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Stifling Lawyers and Bar Associations: Restrictions undermining the right to legal defense in Turkey

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The legal profession has fallen under increasing attack in Turkey since the 2016 state of emergency, with lawyers facing prosecution, arrest, imprisonment, and verbal and physical attack. Emergency decrees have been used to suppress dissenting voices and to restrict and criminalize legal advocacy. Legislative amendments, particularly to the Criminal Procedural Code, have been introduced to neutralize lawyers, making them unable to fully perform their fundamental duties of legal counsel and defense.

This policy brief examines threats to the right to legal defense and a fair trial by the Turkish government since 2016 and offers recommendations to national stakeholders and the international community to move towards restoring the rule of law in Turkey.

Background

Following the July 2016 coup attempt, a state of emergency was declared and remained in force for two years. This was used as a pretext to severely restrict a wide range of fundamental rights and freedoms and to make sweeping legislative changes through emergency decrees. When the Constitutional Court declared itself incompetent to review these decrees, legal challenges against them became virtually impossible.¹ These decrees remained in force even after the state of emergency ended, rendering the so-called

'temporary' emergency period permanent.² While lawyers in Turkey had been targeted and put under pressure before,³ the state of emergency led to intensified attacks ranging from legislation restricting the right to legal defense to legal harassment and disbarment. Most recently, changes to the bar association system have curtailed lawyers' right to free association and threaten bar associations' ability to uphold the rule of law. These practices stifle the legal profession and make it difficult for lawyers to perform their professional duties safely and effectively.

Attacks against Individual Lawyers Undermining the Right to Legal Defense

Since 2016, lawyers have faced increasing “legal harassment” in the form of investigations, criminal proceedings, and detention. According to the Front Line Defenders’ 2018 report, while the government has targeted human rights defenders of all types, lawyers have increasingly become the main targets of repression.⁴ In the last five years, more than 1,600 lawyers have been arrested and prosecuted, and 450 have been convicted, receiving a collective 2,786 years in prison.⁵ These lawyers are variously accused of founding, leading, being a member of, disseminating propaganda for, or otherwise aiding terrorist organizations.⁶

Many of these lawyers have been targeted solely because of whom they represent.⁷ There have been mass arrests of lawyers who have defended Kurds, leftists, the Gulen movement, and other dissidents.⁸ The evidence against them is often based on their normal professional activity, such as their arguments during hearings, statements on behalf of their clients to the media, visits to clients in prison or clients’ funerals, or membership in law associations shut down by the state. For instance, one lawyer received a prison sentence of ten months for allegedly insulting the President in a statement for an appeal petition as defense counsel.⁹ In another case, the Diyarbakır Prosecutor’s Office included suspects’ lawyers as subjects of a criminal investigation based solely on the fact that the lawyers’ names appeared on suspects’ power-of-attorney documents found by police.¹⁰ Despite this severe legal harassment, bar associations and the Union of Turkish Bar Associations (UTBA) have failed to show adequate support to affected lawyers, particularly those who were accused of having links to terrorist organizations.¹¹

Further, lawyers targeted by the state for political reasons are often denied even the semblance of a fair trial, as exemplified by the case against *Çağdaş Hukukçular Derneği* (Progressive Lawyers’ Association, ÇHD). Prominent ÇHD lawyers received lengthy prison sentences following a trial in which basic principles of fairness guaranteed by the Constitution and the European Convention on Human Rights (ECHR) were completely disregarded.¹² The prosecution based its case on digital records which were not made available to the defense and on completely fictitious secret witnesses’ statements. The judge did not allow the defense to speak while challenging the evidence and refused requests to collect further evidence. The defendants and their lawyers were not allowed to finish their arguments and were ultimately forcibly removed from the courtroom.¹³ Following a 238-day hunger strike held in protest of these violations, one of the defendants, ÇHD lawyer Ebru Timtik, died in custody.

These practices not only violate lawyers’ rights to freedom of expression, association, and a fair trial, but also

constitute a politically-motivated attempt to silence and punish lawyers and the clients they represent in violation of the ECHR. Although several appeals from lawyers have been brought before the Constitutional Court and the ECtHR, these applications are still pending before both courts. These cases have not been given priority status despite lengthy pre-trial detentions, which lower courts have often arbitrarily extended under pressure by the government.

In addition to this legal harassment, lawyers are often subject to intimidation, threats, and even physical assault. In 2016, a lawyer’s back was broken after police attacked a protest against the trial of the ÇHD lawyers.¹⁴ On another occasion, police assaulted lawyers who gathered to protest an ongoing trial against *Cumhuriyet* journalists and lawyers, resulting in several injuries.¹⁵ In 2019, lawyer Sertuğ Sürenoğlu was taken to a police vehicle and beaten by the President’s guards after protesting the blocking of traffic for a Presidential convoy headed to a wedding.¹⁶ In one case, public threats led to assassination: Tahir Elçi, a prominent human rights lawyer and former head of the Diyarbakır Bar Association, was murdered after being heavily insulted and threatened in the press for his views on the Kurdish issue. To this day, there has been no effective and impartial investigation into his death.¹⁷

These attacks not only violate the human rights of the lawyers themselves, but also have a chilling effect on the vital role lawyers play in upholding the justice system and guaranteeing all defendants the right to a fair trial – especially when lawyers’ regular professional activities and the mere legal representation of a particular client can be criminalized.

Legal and Practical Obstacles to the Rights to Counsel and Legal Defense

Recent legislative amendments, most of which were introduced by emergency decree shortly after the 2016 coup attempt, prevent lawyers from fulfilling their professional duties and effectively representing their clients. After the state of emergency was lifted, these legislative changes became permanent and continued to hinder lawyers’ work. These changes included new limits on access to a lawyer for up to five days, lawyer-client meetings at police stations, courtrooms, and prisons, lawyers’ presence at legal hearings, and lawyers’ right to examine or copy case files. For certain crimes, especially those related to terrorism, the scope of these restrictions was expanded even further.¹⁸

Some of these legal changes, in combination with the legal harassment and prosecution of lawyers under fabricated charges, also directly affect lawyers’ ability to work. A 2018 amendment to the Criminal Procedure Law allowed courts to bar lawyers from representing defendants convicted on terrorism-related charges if they were being prosecuted for the same crimes. Although this rule existed previously

for lawyers representing convicted clients, its scope was extended and its use became more prevalent. Hundreds of lawyers have now been barred from representing their clients because they are under investigation of having links to illegal Kurdish or opposition political organizations. For instance, one human rights lawyer, who was accused of “being a member of and making propaganda for the PKK (Kurdistan Workers’ Party)” due to his professional and political activities, was prohibited from representing journalists who were arrested and accused of being members of a terrorist organization.¹⁹

Lawyers who face prison sentences exceeding two years also face the risk of disbarment.²⁰ Therefore, prosecution of lawyers not only violates their clients’ right to legal defense, but also undermines lawyers’ ability to continue their profession. This practice of barring certain lawyers from performing their professional duties also serves to ‘homogenize’ the legal profession by removing dissidents.

Another significant way the government attempted to interfere with the legal profession took place as early as admission to the bar, to keep dissidents from practicing law in the first place. As the Ministry of Justice itself does not have the power to stop bar associations from accepting lawyers onto the bar roll, it turned to administrative courts to annul the admission decisions: to prevent individuals deemed ‘undesirable’ from working as lawyers, the Ministry of Justice filed annulment cases against the bar admission decisions.

As of August 2020, around 1000 lawyers’ licenses had been challenged or annulled by administrative courts, which have almost without fail ruled in favor of the Ministry.²¹ Bar associations and the UTBA failed to show adequate support to the defendants.²² Most were charged with membership in a terrorist organization, spreading terrorist propaganda, or attending ‘unlawful’ demonstrations. Young graduates who were investigated or prosecuted for their political activities during their college years were particularly affected. Books, magazines, slogans, banners, and press statements were all considered evidence for terrorism charges.²³ Lawyers who were targeted with this tactic were able to practice only after the Constitutional Court ruled that these annulments were illegal in July 2020.²⁴

Repression of Professional Associations and Civil Society Organizations

As vocal critics of violations of human rights, the rule of law, and judicial independence, professional associations have become key targets for the government. These organizations and their members have been targeted, harassed, and attacked by officials in an attempt to hinder their monitoring and advocacy capacities and silence their criticism.

During the state of emergency, 34 law associations were closed on the grounds that they were associated with

terrorist organizations. Their assets were transferred to the Treasury without remuneration²⁵ and their members faced heavy legal harassment and even detention.²⁶ These included internationally acclaimed organizations focused on monitoring human rights violations and defending victims, such as the Progressive Lawyers Association, Lawyers for Freedom Association (*Özgürlükçü Hukukçular Derneği*), Mesopotamia Lawyers Association (*Mezopotamya Hukukçular Derneği*), Justice School Association (*Adalet Okulu Derneği*).

Bar associations that criticize the government face verbal and physical attacks as well as serious investigation and prosecution. For example, as retaliation for press releases criticizing government policy on the Armenian and Kurdish questions, executives of the Diyarbakır Bar Association face prison sentences for “inciting the people to hatred and enmity” and “publicly denigrating the Turkish nation, state and institutions,”²⁷ and several cases against the Association as a whole are pending before criminal courts.²⁸ In another case, after criticizing hate speech from the Head of the Directorate of Religious Affairs against the LGBTI community,²⁹ the Ankara, Diyarbakır, and Istanbul Bar Associations have been hit with criminal investigations for “inciting the people to hatred and enmity.”

Most recently, a December 2020 law ostensibly aimed at countering money laundering and terrorism financing offers the government new tools to put pressure on civil society organizations and human rights defenders, including human rights lawyers and law associations. The law puts civil society organizations’ financial resources under the supervision of the Ministry of the Interior, requires organizations to accept government-appointed trustees, and allows the government to temporarily shutter organizations whose members face terror-related investigations.³⁰ This increasing government control over civil society organizations, including lawyers’ associations, poses a great threat to the already-restricted space for civil society in Turkey.

The Multiple Bar System

In May 2020, the ruling party proposed two significant amendments to legislation governing the legal profession: cities with more than 5000 registered lawyers could have multiple provincial bar associations, and the UTBA electoral system would be reformed, disturbing the proportional representation of provincial bar associations at the national level. These amendments allow the government to exert more influence and pressure on bar associations that continued to monitor and defend human rights or were critical of the government.

Many national and international stakeholders expressed concern that the first amendment would divide membership to bar associations in larger cities along political lines, leading courts and other government bodies to treat lawyers

and their clients differently based on their membership in a specific bar association.^{31 32} This could undermine the impartiality and independence of the justice system³³ and significantly weaken bar associations' ability to defend human rights and the rule of law by making it easier for the government to target 'non-loyalist' bar associations.³⁴ Dividing up bar associations could also hinder their role in ensuring uniform legal practice, for example, in appointing legal aid lawyers and conducting disciplinary proceedings.³⁵

The second amendment significantly reduced the number of delegates from major provinces' bar associations to the UTBA. While they represent 55% of all lawyers in Turkey, the Istanbul, Ankara, and Izmir Bar Associations now send only 7% of delegates to the UTBA.³⁶ The new distribution of delegates means that the largest and most politically vocal bar associations will be less able to influence disciplinary sanctions or disbarment decisions, making it easier for the government to target lawyers through disciplinary proceedings.³⁷

These proposals were introduced without prior consultation with the bar associations,³⁸ which heavily criticized them along with civil society, academia, and international organizations.³⁹ Lawyers took to the streets to oppose the amendments and protests were held across the country. During their protest march to Ankara, representatives from many provincial bar associations were stopped and cordoned off by the police, who tried to prevent them from entering the city. For 27 hours, protesting lawyers were denied basic supplies such as food or water and access to shelters and restrooms. Despite this heavy backlash, the amendments were passed and were declared constitutional by the Constitutional Court in December 2020 with only four dissenters out of fourteen judges.⁴⁰

The new system has already led to further division and politicization in the legal profession. A government-backed second bar association reached the required 2000 members only in Istanbul, resulting in increasing government pressure on lawyers to transfer. The Istanbul Bar Association recently announced it received reports that lawyers working for public institutions and banks were being pressured to transfer to the newly established 2nd Bar Association.⁴¹ The Ankara Bar Association made a similar announcement concerning lawyers in the public sector who were under pressure to support a 2nd Bar Association, which has yet to collect the required 2000 members, and were threatened with transfers to smaller towns.⁴²

While the government has claimed that these amendments made for a "more democratic and pluralistic" system, this "reform" already has and will continue to endanger the independence of lawyers and the political neutrality of the legal profession.

Conclusion and recommendations

In its judgment on the case of Selahattin Demirtaş, a human rights lawyer and the former co-chair of the second-largest opposition party in Turkey, the ECtHR established that "the tense political climate in Turkey during recent years has created an environment capable of influencing certain decisions by the national courts" and that judicial authorities act more harshly against political dissidents to silence and punish them.⁴³ The government's moves to stifle pluralism and limit the freedom of political debate threaten not only individual rights and freedoms in Turkey but the democratic system as a whole.⁴⁴

To put an end to these systematic attacks against lawyers and the right to a fair trial, there must be a strong commitment from all stakeholders to prevent the criminalization of lawyers for their professional activities and to fully restore the rule of law in Turkey.

The Turkish government must take urgent steps to restore the rule of law and independence of the judiciary. It must stop arresting, detaining, and prosecuting lawyers for their professional activities and must ensure the right to a fair trial for lawyers and their clients; unequivocally and promptly implement judgments of the ECtHR and the Turkish Constitutional Court and ensure full compliance with their rulings; and reverse the newly introduced multiple bar reforms.

Bar associations must stand by all lawyers who are prosecuted for their professional activities and uphold the right to legal defense, regardless of the alleged links or political affiliations of the targeted lawyers or their clients.

Civil society organizations and international human rights organizations must monitor and report on cases concerning increasing pressure and legal harassment against lawyers, lawyers' organizations, and bar associations in Turkey; submit expert opinions in cases and applications before the Constitutional Court and the ECtHR; and advocate for the release of detained lawyers and the acquittal of all lawyers unjustly prosecuted for their professional activities.

International actors must closely monitor the situation and ongoing cases of legal harassment against lawyers; establish solidarity networks with lawyers facing judicial harassment to protect them from social, psychological, and economic pressure; and support lawyers' associations' and civil society organizations' rights to pursue their work independently and without pressure.

The European Union must raise the issue of increasing interference with the legal profession during accession negotiations with Turkey and consider it while assessing Turkey's human rights record; continue to support bar associations and civil society organizations advocating for lawyers' rights in Turkey; and put pressure on the Turkish government to change laws and practices which

misuse and abuse security concerns to silence and attack political dissidents.

The Council of Europe must continue to follow the situation of lawyers in Turkey. In line with efforts to draft a legally binding European convention on the legal profession, the **Parliamentary Assembly of the Council of Europe** must continue to address the plight of lawyers in Turkey and call on Turkey to respect the lawyers' rights as set forth in the Committee of Ministers' Recommendation No. R (2000) 21. The **European Court of Human Rights** must prioritize the

cases of lawyers detained or legally harassed by other means, and the **Committee of Ministers of the Council of Europe** must increase pressure on Turkey to implement the binding judgments of the European Court of Human Rights and initiate infringement proceedings where necessary.

The U.S. government must call for a principled application of human rights in Turkey; openly reject Turkey's attempts to use counter-terrorism as a pretext for suppressing the opposition; and continue to support bar associations and civil society organizations advocating for lawyers' rights in Turkey.

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