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Human Rights Association (İnsan Hakları Derneği-İHD) is a non-governmental, independent, and voluntary body. The association, which was founded in 1986 by 98 human rights defenders, today has 27 branches, 6 representative offices, and 7,945 members. İHD is the oldest and largest human rights organization in Turkey and its “sole and specific goal is to promote ‘human rights and freedoms.’”

IHD Submission for the
Questionnaire for Civil Society and Bar Associations

1. Article 135 of the Constitution of the Republic of Turkey entitled “Professional organizations having the characteristics of public institutions” sets forth a general and common provision for the functioning and activities of certain professional groups, including lawyers. Yet, there is no particular constitutional regulation regarding the functioning of lawyers. The Constitution also incorporates provisions about the election of a member among lawyers one each to the Constitutional Court and the Council of Judges and Prosecutors (CJP).

The legal profession for lawyers is primarily regulated by the Attorneyship Law No. 1136 (AL) in Turkey. Article 1 of this law prescribes: “*Attorneyship is a public service and a self-employed profession. The attorney freely represents the independent defense which is one of the constituents of the judiciary.*” Nonetheless, lawyers are deprived of legal and constitutional guarantees. Lawyers do not have any of the guarantees granted to public prosecutors during adjudication processes in Turkey. For instance, while the prosecutors are seated on a podium next to the judges in a higher position vis-à-vis the lawyers during the hearings, lawyers are not granted the same level.¹

All documents that can be drawn up by lawyers within the scope of attorney-client relationship are drafted by notaries public. Even this problem has yet to be solved.

The Havana Rules, which regulate the professional ethical rules for lawyers, are not complied with in Turkey, while lawyers are routinely identified with their clients, are targeted, and even face criminal charges by prosecutors and panels of judges undertaking the adjudication process for the mere fact that they fulfill their defense duties. For instance, the public prosecutor asked the Ankara 22nd Heavy Penal Court to file criminal charges against the defense lawyers at its hearing on 8 November 2021. Also lawyer Ömer Kavili often stands trial on this ground. The April 2019 report² of the Human Rights Watch (HRW), too, finds a pattern of prosecutors systematically investigating and bringing cases against lawyers underlining efforts by prosecutors to criminalize lawyers under the Anti-Terrorism Act No. 3713 (ATC) for activities undertaken to discharge their professional duties and associate them without evidence with the alleged crimes of their clients. The former Special Rapporteur on the Independence of Judges and Lawyers also referred to this problem in her 2012 report but judicial harassment against lawyers has become even more aggressive, particularly following the failed coup d’état attempt of July 2016.

The judicial ethics recommendation decision available on the CJP’s website does not cite the Havana Rules among the international ethical codes and principles, while these documents in question do not even mention the word “lawyer.” Further, the government’s Judicial Reform Strategy Action Plan of 2020 put forth certain aims to be achieved including a change in the procedure for admission into the legal profession and admission after successful legal exam completion would be introduced in cooperation with the Union of Turkish Bar Associations (UTBA) for the effective exercise of the right to defense in addition to novel practices to be implemented to enable the defense to get effectively involved in judicial processes and for lawyers’ easier execution of their professions.³ Among these aims, however, only the promise that lawyers would be eligible for a special passport has been fulfilled up until now. Also the Human Rights

¹ The 2012 report of the SR on the Independence of Judges and Lawyers drafted after her official visit to Turkey in 2011 also cites this as a problem (para. 38) but there has been no improvement in seating arrangements in courtrooms yet.

<<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/134/03/PDF/G1213403.pdf?OpenElement>>

² <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>

³ <https://yargireformu.adalet.gov.tr/Resimler/eylemlani.pdf>

Action Plan and Implementation Timeframe of April 2021⁴ announced plans to undertake certain activities for the strengthening of defense and render legal services by lawyers more qualified. These activities have not been carried out yet either. On another note, for instance, there is no mechanism to guarantee the safety of lawyers in Turkey when they are involved in attachment procedures. At least one lawyer faces attacks each year in Turkey during the undertaking of attachment procedures.⁵

Article 130 of the Code of Criminal Procedure No. 5271 (CCP) prescribes that lawyers' offices can only be searched through a court order being limited to the incident specified in the order under the supervision of a public prosecutor while the head of the related bar association or a lawyer representing them should be present at the time of the search. Article 58 of the AL, which is a special law, also sets forth that not only lawyers' offices but also their residences should be searched in accordance with the procedures and conditions prescribed in Article 130 of the CCP. The practice in Turkey, however, usually proves to be different: The impugned criminal offense presented as the grounds for the search warrant is argued to have no relation to the professional activities of the lawyer and the public prosecutor does not accompany searches in the execution of such search warrants issued for lawyers. Although Article 58 of the AL does not set forth a condition limiting search warrants to an offense related to lawyers' duties, public prosecutors undertake measures with reference to Article 130 of the CCP and rid lawyers of any sort of protection by utilizing the ATC.

Article 153 of the CCP regulates the power of the defense counsel (lawyer) for discovery of case files. Under Article 157 of the CCP, the rule governing the confidentiality/secretcy of a criminal investigation is maintained all throughout the time, including the time suspect is taken into custody and their questioning at the prosecutor's office and before the criminal peace judgeships. Although lawyers ask for the lifting of such confidentiality orders placed on case files, their requests are denied and they are only handed the questioning records while they are not allowed to see the case file itself. Such state of affairs is against the principle of the equality of arms. Therefore, lawyers cannot duly perform their duties. There is no policy document to prevent this and the problem could not be solved despite the European Court of Human Rights (ECtHR) violation judgments to this end.

2. In Turkey, there are lawyers' rights centers affiliated with bar associations and the UTBA. The Lawyers' Rights Center at the UTBA was established in 2014. Nevertheless, the Union has made only a few statements about lawyers who were attacked or standing trial to date. Human rights centers at some local bar associations, on the other hand, are not effective enough to litigate lawsuits brought against lawyers or to powerfully bring forward rights violations faced by lawyers.

Under Articles 58 and 59 of the AL, investigations and criminal proceedings into lawyers in connection with offenses they commit during their duties as legal representatives or those arising from their duties are subjected to the consent of the Ministry of Justice from which consent needs to be asked for twice, one at the investigation and one at the prosecution stage, in accordance with the law. And in practice the Ministry of Justice usually grants its consent.

One of the major and most fundamental problems in the judicial system in Turkey proves to be the ambiguity of the definition of terror in the ATC. As is also mentioned in reports by human rights organizations, lawyers practicing in Turkey are identified with the clients they defend and face investigations and trials. Despite the fact that both the CCP and the AL require harsher formal conditions to investigate lawyers, public prosecutors in practice take legal action against lawyers as if they were not one. Public prosecutors' offices ask for the consent of the Ministry of Justice in many cases by alleging that the investigations they conduct are not related to the professional activities of lawyers. For instance, following a press statement on peace issued by the Human Rights Association (İHD) on 15 February 2021, the

⁴ <https://rayp.adalet.gov.tr/resimler/1/dosya/insan-haklari-ep02-03-202115-14.pdf>

⁵ <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=16590&Desc=Gebze%E2%80%99de-Haciz-S%C4%B1ras%C4%B1nda-%C3%96ld%C3%BCr%C3%BClen-Av.-Ersin-Aslan-Davas%C4%B1-Ba%C5%9Flad%C4%B1>

Minister of the Interior used the phrase “canı çıkacısı” [a curse commonly used wishing great evil, misery and death befall on someone in Turkish] for the association and the association’s chairperson lawyer Öztürk Türkdöğan was taken into custody at 6.30 early in the morning after his residence was raided by the police on 19 March 2021. Although Mr. Türkdöğan told the police that he was a lawyer, no lawyer from the Ankara Bar Association was called in to be present during the house search while a prosecutor was not present during the search either.⁶

3. Article 5 of the AL entitled “Impediments to admission into attorneyship” prescribes that requests for admission into the legal profession should be denied in the presence of any one of the circumstances listed therein but not limited to those. To specify, lawyers in Turkey faced significant interferences in practicing their professions following the failed coup attempt of July 2016. Numerous trainee lawyers, who had recently graduated from law school, were denied licenses on the grounds of investigations into and lawsuits against them. Further, the Ministry of Justice has been denying license applications by former judges, prosecutors and academics, who had been dismissed from their posts through decree-laws.⁷ The grounds for such rejection decisions are propounded to be the provisions set forth in Articles 5 § 3, 8 § 4, 20 § 4, 71§ 3, 73§ 2 and 74 § 3 of the AL.

Many a measure, which were introduced through decree-laws during the state of emergency but then rendered permanent in the CCP having been signed into law, are detrimental to the rights to an attorney and defense by a suspect. These include, inter alia, public prosecutors’ granting of consent to the police to prevent lawyers to confer with their clients for the first 24 hours routinely provided that a court order be delivered after the fact (CCP Article 154 § 2); limitation of the number of defense counsels, who could be present for a defendant standing trial under anti-terrorism offenses, to three (CCP Article 149 § 2); facilitation of courts to hold hearings and deliver verdicts in the absence of defense lawyers whose excuses for absence were denied (CCP Articles 188 § 1 and 216 § 3); denial of lawyers’ pleas to have witnesses heard if there is a conviction that these requests are made to prolong the trial (CCP Article 178) and allowing remote hearing of some witnesses under protection with altered voices and covered faces instead of facilitating cross examination by their presence before the court in person (CCP Article 139 § 3). In the same vein, courts’ denial of imprisoned suspects to be present in hearings in person has now become an ordinary practice; courts have instead been delivering decisions for the remote presence of remanded suspects via the Audio-Visual Information Technology System (SEGBİS) (CCP Article 196 § 4).⁸ Further, lawyers facing prosecution under Article 220 or 314 of the Turkish Penal Code (TPC) can be banned from practicing in cases on the same subject through a judge’s order as per CCP Article 151 § 3-6 that have been in force since 2005. CCP Article 151, too, proves to be quite dangerous with regards to lawyers practicing in political trials and is one of the major obstacles before lawyers by prescribing bans on lawyers to practice law.

The Commissioner for Human Rights of the Council of Europe stated in a report published following her 2019 visit to Turkey that the criminal justice system in the country had many issues concerning adversarial proceedings and the principle of equality of arms along with restrictions on the right to defense.⁹

4. The government proposed a bill targeting the bar association system in the country following Ankara Bar Association’s press statement criticizing the Director General of Religious Affairs’ statement implicating hate speech against the LGBTI+ on 24 April 2020.

Law No. 7249 on Amendments to the Attorneyship Law and Some Other Laws, commonly known as the “multiple bar association law,” went into force on 15 July 2020. 78 out of 80 bar associations in Turkey

⁶ Information on Mr. Türkdöğan’s arrest was submitted to the related UN Special Procedures mandates, including the SR on the Independence of Judges and Lawyers, on 28 May 2021 (Ref: 1ov7zkgk).

⁷ http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf

⁸ <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>

⁹ <https://rm.coe.int/090000168099823e>

urged the government to stop such initiatives in two declarations issued on 19 May and 1 June 2020 and asked the authorities to address the real problems of the country. More than 60 chairpersons of bar associations all around the country commenced the March of the Defense from their respective cities to the capital, Ankara, seeing that their demands were not taken into account and the process was ongoing. The chairpersons sustained quite heavy interventions, their entry to the capital was blocked, legal profession sustained a heavy blow.¹⁰ The multiple bar association regulation interferes with the election methods in bar associations. Further, it has been stated that pro-government bar associations would not protect the rights of citizens when they were in conflict with the state thus, harming the entirety of people as the new law gave way to pro-state bar associations.¹¹

In many incidents related to lawyers' rights like the above-mentioned one, the fact that lawyers were left vulnerable due to the political stand of the chairperson of the UTBA, lawyer Metin Feyzioğlu, has also been criticized. In Turkey it is the elected chairpersons who hold the power not the bar associations or their executive boards. The chairpersons are elected separately from the executive boards in bar associations' and UTBA's elections, while such fact leads to anti-democratic practices.

5. No statistical data has been released either by bar associations or the UTBA on this matter. In order for one to be able to provide related data, one needs to lodge an application within the scope of the Right to Information Act.

6. The government primarily closed down many lawyers' organizations during the state of emergency declared after the coup attempt of July 2016 in Turkey. The April 2019 report of the HRW specifically underlined that three lawyers' organizations, namely the Progressive Lawyers' Association (Çağdaş Hukukçular Derneği), Lawyers for Freedom Association (Özgürlükçü Hukukçular Derneği) and the Mesopotamia Lawyers' Association (Mezopotamya Hukukçular Derneği) were closed down by emergency decree-laws due to the fact that they had a strong focus on human rights cases and supporting the rights of defendants in terrorism cases.

24 January was declared to be the Day of the Endangered Lawyer by international lawyers' organizations in 2010, while the day was dedicated to lawyers in Turkey in 2019.¹² International Bar Associations stated that 1,488 lawyers were subjected to ill-treatment amounting to torture during the state of emergency, while 572 lawyers were detained and 79 were sentenced to imprisonment.¹³

Lawyers in Turkey are usually pressured by the state and state authorities. Lawyers face judicial harassment by means of investigations and criminal proceedings brought against them in relation to their professional activities; they are threatened and killed. For instance, lawyer Tahir Elçi, the chairperson of Diyarbakır Bar Association and one of the most prominent human rights defenders in the country, was singled out and received death threats because of his statements on live TV about the escalating acts of terrorism and the future of the resolution process in the country following the bombed attack of 10 October 2015 in Ankara that claimed the lives of 104 people. Tahir Elçi was aggressively targeted by state authorities and pro-government media due to his statements that indeed fell under freedom of expression. An investigation was initiated into him. He was shot to death on 28 November 2015 at a press conference he was holding to urge the authorities to prevent damage to the Four-Legged Minaret in Diyarbakır in armed conflict. The indictment on the murder of Tahir Elçi could only be drafted as of 26 March 2020 after about five years after the fact as a result of vigorous efforts by the Diyarbakır Bar Association and Tahir Elçi Foundation but we have been witnessing a practice of impunity in the trial heard at Diyarbakır 10th Heavy Penal Court.

¹⁰ <http://www.ankarabarosu.org.tr/HaberDuyuru.aspx?DUYURU&=6153>

¹¹ <https://www.hrw.org/news/2020/07/08/turkey-plan-divide-undermine-legal-profession>

¹² <https://eldh.eu/wp-content/uploads/2018/11/Basic-Report-Turkey2019.pdf>

¹³ <https://ihd.org.tr/en/lawyers-under-judiciary-pressure/>

In 2011, more than 40 lawyers along with lawyers affiliated with Asrın Law Office were taken into custody while 36 lawyers were imprisoned. Criminal investigations were initiated into the lawyers because they acted as defense lawyers for the organization leader Abdullah Öcalan incarcerated in İmralı Prison and they were subsequently detained. Many lawyers were imprisoned for about three years within the scope of this case file while the trial is still pending before İstanbul 16th Heavy Penal Court.

In September 2017, criminal investigations were initiated into 20 lawyers affiliated with the Progressive Lawyers' Association for acting as defense attorneys for an academic and a teacher, who had been detained in relation to their months-long hunger strike they had gone on to protest dismissals during the state of emergency, and 17 of these lawyers were subsequently detained as well. The lawyers were remanded pending trial and were acquitted at the first hearing held in September 2018 but the prosecutor's office objected to the acquittal ruling of the court the same day. A day later the court ruled for the re-detention of 12 out of 17 lawyers. 18 lawyers, including the chairperson of the association -lawyer Selçuk Kozağaçlı, were then sentenced to a total of 159 years imprisonment under the charges of aiding, membership in, and leading an organization. Lawyer Ebru Timtik, a member of the association, went on a hunger strike on the grounds that the lawsuit brought against them violated their right to a fair trial and lost her life. The Ministry of Interior, on the other hand, published a booklet in 2020 targeting lawyers affiliated with the association,¹⁴ which effectively violated the lawyers' right to presumption of innocence while their trial was pending.

Lawyers Özlem Gümüştaş and Sezin Uçar were added to the case file within the scope of which their clients had been facing trial under the charges of membership in the illegal Marxist Leninist Communist Party and were subsequently detained. The two lawyers were remanded pending trial for about a year, while the criminal proceedings against them are pending.

On 12 March 2020, 13 lawyers affiliated with İHD and Lawyers for Freedom Association were taken into custody in Şanlıurfa having been charged with aiding a terrorist organization (TPC Article 220 § 7) on the grounds of their conferences with their clients in prisons. The lawyers' offices and residences were searched, their computers were seized, while the case files in two lawyers' offices were also seized. Lawyer Sevda Çelik Özbingöl, among those in custody, was imprisoned for nine months then released. Şanlıurfa 6th Heavy Penal Court subsequently sentenced her to 11 years of imprisonment.

Ankara Chief Public Prosecutor's Office initiated an investigation into 23 of the lawyers, who had protested the multiple bar association bill before the Ankara Courthouse on 3 July 2020, for violating the Law on Meetings and Demonstrations. Statements of the lawyers were taken and the investigation is still pending.

In Turkey, lawyers who are not facing investigations or criminal proceedings are subjected to international travel bans under the name of the judicial control measure. Yet, there is no provision within the CCP that sets forth international travel ban with regards to lawyers.

Moreover, the Ministry of Justice's defense statements submitted in response to applications by lawyers before the Constitutional Court and the ECtHR demanding that authorities take measures in order to prevent gross violations of the right to life of civilians at the time of the curfews in Turkey incorporate accusatory statements targeting lawyers. The Commissioner for Human Rights of the Council of Europe issued a memorandum criticizing Turkey on this issue.¹⁵

7. The Human Rights Association adamantly works for the rights of lawyers, including publishing special reports specifically designed for the plight of lawyers¹⁶ on the domestic level, while calling attention to the situation of lawyers in Turkey in collaboration with FIDH and EuroMed Rights, of which it is a member, on the international level. Further, the association presents data on judicial independence and the defense in

¹⁴ <https://icisleri.gov.tr/icguvenlik/bir-terror-orgutunun-cokusu-olum-oruclari-ve-dhkpcnin-kanli-gecmisi>

¹⁵ [https://rm.coe.int/ref/CommDH\(2016\)35](https://rm.coe.int/ref/CommDH(2016)35)

¹⁶ E.g. 1 June 2018 İHD report: <https://ihd.org.tr/en/lawyers-under-judiciary-pressure/>

its annual human rights violations reports.¹⁷ IHD also pointed out to the judicial harassment faced by lawyers in the country in a special report drafted in collaboration with the Observatory for the Protection of Human Rights Defenders.¹⁸

8. Curfews were declared at certain intervals in response to the COVID-19 pandemic in Turkey. Lawyers have been exempt from such curfews when they needed to undertake their professional activities including visiting their clients in prisons or participating in questionings within the scope of the CCP but neither the state nor the UTBA provided special support for lawyers to promote their professional capacities during the pandemic.

9. Legislative regulations should be introduced in order to provide for the effective and free exercise of the legal profession as is set forth in the UN Basic Principles on the Role of Lawyers (Havana Rules); provisions restricting admission to the legal profession for lawyers in the AL should be annulled; the multiple bar association regulation should be revoked; judges and prosecutors should be reminded of the Havana Rules by means of a decision handed down by the CJP.

Initiation of investigations and proceedings with an eye to expose lawyers, bar associations and lawyers' organizations to judicial harassment should be ended. The above-mentioned amendments to the CCP,¹⁹ which were introduced through state of emergency decree-laws and subsequently signed into laws, along with provisions enabling bans on lawyers that effectively restrict lawyers' right to fulfill their professional duties as well as the right to defense should be annulled.

All lawyers, who were subjected to investigations and criminal proceedings because of their professional activities as defense lawyers and of their human rights work and remanded pending trial, should be released. Actors, who make lawyers stand trial or attempt to intimidate lawyers by threats and repression, should be identified through effective investigation methods and should be effectively prosecuted in order to end the policy of impunity in Turkey. The ATC should absolutely be annulled. Legislation providing for the restriction of the right to defense should be amended, legal profession for lawyers should be equipped with legal guarantees based on the fact that the legal profession undertaken by lawyers is one of the main constituents of the judiciary.

¹⁷ E.g. <https://ihd.org.tr/en/ihd-2020-report-on-human-rights-violations-in-turkey/>

¹⁸ <https://ihd.org.tr/en/obs-ihd-report-turkeys-civil-society-on-the-line-a-shrinking-space-for-freedom-of-association/>

¹⁹ CCP Articles 154 § 2, 149 § 2, 188 § 1, 216 § 3, 178, 139 § 3, 196 § 4, 151 § 3-6, 151.