regarding Turkey's record of criminalising freedom of expression, the Observer recalls that the Turkish Human Rights Association has calculated that Turkish law and regulations contain more than 300 provisions constraining freedom of expression, religion, and association. These laws and regulations are frequently used to prosecute politicians, journalists and writers for their non-violent expression of their beliefs and opinions. Article 159 of the Turkish Penal Code has been particularly widely used against citizens who have criticised state institutions and this has led to many unjust prosecutions.

However, the Observer is most strongly fortified in his opinion by reason of the fact that Ms. Kalayci was the subject of criminal proceedings for a period of almost 15 months before the public prosecutor sought her acquittal on the basis that no offence had in fact been committed. Article 159 of the Turkish Penal Code was amended in February 2002 so as to render speech or writing that was intended to merely criticise, but not insult, state institutions no longer illegal. Interestingly, February 2002 was also the month when Ms. Kalayci was summoned to the Ankara Public Prosecutor's Office in order to answer the allegation that she had "insulted the Ministry of Justice". By the time the first indictment was preferred by the Ankara Public Prosecutor a month later on 23 March 2002, the new law was in full effect. It is therefore possible to conclude that throughout the entire duration of the criminal proceedings against Ms. Kalayci, from March 2002 – May 2003, the public prosecutor would have been aware that speech or writing that was intended to merely criticise, but not insult, state institutions was no longer illegal. In such circumstances, one is left questioning why a public prosecutor who in May 2003 was prepared to declare that Ms. Kalayci's comments were merely criticism rather than insult, ever initiated criminal proceedings against her in the first place. And, when one recalls that the proceedings were not only initiated but maintained for a total of 15 months, questions must be asked to as to the motive of the public prosecutor in so doing. There can be no mileage in an argument that the proceedings needed to be continued in order to resolve a jurisdictional issue because the legal argument relating to jurisdiction concerned Article 240, not Article 156. In the opinion of the observer, the proceedings against Ms. Kalayci were initiated and maintained solely in order to harass and intimidate a lawyer who had sought to express her opinion on a politically sensitive issue.

Annex A

1. Background information concerning the accused

Filiz Kalayci, 29 years old, qualified as an advocate in 1998 and since then has practised as a member of the Ankara Bar Association. She specialises in criminal defence work with an emphasis on political and serious criminal cases heard before the State Security Court. She has no previous convictions.

2. Socio-political background to the trial

Article 2 of the Turkish Constitution describes the characteristics of the Republic as a "democratic, secular, and social State governed by the rule of law, in accordance with the concepts of social peace, national solidarity, and justice; respectful of human rights, committed to Ataturk nationalism, and based on the fundamental principles set forth in the preamble". Thus, the principle of the rule of law is given a prominent place in the Constitution together with other fundamental characteristics of the Turkish State.

According to Turkish law, the power of the judiciary is exercised by judicial (criminal), military and administrative courts. These courts render their verdicts in the first instance, while superior courts examine the verdict for subsequent rulings.

Criminal courts of original jurisdiction are Justice of the Peace Courts (Sulh Ceza Mahkemeleri), Courts of General Criminal Jurisdiction (or Courts of First Instance) (Asliye Ceza Mahkemeleri), and Heavy Penal Courts (Aoir Ceza Mahkemeleri). Justice of the Peace Courts and Courts of General Criminal Jurisdiction have one judge, and are generally located in the capitals of sub-provinces. Heavy Penal Courts are composed of three judges, one of whom is the head, and are located in provincial capitals. In addition, State Security Courts deal with political and serious criminal cases deemed threatening to the security of the state. Turkish courts have no jury system; judges render decisions after establishing the facts in each case based on evidence presented by lawyers and public prosecutors. The Supreme Court of Appeal (also known as the Court of Cassation) is the only competent authority for reviewing decisions and verdicts of lower-level judicial courts, both civil and criminal.

Article 9 of the Turkish Constitution provides for an independent judiciary. Under Article 138, judges are protected from instructions, recommendations or suggestions that may influence them in the exercise of their judicial power. Furthermore, no legislative debate may be held concerning the exercise of judicial power in a pending trial and both legislative and executive organs are required to comply with court decisions without alteration or delay. Article 139 of the Constitution provides judges with security of tenure, although certain legitimate exceptions are authorised.

Notwithstanding these provisions, there is continuing concern within the international community regarding the extent of the independence of Turkish judges in

practice. These concerns centre on the make up of the ruling body of the judiciary, the High Council of Judges and Prosecutors and its potential to exert undue pressure on members of the judiciary. Established by Article 159 of the Constitution, the High Council is responsible for appointing, transferring, promoting, disciplining and dismissing judges. The Council is chaired by the Minister of Justice, a Minster of Justice Under-Secretary and five judges selected by the President, thereby failing to separate the judiciary from the executive. Decisions of the Council are not open to judicial review. Discussion within the Turkish government about possible changes to the High Council suggests that the government is aware that it is not satisfactory.[11]

Turkey has also been the target of much criticism over a long period of time by human rights organisations[12], United Nations Mechanisms[13] and the European Court of Human Rights[14] on the issue of the extent to which Turkish lawyers are able to exercise their role in the judicial process without undue restriction and pressure. Observers have commented that on occasion lawyers are subjected to state-sanctioned or state-tolerated harassment, intimidation and violence merely for providing professional legal services to their clients. Lawyers who repeatedly conduct defences before the State Security Courts are, at least in some cases, considered to share the political views of their clients and, as such, termed "terrorist lawyers" by the police, the public prosecutors and the courts. Lawyers who appear in trials before the State Security Courts in cases of torture and extra-judicial killing are, in some quarters, qualified as "public enemies". Lawyers who publicly comment on the human rights practices of Turkey or the Kurdish situation tend to be regarded, in some official circles, as enemies of the state and branded separatists.

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[11] For a detailed discussion see Chapter VII of *The Independence of Judges and Lawyers in the Republic of Turkey: Report of a Mission, 1999*, published by the Centre for the Independence of Judges and Lawyers, Geneva, Switzerland.

[12] Turkey has been highlighted in many reports of the International Commission of Jurists, see for example *Attacks on Justice,* years 1999, 2000 and 2002 and *The Independence of Judges and Lawyers in the Republic of Turkey, Report of a Mission, 1999*. See also, Amnesty International documents, as for example, *Lawyers severely ill-treated outside Buca Prison in Izmir*, EUR 44/31/96, March 1996; *17 years in the balance: Lawyer Esber Yagmurdereli returns to prison in freedom of expression case*, EUR 44/074/1998, November 1997; *Ocalan Lawyers at Risk,* EUR 44/020/1999, February 1999 and Amnesty International Annual Reports of 2000 and 2001.

[13] See, for example, report of cases of harassment of lawyers in the reports of the Special Rapporteur on the Independence of Judges and Lawyers, Mr. Param Cumaraswamy (E/CN.4/1998/39, 12 February 1998; E/CN.4/1999/60, 13 January 1999; E/CN.4/2000/61, 21 February 2000 at 287-302; E/CN.4/2002/72, 11 February 2002 at 184-189); Report submitted by Ms. Hina Jilani, Special Representative of Secretary-General on Human Rights Defenders (E/CN.4/2002/106, 27 February 2002) and Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Mr. Abid Hussain (E/CN.4/199840, 28 January 1998; E/CN.4/1997/31/Add1, 11 February 1997.

[14] See for example ECtHR, *Kurt v. Turkey*, 25 May 1998 and ECtHR, *Okcuoglu v. Turkey*, 8 July 1999.

Annex B

1. Appointment of the Observer

The Trial Observer, Mr. Paul Richmond, Barrister of England and Wales, was appointed by the ICJ and was charged with reporting directly to the ICJ. Mr. Richmond observed the hearing on 20 May 2003.

The Observer was briefed by the ICJ in the way made apparent in this report. This report has been prepared in general reliance upon the Trial Observation Manual prepared by the ICJ which formed part of that briefing.

2. Methodology

The Observer attended the hearing at No. 4 Ankara Heavy Penal Court on 20 May 2003. He was accompanied by a local interpreter capable of simultaneous translation.

During the Mission to Turkey the Observer also held meetings with Filiz Kalayci (the defendant), Mr. X (Ms. Kalayci's main legal representative), representatives of the Contemporary Lawyers Association, the presiding Judge and representatives of the Human Rights Association. The Observer has unfettered access to the complete prosecution file and obtained copies of the official court minutes of the hearing that he observed.

The report also includes information from a number of written sources. Among these are documents, reports, books etc. from U.N. agencies, news sources, humanitarian NGOs and researchers on Turkey. These sources where used are appropriately attributed.

The Observer and the ICJ would like to express their gratitude towards all those agencies, organisations and individuals that have contributed to the information presented in this report.

Annex C

Cumhuriyet Daily, 15.01.2002

Lawyer Kalaycı blamed the Ministry of Justice "to provoke death fasts".
Reaction to the circular on "Chatting"

Spokesperson of prisoners[15] Lawyer Filiz Kalayci criticised that prisoners to be convened would be identified by the selection committee and said that this proposal was not consented by prisoners. Prisoners want the proposal of the Bar Association."

It was reported that the "conditional chatting" circular announced by the Ministry of Justice to be applied when the death fasts are stopped was already distributed to prisoners in Sincan F type prison. It was also reported that the circular was not consented by prisoners. Lawyer Filiz Kalaycı claimed that death fasts were not developed by only prisoners but the Ministry provoked the action by not providing any other option.

By criticising the identification of prisoners to come together by the selection committee, Lawyer Filiz Kalayci said that this conditional proposal cannot be accepted. "The proposal was not consented by prisoners. They want the proposal of the Bar Association", she said. (...)

Kalayci by drawing attention to the on-going deaths, claimed that death fasts were not developed by only prisoners but the Ministry **provoked** the action by not leaving any other option. "The Ministry is cause of re-entering of people into death fasts", Kalayci said.

Saying that the Ministry cannot turn its back to the proposal "three doors, three locks" prposed by the democratic organisations including bar associations, Lawyer Filiz Kalayci siad that "if the Ministry turns its back to the proposal, it will issue an invitation for new deaths. There is no other meaning."

(...)
(...)
(...)

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[15] The Cumhuriyet daily published a corrigendum which reads that "Lawyer Filiz Kalaycı was mistakenly identified as spokesperson of prisoners. We apologize from Lawyer Kalaycı evaluated the issue in regard to her clients and our readers".

Annex D

INDICTEMENT
TO KIRIKKALE HEAVY PENAL COURT

Plaintiff:
Defendant: Lawyer Filiz Kalaycı, born in 1974, registered at Goksun Alı_lıbucak village, resident at.....member of Ankara Bar Association

Complaint Issue: To insult and despise the moral personality of the Ministry of Justice and to misconduct the duty of lawyership

Date of Crime: 15 January 2002

Permission of Legal Investigation: Correspondence of the Ministry of Justice dated 9 April 2002 including the statement of the Directorate General for Penal affairs

The legal investigation dossier launched upon complaint against defendant lawyer who is registered at Ankara bar Association was examined;

It has been understood from report of Ankara Chief Office of Republic Prosecution, comments of Directorate General for Penal Affairs and from the examination of all documents that Lawyer Filiz Kalaycı

made statements like "The Ministry is cause of re-entering of people into death fasts", "the Ministry issues an invitation for new deaths", "the Ministry **provoked** the action by not leaving any other option" as published on the Cumhuriyet daily of 15 January 2002 with a view that her prisoned clients were victimised .

It is demanded, on behalf of the public, to make a decision to launch a final investigation against defendant lawyer Filiz Kalaycı on the grounds of Article 59/1 and 2 of the Law No.1136 and try her for prosecution based on Article 159/1 of the Turkish Penal Code.

12 April 2002
Kenan Sa_lam
Chief Prosecutor of the Republic