



Submission in response to questionnaire for civil society and bar associations issued by Special Rapporteur on the Independence of Judges and Lawyers

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The Focus Country: TURKEY

Q1: Taking into consideration the guarantees for the functioning of lawyers, contained in principles 16-22 of the Basic Principles on the Role of Lawyers, please describe the constitutional, legal, administrative and policy measures adopted in your country to enable lawyers to exercise their professional activities in favour of their clients in a free and independent manner.

Q2: What entities and/or mechanisms are in place to prevent and/or punish interferences with the free and independent exercise of the legal profession? Please briefly describe them and specify whether they are independent bodies or if they belong to the administrative structure of the State.

Q4: Please describe the role of the national bar association(s) in protecting lawyers and the free exercise of the legal profession. Is the bar association de jure and de facto independent from the State?

Combined answer to Q1, Q2, Q4

1. In Turkey, the profession of lawyers is stipulated by the Law no. 1136 (the Attorneyship Law). In this law, independence is mentioned in three articles. First, Article 1 reads that “*Attorneyship is a public service and a liberal profession. The attorney freely represents the independent defense which is one of the constituents of the judiciary.*”
2. Further Articles 97 §6 and 123 §6 read that “*Defending the dictates of the law and professional rules against all manner of organs in matters involving the honor and independence of the profession, and taking the actions behooving him/her directly or indirectly*” is one of the duties of the presidents of the provincial bar associations (PBAs) and the president of the Union of PBAs (UTBA).
3. Provincial bar associations (PBAs) and their umbrella organisation, Union of Turkish Bar Association (UTBA) are responsible for protecting the independence of lawyers and support them to exercise their professional activities in a free and independent manner. It is detailed in the next page within the text box.

4. As detailed in the Venice Commission's opinion¹:

The Attorneyship Law regulates the status of attorneys, accession to the legal profession, attorney's fees, legal aid, professional duties and discipline of attorneys, disbarment, etc. It also defines the powers and the structure of the professional associations of attorneys – provincial bar associations (PBAs) and of the Union of Turkish Bar Associations (UTBA).

The Constitution of Turkey does not contain provisions specifically describing the organisation of the legal profession PBAs and UTBA. Yet, Article 135 of the Constitution defines the status of "public professional organisations and their higher bodies" as being "public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession". Under Article 135, the organs of public professional organisations "shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision." Under Article 76 of Attorneyship Law, the PBAs and UTBA are regarded as "professional organisations" and their "higher body" respectively, governed by Article 135 of the Constitution.

Under the 1969 Law, PBAs are established in each province. PBAs register all attorneys working in their respective provinces and may decide on disbarring them. Membership in the PBAs is mandatory, in the sense that it is a pre-requisite for rendering legal services and practicing law in Turkish courts (Articles 63 and 66 of Attorneyship Law). PBAs perform important functions vis-à-vis attorneys: they admit lawyers to the bar (see Article 7), organise mandatory trainings for young lawyers ("apprenticeships" – see Article 15 et seq.), register partnerships (Article 44), decide on disciplinary cases (see Article 103 et seq.), advise attorneys on ethical obligations, mediate between attorneys and between attorneys and their clients (Article 95), and may impose disciplinary sanctions on attorneys, including temporary prohibitions to practice or definitive disbarments (Article 136).

PBAs are "operating on the basis of democratic principles". That means that attorneys participate in the General Assembly of the BA which elects the governing bodies of the BA (the President, the Management Board, the Disciplinary Board, etc. – see Articles 89, 90 and 104), by secret vote, and decides certain other issues. Every attorney must pay dues to support the functioning of his/her BA (Article 65). Decisions of the General Assembly of each PBA are taken by "the largest number of votes" (Article 87). This rule also applies for the election of delegates to the Union of Turkish Bar Associations (Article 81 (1) and Article 87 (4)).

At the national level, Attorneyship Law established the Union of Turkish Bar Associations (UTBA). UTBA is the umbrella organisation of the PBAs. It represents PBAs before State authorities (see Article 110 p. 7). It also has competencies vis-à-vis individual attorneys. Thus, UTBA may review certain decisions of the PBAs in matters related to the bar admissions, disciplinary sanctions, disbarment etc. Decisions of UTBA are subject to review by the Ministry of Justice but, unless referred back by it, become final if approved or if the Ministry takes no decision within two months. Decisions of UTBA referred by the Ministry back to UTBA are deemed to be approved if supported by a two-thirds majority of the UTBA Management Board but otherwise will not be approved. All decisions are subject to challenge in the administrative courts (see Articles 8, 9, 142, 157, etc.). The UTBA has other

¹ The part in blue is copied from Venice Commission's Opinion no.991/2020¹ (As it answers the questions very detailed and sufficient way, no need is seen to rewrite.) (Appendix-2)

important functions. For example, it sets out rules of professional conduct (see Article 34) and determines the amounts of dues which attorneys must pay to the UTBA (Article 117).

5. In the instances where a lawyer breaches the code of conduct, independent disciplinary committees founded within every PBAs investigates, tries and decides on the instance. However, there is no specific body to punish the interferences of third parties (external interferences) to the free and independent exercise of the profession.

6. **Problems with the independence of bar associations:** Under Article 135 of the Constitution, provincial bar associations and UTBA are independent professional bodies having the characteristics of public institutions.² However, by Presidential Decree No:5 (Presidential Decree as to the State Inspection Institution / Devlet Denetleme Kurumu – DDK), the Turkish Presidency acquired the authority to inspect Bar Associations, and to suspend their Chairpersons and board members (Article 6).³ The Turkish Presidency’s power to suspend a Bar Association’s elected executives has significantly impaired their independence.

7. Moreover, with Law no. 7249 dated 11 July, 2020, the independence of bar associations in Turkey has further been diminished. The Law has dramatically reduced the influence of the Bar Associations of big cities within the union.⁴ The purpose of the Law is to disempower the Bar Associations of big cities which are critical of the Government and have been playing an increasingly important role in documenting human rights abuses.⁵

8. Law no. 7249, dated 11 July, 2020, is clearly in breach of the UN Basic Principles on the Role of Lawyers and the Council of Europe Committee of Ministers’ Recommendation No. R (2000) 21, which require, respectively, that:

- a. A bar association must be able to exercise its functions without external interference from government or other actors,
- b. bar associations, or other professional lawyers’ associations, should be self-governing bodies, independent of the authorities and the public.

Q3:Please indicate if there are any legislative, administrative, or institutional barriers that have hindered the work of lawyers and the exercise of the legal profession in your country, and describe them.

9. Amendments to several laws made through the emergency decrees between 2016 and 2018 considerably reduced the capabilities of lawyer on fulfilling their professional duties and effectively

² **ARTICLE 135** - Professional organizations having the characteristics of public institutions and their higher bodies are public corporate bodies established by law, with the objectives of meeting the common needs of the members of a given profession, to facilitate their professional activities, to ensure the development of the profession in keeping with common interests, to safeguard professional discipline and ethics in order to ensure integrity and trust in relations among its members and with the public; their organs shall be elected by secret ballot by their members in accordance with the procedure set forth in the law, and under judicial supervision.

³ <https://arrestedlawyers.org/2018/09/24/erdogan-gets-infinite-authority-over-the-national-and-provincial-bar-associations/>

⁴ <https://www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers>

⁵ Ibid: After the Law no. 7249 dated 11 July, 2020 a provincial bar association with less than 100 lawyers such as Ardahan in northeastern Turkey will be able to send 4 delegates, where it used to be able to send 3, but a bar association like Izmir in western Turkey with over 9500 lawyers, which used to be able to send 35, will now be able to send just 5 delegates. A delegate from Ardahan would, therefore, represent less than 25 lawyers, while a delegate from Izmir would represent approximately 1900. Such a radical imbalance which disproportionately gives power to bar associations that have very few members and seriously diminishes the influence of bars with thousands of members is neither more democratic nor more pluralistic, despite the government’s claim.

representing their clients. These decrees have become permanent laws as the Parliament blankety approved them.

10. This restriction includes followings:

- a) Continuation of Trials without Defense Counsel
- b) Restriction of Representation by Attorney in Trial
- c) Prohibition from Defense Counsel Duty
- d) Limitation of the Right to Confer with a Defense Counselor during police custody
- e) Limitation of the Right to Confer with an Attorney in Prison
- f) Limitation of Attorney's Right to Examine the File's Content and Make a Copy
- g) Limitation of the Right to Call Witness
- h) Limitation of the Right to Cross-Examine a Witness
- i) Limiting the Defendant's Right to Appear in Court.^{6 7}

Q5: Please provide detailed information on the number of lawyers that have been subject to criminal, administrative or disciplinary proceedings in the last five years for alleged violations of standards of professional conduct. How many of them were found guilty? How many of them were ultimately disbarred?

11. According to the Arrested Lawyers Initiative latest report titled ‘The Crackdown: “Systematic Arbitrary Imprisonment of Lawyers in Turkey (2016-2022)”⁸, since 2016’s coup attempt, there has been a relentless campaign of arrests which has targeted fellow lawyers across the country. As of today, more than 1600 lawyers have been arrested and prosecuted while 615 lawyers have been remanded to pretrial detention. So far, **474 lawyers have been sentenced to a total of 2966 years** in prison on the grounds of membership of an armed terrorism organization or of spreading terrorist propaganda.⁹

12. According to the same report, 15 of the persecuted lawyers are presidents (or former presidents) of their respective provincial bar associations:

- a) President of the Konya Bar Association, Fevzi Kayacan, was arrested 23 July 2016 and was sentenced to 10.5 years in October 2017.
- b) President of the Siirt Bar Association, Cemal Acar, was arrested on 23 September 2016 and was sentenced to 8 years on May 2018.
- c) President of the Trabzon Bar Association, Orhan Öngöz was arrested on 27 September 2016 and was sentenced to 6 years and 3 months in April 2019.¹⁰
- d) Cemalettin Ozer, former president of the Erzincan Bar Association, was sentenced to 8 years and 9 months.
- e) Zeynel Balkiz, former president of the Manisa Bar Association, was sentenced to 2 years and 1 month in October 2018.

⁶ Stifling Lawyers and Bar Associations: Restrictions undermining the right to legal defense in Turkey, https://freedomhouse.org/sites/default/files/2021-03/03312021_Freedom_House_Turkey_Policy_Brief-1-Stifling-Lawyers-and-Bar-Associations.pdf (Appendix-3)

⁷ This issue is detailed in a report titled 'When State of Emergency Becomes The Norm: The Impact of Executive Decrees on Turkish Legislation', https://tr.boell.org/sites/default/files/ohal_rapor_jing.final_version.pdf, relevant pages of the report is in Appendix-4

⁸ The Crackdown: “Systematic Arbitrary Imprisonment of Lawyers in Turkey (2016-2022), Appendix-1

⁹ <https://arrestedlawyers.files.wordpress.com/2021/12/the-crackdown.pdf>

¹⁰ Ibid

- f) In January 2021, former president of Diyarbakir Bar Association, Mehmet Emin Aktar was sentenced to six years and three months.
- g) Furthermore, the presidents of the Aksaray and Kahramanmaras Bar Associations, Levent Bozkurt and Vahit Bagci, respectively, and the former presidents of the Yozgat Bar Association, Hacı Ibis and Fahri Acikgoz, were detained for a certain time before they were released on bail.¹¹

474 LAWYERS WERE SENTENCED TO 2966 YEARS IN PRISON

Province	Number Of Convicted Lawyers	Province	Number Of Convicted Lawyers	Province	Number Of Convicted Lawyers
Adana	13	Eskişehir	14	Mardin	3
Adıyaman	4	Gaziantep	3	Mersin	11
Afyon	15	Gümüşhane-Bayburt	2	Muş	1
Ankara	36	Hakkari	1	Mugla	1
Antalya	14	Giresun	3	Niğde	3
Aydın	6	Isparta	1	Ordu	1
Balıkesir	6	İstanbul	109	Sakarya	4
Batman	1	İzmir	27	Samsun	13
Bilecik	1	Kayseri	22	Siirt	1
Bolu	2	Kırkkale	3	Sivas	10
Bursa	17	Kırşehir	2	Şanlıurfa	9
Çorum	2	Kocaeli	7	Şırnak	1
Denizli	15	Konya	27	Tokat	4
Diyarbakır	20	Karaman	1	Trabzon	4
Düzce	3	Kütahya	2	Tunceli	1
Erzincan	2	Malatya	3	Uşak	1
Erzurum	11	Manisa	11	TOTAL	474

TURKEY: THE NUMBER OF LAWYERS CONVICTED SINCE JULY OF 2016 BY PROVINCES

13. According to the report titled 'The Crackdown', these mass arrests were carried out in breach of the safeguards put forward in Article 58-60 of the Attorneyship Law. According to these articles, (i) lawyers cannot be detained and remanded for pretrial detention, (ii) a lawyer can be prosecuted only if the Minister of Justice gives authorization. Art. 61 of the Code of Lawyers exempts the situation of flagrante delicto, if a lawyer is caught in flagrante delicto, he / she can be prosecuted without seeking authorization for prosecution, and can be detained and remanded for pretrial detention. However, some 1600 lawyers have been arrested, 615 have been remanded to pretrial

¹¹ <https://arrestedlawyers.files.wordpress.com/2021/12/the-crackdown.pdf>

detention through the use of a misinterpretation of in flagrante delicto and the abuse of Art 314 of Penal Code.¹²

14. ECtHR in two recent cases concluded that the Turkish judiciary's (mis)interpretation of in flagrante delicto was wrong, unforeseeable and breached the right to liberty.¹³

15. Moreover, those more than 1600 lawyers have been prosecuted without the ex-ante authorization that should be given by the Minister of Justice in order to prosecute them.

16. A large amount of data that is controlled by the Ministry of Justice's National Judiciary Informatics System (UYAP) is also being used to target lawyers, i.e., lawyers have been subjected to profiling through the processing of the data on the charges imputed to their clients. This profiling is used to produce the list of lawyers who are to be prosecuted.¹⁴

17. The same report reveals that:

- a) incumbent or former executives of Turkey's most important and vocal bar associations, namely Istanbul, Ankara and Diyarbakir Bar Associations, are under criminal investigation due to their press statements or actions unpleasant to the Government.
- b) Former president of the Diyarbakir Bar Association Ahmet Özmen and the members of the board Mahsum Bati, Nuşin Uysal Ekinci, Cihan Ülsen, Sertaç Buluttekın, Muhammet Neşet Girasun, Serhat Eren, İmran Gökdere, Velat Alan, Ahmet Dağ and Nahit Eren are on trial for insulting Turkish nation because of a press statement titled 'We share the unmitigated great sorrow of Armenian People'.¹⁵
- c) In April 2020, separate investigations were initiated against the board members of Ankara and Diyarbakir Bar Associations. The reason for the investigations is the press statements of Ankara and Diyarbakir Bar Associations denouncing Turkey's top mufti Ali Erbaş who, during his Friday sermon on April 24, alleged that LGBT people were the source for evil and epidemic.¹⁶ As the result of this investigation, the chair of Ankara Bar Erinç Saglan and eleven members of the board have been indicted for insulting a public servant, and the first hearing will be held on 11th November, 2021 before Ankara 16th Heavy Penal Court. The executives of Ankara Bar now face up to two years imprisonment. Moreover, in June 2021, an investigation was initiated against the board members of Izmir Bar Association for the same reason.¹⁷ In addition, in June 2021, the Minister of Justice gave an authorization of prosecution about the chair of Istanbul Bar Association Adv. Mehmet Durakoglu and four other executives of the bar over their critical comments on the said expression of Turkey's top mufti Ali Erbaş.
- d) In September 2020, Istanbul Bar Association was informed that its board members including the president were under investigation because of the picture of late lawyer Barkin Timtik displayed on balcony of the Bar building.¹⁸

¹² <https://arrestedlawyers.files.wordpress.com/2021/12/the-crackdown.pdf>

¹³ Yildirim Turan and other 426 applicants v. Turkey, Applications nos. 75805/16 and 426 others; Hakan Bas v. Turkey, application no. 66448/17

¹⁴ <https://arrestedlawyers.files.wordpress.com/2021/12/the-crackdown.pdf>

¹⁵ <https://arrestedlawyers.org/2019/12/08/former-board-of-the-diyarbakir-bar-association-to-be-prosecuted-over-a-press-statement-on-april-24/>

¹⁶ <https://arrestedlawyers.org/2020/04/28/ankara-bar-association-is-under-investigation-for-its-statement-denouncing-turkeys-top-mufti/>

¹⁷ <https://twitter.com/ArrestedLawyers/status/1410351728319401985?s=20>

¹⁸ <https://twitter.com/ArrestedLawyers/status/1307636489417887745?s=20>

Q6: Please provide information on any case where lawyers in your country have been subject to intimidation, hindrance, harassment or improper interference, whether from State authorities or non-State actors, for action taken in accordance with their recognized professional duties. Please also describe the measures that State authorities have taken to investigate and bring perpetrators to justice.

18. In 2018, the Interior Minister twice publicly accused the Diyarbakır Bar Association of supporting terrorism, without providing any evidence, prompting criminal investigations into its board.¹⁹

19. After the Ankara Bar Association reported on torture at the Ankara security directorate, in July, 2019, the Deputy Interior Minister accused the Bar Association of having links with the Gülen movement, which Turkey accuses of masterminding the 2016 coup attempt.²⁰

20. President Erdogan on several occasion accused lawyers as acting like terrorists.²¹

21. According to Avukat Haklari Grubu (Lawyers' Rights Group), every year around 60 lawyers are subjected to physical assaults in Turkey.²² These assaults in some instance resulted in the death of the victim lawyer.

Q7: What activities does your organization carry out to promote the independence of the legal profession? Do you co-ordinate with other organizations with similar functions in other countries or regions? Are you part of a network for this purpose? Please give examples.

22. **The Arrested Lawyers Initiative (TALI)** begun its activities in 2016, in Brussels, Belgium. Since then TALI has been monitoring the situation of lawyers and human rights defenders in Turkey, and publishing periodic news reports and legal reports. TALI circulates these reports through bar associations in Europe, as well as UN Special Rapporteurs. TALI published reports in English, Italian and Spanish. TALI is the member of the International Observatory for Lawyers.

23. Among other things, **TALI**:

- a) visits bar association and confederation in Europe, briefs them about the situation in Turkey and conducts joint advocacy campaigns with them,
- b) makes submissions to the UN human rights mechanisms, makes UPR submissions, submits third party interventions to the ECHR,
- c) helps any NGO that wants to make trial monitoring and other human rights activities in Turkey, and informs them on the legal and technical issues,
- d) makes intervention at the events held during the sessions of the PACE, the European Parliament events, and the UN Human Rights Council,

¹⁹ Turkish Interior Minister Soylu defames Diyarbakır Bar Association in Southeast as terror affiliated, <https://arrestedlawyers.org/2018/06/20/turkish-interior-minister-soylu-labels-diyarbakir-bar-association-in-southeast-as-terror-affiliated/>

²⁰ Ibid.

²¹ <https://m.bianet.org/english/politics/230047-erdogan-suggests-debarment-of-lawyers-engaged-in-terrorism>
<https://www.reuters.com/article/turkey-erdogan-lawyers-int-idUSKBN25S4ZB>

²² <https://www.indyurk.com/node/259146/haber/her-y%C4%B1l-60-avukat-%C3%B6ld%C3%BCr%C3%BCl%C3%BCyor-veya-yaralan%C4%B1yor-en-%C3%A7ok-sald%C4%B1r%C4%B1-siyasi-bo%C5%9Fanma-miras>

- e) makes interviews with UN Special Rapporteurs, president of NGOs founded by lawyers or judges, and prominent human rights defenders to discuss the situation of lawyers and judges globally.

24. **TALI** so far have:

- a) coordinated with CCBE, the IBAHRI, the Lawyers Rights Watch Canada, the Italian Human Rights Federation, the Law Society of England and Wales and Lawyers for Lawyers.
- b) published joint reports with the Italian National Bar Association (CNF), the International Observatory for Lawyers, and the Italian Human Rights Federation.

##End##

Appendices:

- 1- The Crackdown, report by the Arrested Lawyers Initiative
- 2- Venice Commission's Opinion no.991/2020
- 3- Freedom House Policy Brief titled 'Stifling Lawyers and Bar Associations: Restrictions undermining the right to legal defense in Turkey'
- 4- Relevant pages of the report titled 'When State of Emergency Becomes The Norm: The Impact of Executive Decrees on Turkish Legislation'

