

Submission by Istanbul Bar Association Human Rights Centre to the Special Rapporteur on the Independence of Judges and Lawyers’ for the forthcoming report on “Protection on Lawyers”

10/12/2021

This brief is prepared by the Human Rights Centre of Istanbul Bar Association (the Centre). The Centre was founded in 1998 at the Istanbul Bar Association. Working methods and principles of the Centre are defined by Istanbul Bar Association Directive on Commissions and Councils. Members of the Centre comprise attorneys and apprentice attorneys at Istanbul Bar Association. Chair, Deputy Chair and Secretary General of the Centre are elected every two years. Attorneys work on a voluntary basis at four sub-working groups focused on prisoner’s rights, refugee rights, right to freedom of expression, and LGBTI+ rights.

The brief aims to provide information for the preparation of the report by the UN Special Rapporteur on the Independence of Judges and Lawyers’ to be presented to the Human Rights Council in June 2022. The brief is prepared based on the information gathered by the members of the Centre.

In this context, the Centre is particularly concerned with the situation on the legislative, administrative, and institutional barriers hindering the exercise of legal profession, as well as the increasing number of lawyers subjected to criminal or administrative proceedings while exercising their professional activities. The major points are summarized below.

Legislative and administrative barriers

In July 2020, major amendments were made to the Attorneyship Law. Several basic rules governing the procedure of establishing a bar association were amended so that certain lawyer groups close to the government could establish their own bar association. Some other amendments were also made on the rules on the composition of the General Assembly of Union of Turkish Bar Associations, for the government to have more influence on the procedure of election of the president and board members of the Union of Turkish Bar Associations. According to the new law, each bar association in the provinces will be represented by three delegates and a president in the General Assembly of Union of Turkish Bar Associations.

On 31 December 2020, the Law No. 7262 on “Preventing the Financing of the Proliferation of Weapons of Mass Destruction” was entered into force without any comprehensive public or parliamentary debate.¹ Article 20 of the new law, contrary to the essence of the private nature the attorney-client relationship, obliges independent attorneys to give wide range of information about their clients to the public authorities.

¹ <https://www.resmigazete.gov.tr/eskiler/2020/12/20201231M5-19.htm>.

Lawyers face several de jure and de facto obstacles in accessing to case files or meeting with judges and prosecutors regarding their cases. This alone is an important indicator showing the authorities' point on the lawyers.

Lawyers subjected to criminal proceedings

In 2020, criminal investigations were initiated against the board members of the Istanbul, Ankara, İzmir and Diyarbakır Bar Associations pursuant to Article 216(3) of the Turkish Penal Code (insulting the religious values adopted by a part of the public), in connection with their press statements concerning discriminatory language used by the Head of Religious Affairs of Turkey.² Board members of the Human Rights Centre of Istanbul Bar Association, along with 2 board members and head of the Bar Association, were later charged with “insulting a public officer on duty for his beliefs, thoughts and opinions” pursuant to Article 125(3) of the Turkish Penal Code. The latter is still pending before the first instance court.

In 2021, a lawyer registered to Istanbul Bar Association was prosecuted and detained, contrary to the specific procedural safeguards and constitutional rights, for the insulting the President of the Republic of Turkey under Article 299 of the Criminal Code on account of his tweets.³

During the last five years, tens of lawyers of the Istanbul Bar Association were detained on terrorism related charges. Two lawyers started a hunger strike demanding right to a fair trial, which later turned into a death fast in April 2020. In August 2020, one of the lawyers, Ebru Timtik, lost her life on the 238th day of the hunger strike.

Executive interference in lawyer license procedures

Apart from the criminal investigations and prosecutions, increasing numbers of lawyers are also being subjected to allegedly arbitrary administrative proceedings pursuant to Article 5 (3) of the Attorneyship Law. Law graduates who successfully complete their attorney internship might not get their license if the Ministry of Justice rejects to approve their application due to ongoing investigations or prosecutions against them. The processes before the Ministry of Justice might take years, and the candidates cannot exercise their profession in the meantime. In case of rejection, the Ministry of Justice sends the application to the Union of Turkish Bars. Even if the Union of Turkish Bars grants the license despite the opinion of the Ministry of Justice, the Ministry may initiate administrative proceedings before the Administrative Courts, seeking cancellation of the license. In most cases, administrative courts cancel the attorneyship licenses, in line with the opinion of the Ministry of Justice, even in the case of suspension of the pronouncement of the judgment (HAGB).

² On 24 April 2020, the Head of Religious Affairs of Turkey declared that Muslims should “join the fight to protect people from such evil” and blamed homosexuality and premarital sex for the spread of HIV. Several bar associations published human rights statements, underlining the prohibition on discrimination

³ Criminal proceedings are still pending.

Covid-19 measures and legal profession

Within the context of the pandemic, attorneys were, for a considerable period, restricted to meet their clients in prisons and removal centres in person. That restrictions were not imposed for every prison in the same way, scope, and duration. There were serious concerns on that these differences were mainly because of the existence of detainees allegedly being kept for political reasons in some prisons.

Steps need to be taken to better protect and guarantee the free exercise of the legal profession

- The constitution should define the defence as a constituent element of the judiciary, and relevant legislation should be reviewed to empower the independence of the bar associations.
- The parliament should abolish the multiple bar association system in order to maintain the independent nature of bars and attorneyship, adopt a more democratic and fair election system for the Union of the Bar Associations.
- The authority to govern the licence procedure of the attorneys should be vested only in the Union of Turkish Bar Associations.
- Several provisions of Law No. 7262 bringing inappropriate interferences with the attorney-client privacy should be repealed.
- Judicial and executive authorities should not equate the lawyers with their clients and impose criminal measures or sanctions against them due to the legal activities within the exercise of constitutional rights, especially right to a fair trial.
- In applying criminal measures such as pre-trial detention and custody, the authorities should comply with all specific procedural safeguards laid down in relevant domestic law.
- The attorneys, while carrying out their duties, should not, in a way contrary to the proper administration of justice and right to fair trial, be denied access to their case files or to judges/prosecutors.