



## Türkiye

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United Nations Human Rights Committee Consideration of the 2<sup>nd</sup> Periodic Report of Türkiye

**Joint Submission to the United Nations Human Rights Committee by Lawyers for Lawyers, the Law Society of England and Wales, the International Bar Association's Human Rights Institute, and the International Commission of Jurists, submitted on 16 September 2024.**

## Information on the submitting organisations

**Lawyers for Lawyers (L4L)** is an independent, non-political and not-for-profit lawyers' organisation established in 1986. Its mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognised norms and standards by supporting lawyers who are at risk as a result of discharging their professional duties. Lawyers for Lawyers was granted special consultative status with the UN Economic and Social Council in July 2013.

Contact: Tara Fiechter, Programme Officer, [t.fiechter@lawyersforlawyers.nl](mailto:t.fiechter@lawyersforlawyers.nl).

**The Law Society of England and Wales** is the professional body representing over 200,000 solicitors in England and Wales. Its aims include upholding the independence of the legal profession, the rule of law and human rights around the world. Established by Royal Charter in 1845, it was granted special consultative status with the UN Economic and Social Council in 2014.

Contact: Triona Lenihan, International Policy Adviser, [triona.lenihan@lawsociety.org.uk](mailto:triona.lenihan@lawsociety.org.uk).

**The International Bar Association's Human Rights Institute (IBAHRI)** was established in 1995 under the honorary presidency of emblematic human rights defender, the late Nelson Mandela, and works with the global legal community and partner civil society organisations to promote and protect human rights and the independence of the legal profession worldwide. The IBAHRI is a substantively autonomous entity within the International Bar Association, the world's leading organisation of international legal practitioners, bar associations and law societies, with over 80,000 individual lawyers, and 190 bar associations and law societies across more than 160 countries. Under the IBAHRI's By-Laws, the Institute is governed by an independent Council and is under the Directorship of Baroness Helena Kennedy LT KC.

Contact: Zara Iqbal, IBAHRI Programme Lawyer, [zara.iqbal@int-bar.org](mailto:zara.iqbal@int-bar.org).

**The International Commission of Jurists (ICJ)** is a non-governmental organisation working to advance understanding and respect for the rule of law as well as the protection of human rights throughout the world. It was set up in 1952 and has its headquarters in Geneva, Switzerland. It is made up of some 60 eminent jurists representing different justice systems throughout the world and has 90 national sections and affiliated justice organisations. The International Commission of Jurists has consultative status at the United Nations Economic and Social Council, the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Council of Europe and the African Union. The organization also cooperates with various bodies of the Organization of American States and the Inter-Parliamentary Union.

Contact: Kerem Altıparmak, Senior Legal Consultant, [kerem.altiparmak@icj.org](mailto:kerem.altiparmak@icj.org).

## **I. Introduction**

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1. Lawyers for Lawyers (L4L), the Law Society of England and Wales (LSEW), the International Bar Association's Human Rights Institute (IBAHRI), and the International Commission of Jurists (ICJ) welcome the opportunity to contribute to UN Human Rights Committee's examination of Türkiye's second periodic report. This submission will focus on matters concerning articles 2, 4, 7, 9, 14, 19 and 22 including:
  - II. Institutional independence of the legal profession
  - III. Systematic prosecution and interference with lawyers' activities
  - IV. Restrictions on the right to an effective defence
  - V. Individual cases of lawyers imprisoned, prosecuted, or convicted
2. This report will provide information on issues and questions raised in the List of Issues, though not exclusively, that have an adverse impact on the capacity of lawyers to carry out their professional functions in Türkiye. The concerns shared in this submission are particularly relevant for the Committee's evaluation of Türkiye's implementation of the right to a fair trial under Article 14 ICCPR, as it relates to the independence of the legal profession, as well as other ICCPR rights and their ensuing impact thereon.

### *Methodology*

3. The undersigned organisations have been closely following the rule of law and human rights developments in Türkiye in the context of continuous and alarming democratic backsliding and the rise of authoritarianism. Public and private intervention and advocacy to date has had a particular focus on the situation of lawyers in the country and their ability to practice their profession free from intimidation, hindrance, harassment or improper interference (pursuant to the UN Basic Principles on the Role of Lawyers ['UN Basic Principles']). The information in this submission is collected through ongoing research, including semi-structured interviews with Turkish legal professionals, and engagement with and reports from Turkish lawyers and other local and international stakeholders.

## **II. Institutional independence of the legal profession in Türkiye (Articles 2, 14)**

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4. The following information is provided in response to the Committee's request for information relating to implications of legal changes and governance of the legal profession (LoIPR, para 16). Judicial independence is a prerequisite for the rule of law and is essential to ensure that lawyers can carry out their duties in a free and enabling environment. An equitable system for the administration of justice guarantees the independence of lawyers in the discharge of their professional duties without any improper restrictions, pressures or interference, direct or indirect. Therefore, the relationship between judges and lawyers is one of mutual reliance in furthering the delivery of justice.
5. Since the 2016 coup attempt in Türkiye, the legal profession has faced widespread attacks on its independent functioning, which has included human unfair trials, and other forms of harassment from authorities.
6. There is also a lack of guarantees of institutional independence of the judiciary, in breach of article 14 obligations. Judicial independence underwent serious degradation following the mass dismissal of judges and prosecutors beginning in 2016 and the structural "reforms" and consequent deficiencies in the judicial system as result of executive overreach in contravention of the separation of powers.

7. Türkiye's judiciary crisis can be illustrated by the lack of compliance by the executive with some Constitutional Court rulings in individual cases. In November 2023, judges from the Court of Cassation (Yargıtay) filed a criminal complaint against judges of the Constitutional Court (AYM). This unprecedented action stemmed from a disagreement in the case of **Can Atalay**, after the Constitutional Court ruled that Atalay's imprisonment violated his parliamentary impunity and constitutionally protected rights. The Court of Cassation refused to comply with the Constitutional Court's ruling and accused its judges of overstepping their authority. Rule of law is undermined when the decisions of the Constitutional Court, which has the final authority to interpret the Constitution, are not implemented and are turned into political targets.

#### Constitutional amendments following the attempted coup in 2016

8. The 2017 constitutional reforms in Türkiye significantly altered the structure and functioning of the judiciary. **Law No. 6771**<sup>1</sup> introduced various amendments to the Constitution, including the transformation of the Supreme Board of Judges and Prosecutors (renamed the Council of Judges and Prosecutors, henceforth 'CJP') and the composition and appointment of members to the CJP (Article 14). The CJP oversees the organisation and functioning of the judiciary and is responsible for appointments, transfers, promotion, and disciplinary actions.
9. Amendments to Article 159 of the Constitution, introduced by Law No. 6771, decreased the number of Council members from 22 to 13, and introduced new modalities for their appointment. It allows the President to directly appoint 4 out of 13 CJP members, in addition to the Minister of Justice, who presides over the Council, and the Undersecretary, an ex-officio member of the Council.<sup>2</sup> There are 3 members from among the civil judges and prosecutors and one member from among the administrative judges and prosecutors.<sup>3</sup> Seven members are elected by the Grand National Assembly from among members of the Court of Cassation (three members), the Council of State (one member) and law professors and lawyers (three members). None of the members of the Council are appointed by judges or public prosecutors.<sup>4</sup> The Council of Europe's European Commission for Democracy through Law (Venice Commission) observed that the constitutional amendments "would introduce in Turkey a presidential regime which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one", and that "control over this body thus means getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where transfers of judges are a common practice".<sup>5</sup> These amendments erode judicial and prosecutorial independence and violate rights protected under the Covenant, including the right to a fair trial (Article 14, ICCPR and Article 6, European Convention on Human Rights ['ECHR']), and thereby degrade the capacity of these institutes to discharge their functions in safeguarding against other human rights abuses. The amendments fail to comply with the UN Basic Principles on the Independence of the Judiciary (Principles 1, 2, 4, 8, 18, and 20) and the UN Guidelines on the Role of Prosecutors (Principles 2(a), 4, 8, 21, and 22). **They are**

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<sup>1</sup> European Commission for Democracy Through Law (Venice Commission), 'Turkey: Law No.6771 Amending the Constitution', CDL-REF(2017)018 (23 February 2017).

<sup>2</sup> Venice Commission, Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017, CDL-AD(2017)005 (13 March 2017) para 94.

<sup>3</sup> Article 159 of the Constitution of the Republic of Türkiye.

<sup>4</sup> ICJ, 'Turkey Judgeship Advocacy Analysis Brief' (2018) <[www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf](http://www.icj.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf)>.

<sup>5</sup> Venice Commission, Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017, CDL-AD(2017)005 (13 March 2017) para 119.

**therefore non-compliant with ICCPR article 14, as they impair the capacity of justice sector agents to administer justice fairly and equally.**

#### Dismissal and appointment of judges and prosecutors

10. Following the 2016 attempted coup, one-third of judges and prosecutors were dismissed without any individual investigation or an opportunity for defence.<sup>6</sup> To justify the dismissal of a judge during this period, **Law No.667** required a mere “affiliation” with a “structure, formation or group” that the National Security Council has “determined to operate against the national security of the state”.<sup>7</sup>
11. **Law No.7145** further entrenched executive effective control over the judiciary. Adopted in July 2018, it extended the government’s emergency powers it had during the 2016 coup attempt. Specifically, Article 26 allowed for the dismissal of public workers, including judges and prosecutors, without input of the judicial body – the CJP. The broad provision states ‘special or extraordinary circumstances’ as a legal basis for the intervention, allowing for potential misuse. The law overrode constitutional protections, including judicial independence<sup>8</sup> and the right to a fair trial,<sup>9</sup> and had grave implications for the fairness and reliability of legal proceedings. The CJP’s power to dismiss judges and prosecutors under this law finally expired in 2022. Mass dismissals of judges have caused irreparable damage to the Turkish judiciary.
  - II. In January 2019, the CJP adopted its first decision, following the formal end of the state of emergency, dismissing 17 judges and prosecutors (6 public prosecutors, 3 members of the Administrative Court and 7 judges of the Tax Court) based on alleged membership of FETÖ.<sup>10</sup>
  - III. In October 2020, the CJP utilised its special power to dismiss nine judges and two prosecutors for alleged membership of or connections with the Gülenist movement.<sup>11</sup> This decision was not accompanied by any reasoning on the individual situation of each judge or prosecutor and without fair hearing before an independent authority.
  - IV. Since 2017, thousands of judges and prosecutors have been dismissed by the government and the CJP without due process. Many of these judges and prosecutors have faced unwarranted criminal charges under overbroad anti-terrorism laws, which contravene the principle of legality. Recently, the Council of State announced that 5,112 of the judges and prosecutors who were dismissed from their jobs on the grounds of their contact and affiliation with “terrorist organisations” filed lawsuits. Some 3,799

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<sup>6</sup> 4236 members of the judiciary in total, <http://bianet.org/bianet/siyaset/182400-ohal-de-yargi-kurumlarindan-ihraclar>

<sup>7</sup> Article 3 of State of Emergency Decree n.667 relating to Precautions against members of the judiciary: “In case of their membership, affiliation or a connection to a structure, formation or group that is determined by the National Security Council to operate against the national security of the state or terrorist organizations, it is decided that it is not appropriate for members of the Constitutional Court, Chamber Presidents and members of the Court of Cassation, Chamber Presidents and members of the Council of State, members of the Turkish Court of Accounts, judges and prosecutors to remain in the profession and that they should be removed from the profession. Deciding authority for members of the Constitutional Court is the General Assembly of the Constitutional Court, for Chamber Presidents and members of the Court of Cassation, deciding authority is the First Presidency Council of the Court of Cassation, for Chamber Presidents and members of the Council of State, deciding authority is the Presidency Council of the Council of State, for members of the Court of Accounts deciding authority is the commission consisting of the vice-presidents and the head of a department and a member to be determined by the president of the Court of Accounts under the chairmanship of the president of the Court of Accounts.”

<sup>8</sup> Article 138 of the Constitution

<sup>9</sup> Article 36 of the Constitution

<sup>10</sup> ICJ, ‘Dismissal of Judges and Prosecutors tainted by Unfairness’ (4 February 2019) <[www.icj.org/turkey-dismissal-of-judges-and-prosecutors-tainted-by-unfairness-says-icj/](http://www.icj.org/turkey-dismissal-of-judges-and-prosecutors-tainted-by-unfairness-says-icj/)>.

<sup>11</sup> ICJ, ‘Turkey Dismissal of Judges and Prosecutors Fundamentally Unfair’ (21 October 2020) <[www.icj.org/turkey-dismissal-of-judges-and-prosecutors-fundamentally-unfair/](http://www.icj.org/turkey-dismissal-of-judges-and-prosecutors-fundamentally-unfair/)>.

cases were dismissed, and 435 cases were annulled. The Council also stated that 3,448 of the appeals filed against these decisions were decided.<sup>12</sup> Although a very low percentage of the dismissed judges and prosecutors were reinstated by the Council of State, the body has come under harsh criticism from President Recep Tayyip Erdoğan. Commenting on the annulment decisions concerning 435 dismissed judges and prosecutors, President Erdoğan stated that "[w]e cannot remain silent about the decision made by the Council of State".<sup>13</sup> The CPJ later announced that new investigations had been launched concerning 387 judges and prosecutors who had been reinstated by the Council of State.<sup>14</sup>

12. As noted in the State Party's response to the LoIPR, admission to the profession and subsequent promotion have been carried out within the framework of the procedures and principles stipulated in **Law No. 2802** on Judges and Prosecutors. Article 8 of **Law No. 2802** outlines the general conditions for appointment. Articles 9 and 10 relate to examinations/trainings for judicial positions and probationary periods, whilst Article 29 establishes the criteria for promotion based on ethical conduct and merit-based professional performance.
13. Since the 2016 coup attempt and following a range of legislative reform affecting the judiciary, the appointment and promotion of judges and prosecutors has been subject to undue influence by political actors. By December 2023, there were 23,759 judges and prosecutors in Türkiye, of which at least 12,000 were recruited after the mass dismissal of judges and prosecutors from 2016 and onwards.<sup>15</sup>
14. The newly recruited judges and prosecutors are generally perceived as politically loyal to the ruling AKP government<sup>16</sup> and have been promoted to serve in higher courts and for the government. For example, in June 2022, President Erdoğan appointed Istanbul judge Akın Gürlek, well known for convicting dissidents, including several senior opposition figures and human rights lawyers, to Deputy Justice Minister. In March 2019, judge Gürlek sentenced 18 human rights lawyers to a total of 159 years on terrorism-related charges.<sup>17</sup> One of those lawyers was the late **Ebru Timtik**, who launched a hunger strike to protest a lack of fair trial and lengthy jail sentences handed down to the lawyers.<sup>18</sup> Gürlek was reappointed to the Deputy Justice Minister role in June 2023.<sup>19</sup>

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<sup>12</sup> Dal, Aylin, 'Statement on the cases of judges and prosecutors dismissed from the Council of State' (AA, 14 February 2024) <<https://www.aa.com.tr/tr/gundem/danistaydan-ihrac-edilen-hakim-ve-savcilarin-davalarıyla-ilk-iciklama/3136997>>

<sup>13</sup> Bianet, 'Erdoğan criticizes Constitutional Court and Council of State' (15 February 2024) <<https://bianet.org/haber/erdogan-criticizes-constitutional-court-and-council-of-state-291938>>

<sup>14</sup> NTV, 'Second examination by the HSK on the judges and prosecutors who were reinstated by the Council of State' (17 February 2024) <[https://www.ntv.com.tr/turkiye/hskdan-danistayin-goreve-iade-karari-verdigi-hakim-ve-savcilar-hakinda-ikinci-inceleme.RSJKRa6eEE-r\\_aHdRPfYw](https://www.ntv.com.tr/turkiye/hskdan-danistayin-goreve-iade-karari-verdigi-hakim-ve-savcilar-hakinda-ikinci-inceleme.RSJKRa6eEE-r_aHdRPfYw)>

<sup>15</sup> Council of Judges and Prosecutors, 'CPJ Annual Report for 2023' <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporu.pdf>> p 88.

<sup>16</sup> See statements of former Istanbul Bar Association President Mehmet Durakoğlu available at <https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357>; and statements by former Court of Cassation prosecutor Ömer Faruk Eminapaoğlu available at <https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akpnin-yargidaki-kadrolasmasinin-temeli-mulakatlar-402250>.

<sup>17</sup> The Arrested Lawyers Initiative, 'Analysis: Members of the Turkish Judiciary Are Promoted Based on the Extent of their Crackdown on Government' (8 June 2022) <<https://arrestedlawyers.org/2022/06/08/analysis-members-of-the-turkish-judiciary-are-promoted-based-on-the-extent-of-their-crackdown-on-government-critics/#:~:text=In%20March%202019%2C%20he%20sentenced,had%20been%20handed%20down%20to>>.

<sup>18</sup> The Arrested Lawyers Initiative, 'Fasting lawyer Ebru Timtik has passed away in her quest for a fair trial' (28 August 2020) <<https://arrestedlawyers.org/2020/08/28/death-fasting-lawyer-eburu-timtik-has-passed-away-in-her-quest-for-a-fair-trial/>>.

<sup>19</sup> Turkish Minute, 'Well known pro-govt figure among 68 deputy ministers appointed by Erdogan' (22 June 2023) <[www.turkishminute.com/2023/06/22/well-known-pro-govt-figure-among-68-deputy-ministers-appointed-by-erdogan/](http://www.turkishminute.com/2023/06/22/well-known-pro-govt-figure-among-68-deputy-ministers-appointed-by-erdogan/)>.



15. The selection and recruitment of judges and prosecutors is also conducted in a non-transparent manner.<sup>20</sup> The Ministry of Justice supervised the selection boards for new judges and prosecutors, while the CJP had no role in the selection boards. The annual appraisal of judges and prosecutors is completed by the CJP, away from objective, merit-based, standardised and pre-established criteria in Law No. 2802 for recruiting and promoting judges and prosecutors.
16. The rapid recruitment of judges has resulted in the appointment of some judges that lacked the necessary professional competencies and qualifications to serve.<sup>21</sup> More than 50% of Türkiye's roughly 23,000 judges and prosecutors have been recruited after 2017.<sup>22</sup> According to the EEAS, pre-service training for candidate judges and prosecutors and in-service training continued to be delivered by the Justice Academy. The Academy has scientific, administrative and financial autonomy by law, but the EEAS flagged concerns related to the independence of the Academy because its management is left to its president, who is appointed by the President of the Republic. "The Academy's lack of independence affects its capacity to provide training programmes that meet the requirements of openness, competence and impartiality."<sup>23</sup>

#### Undermining of bar associations: Amendments to Law No.1136 and introduction of Law No.7262

17. **Attorneyship Law No. 1136** classifies the legal profession as an independent public service and liberal profession.<sup>24</sup> The law outlines the regulatory framework governing the legal profession, detailing the registration and accession to the profession, legal aid, professional rights and duties, and discipline of lawyers. It also defines the powers and the structure of the professional associations of lawyers and the Union of Turkish Bar Associations. The Presidents of all 83 Turkish bar associations have a duty to defend the independence of the legal profession.
18. Law No. 1136 was amended on 11 July 2020, allowing the creation of multiple bar associations in cities with more than 5,000 lawyers by any group of at least 2,000 lawyers.<sup>25</sup> This multi-bar system continues to impact the legal profession in Türkiye<sup>26</sup> ignoring repeated calls for robust safeguards to protect against interference with the independence of the legal profession. Previously, each city had a single association responsible for admitting lawyers to practice. The new law has fragmented the legal profession, particularly in major cities like Istanbul and Ankara, with many arguing<sup>27</sup> that the law was designed to weaken existing bar associations that have traditionally been critical of the government by

<sup>20</sup> European External Action Service, 'Türkiye 2023 Report' (8 November 2023)

<[www.eeas.europa.eu/sites/default/files/documents/2023/SWD\\_2023\\_696%20Tu%CC%88rkiye%20report.pdf](http://www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf)>.

<sup>21</sup> In 2018, an opposition MP presented a list of over 100 newly recruited judges and prosecutors who had held active roles within the ruling AKP party. <https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akplileri-acikladi-113-kisilik-liste/>

<sup>22</sup> Council of Judges and Prosecutors, 'CPJ Annual Report for 2023' <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporu.pdf>> p 88.

<sup>23</sup> European External Action Service, 'Türkiye 2023 Report' (8 November 2023)

<[www.eeas.europa.eu/sites/default/files/documents/2023/SWD\\_2023\\_696%20Tu%CC%88rkiye%20report.pdf](http://www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf)>.

<sup>24</sup> Article 1 of Law No. 1136.

<sup>25</sup> Human Rights Watch, 'The Reform of Bar Associations in Turkey: Questions and Answers' (7 July 2020) <[www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers](http://www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers)>.

<sup>26</sup> This system was proposed and enacted under the "Law Amending the Law on Attorneys and Other Laws" (Law No. 7249). See, Venice Commission, Explanatory Note on Law no. 7249 of 11 July 2020 amending the Attorneyship Law (no. 1136 of 19 March 1969), CDL-REF(2020)033 (20 June 2020) p 6 <[www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)033-e)>.

<sup>27</sup> Majority of the bar associations, including the major ones in Istanbul, Ankara and İzmir and thousands of lawyers protested the reform, claiming that the legal amendment was part of the government's plan to take over the legal profession. See Barolar yürüyüşü Anıtkabir'de sonlandırdı: "Türkiye'de savunma tarihi tekrar yazıldı". Available at <https://www.bbc.com/turkce/haberler-turkiye-53158225>

encouraging the formation of pro-government associations. For example, the second bar association in Ankara has taken a position in favour of the government on critical issues relating to the rule of law.<sup>28</sup> The Minister of Justice and other officials regularly attend events by newly established bar associations to show their support.

19. The Venice Commission has warned that “there is a real risk that the creation of multiple bar associations in the same city, based on voluntary membership, will lead to further politicisation of the legal profession.” The Commission asserted that this fracturing leads to a compromise of ‘the neutral role’ of attorneys, endangering their independence. It further concluded that “the creation of alternative bar associations may lead to incoherent practice in disciplinary matters and create administrative instability”.<sup>29</sup>
20. The new law also altered the number of delegates provincial bar associations can send to the Union of Turkish Bar Associations (UTBA). Previously large bar associations (Ankara, İstanbul and İzmir) allowed three delegates and then one for every 300 members of the bar association. Under the new law, all bars are allowed to send four delegates to the union, and then one delegate more for every 5000 members. Consequently, smaller bars have gained much greater power than they used to have and together they exercise greater influence over the activities of the Union.<sup>30</sup>

#### Interferences with admission to the legal profession and disciplinary proceedings

21. Since 2016, there have been increasing reports of attorney licenses being refused or annulled, mostly targeting prospective lawyers associated with the defence of human rights or lawyers who publicly speak out in politically sensitive cases.<sup>31</sup> According to statistics obtained from the UTBA, the Ministry of Justice has filed 2349 cases before administrative courts against admission decision granted by the UTBA since 2020. Between 2008 and 2020, the Ministry filed 1252 cases against admission decisions, out of which 376 licences were annulled and 175 of the Ministry’s requests were denied.<sup>32</sup> Moreover, the Ministry of Justice has reportedly denied access to the legal profession to 891 intern lawyers since 2015.<sup>33</sup>
22. Lawyers have also faced or been threatened with undue and unfair disciplinary proceedings and disbarment, particularly when prosecuted for offences under the Anti-Terror Law. **Law No. 1136** provides that those who fail to observe the provisions regarding the rights and duties of lawyers can be punished with censure, a fine, or dismissal, depending on the severity of the offence. Lawyers who are convicted for offences against

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<sup>28</sup> For example, when the Court of Cassation announced that it would not implement the Constitutional Court’s decision on lawyer and MP Can Atalay and filed a criminal complaint against the members of the Constitutional Court, the Union of Bar Associations and the vast majority of Bar Associations heavily criticized the Court of Cassation, while the second Ankara Bar Association declared that the Court of Cassation had made a very correct decision. Available at <https://www.yirmidort.tv/gundem/ankara-2-nolu-barosundan-yargitayin-can-atalay-kararina-iliskin-aciklama-145927>

<sup>29</sup> *Ibid*, para 73.

<sup>30</sup> In a joint paper ICJ and Human Rights Watch claimed that disproportional representation of chambers in professional organizations breached principles of democracy and human rights - Human Rights Watch and ICJ, ‘The Reform of Bar Associations in Turkey: Questions and Answers’ (7 July 2020). <[https://www.hrw.org/sites/default/files/media\\_2020/07/Q%20and%20A%20bar%20associations.pdf](https://www.hrw.org/sites/default/files/media_2020/07/Q%20and%20A%20bar%20associations.pdf)>

<sup>31</sup> Lawyers for Lawyers, ‘Joint statement on the concerns about access to the legal profession and increasing disbarments of lawyers in Turkey’ (19 July 2021) <<https://lawyersforlawyers.org/en/concerns-about-access-to-the-legal-profession-and-increasing-disbarments-of-lawyers-in-turkey/>>; See, also, UN Human Rights Council, ‘Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán’ (22 April 2022) A/HRC/50/36, para 87;

<sup>32</sup> Tahir Elçi Human Rights Foundation, “Lawyers without Licenses: Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession” (December 2020) pp 23-24.

<sup>33</sup> IBAHRI and TALI, ‘A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey’ (14 February 2024) p 11 <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.



the security of the State or against the Constitutional order are automatically disbarred.<sup>34</sup> These offences are listed as terrorist crimes under Anti-Terror Law, which is concerning given the recent trend of prosecutions against lawyers under this legislation.<sup>35</sup> The disciplinary board of the bar association holds the discretionary power to ban a lawyer from practicing, by means of a precautionary measure, if the lawyer is being prosecuted for terror offences.<sup>36</sup>

23. Several lawyers currently face disciplinary proceedings instigated for criminal prosecution related to the exercise of their legitimate activities. Human rights lawyer **Sezin Uçar**, has been prosecuted for “membership of a terrorist organisation” since 2017,<sup>37</sup> leading to a one-year ban from practice in terror-related investigations and prosecutions requested by the public prosecutor. The Istanbul Bar Association objected to this outcome because lawyers should not be identified with their clients or clients’ cause. However, following a complaint by the Bursa Chief Public Prosecutor’s Office on 25 December 2023, disciplinary proceedings were instigated against Uçar by the Istanbul Bar Association.<sup>38</sup> Similarly, in December 2018, following a request by the Ministry of Justice, the Istanbul Bar Association initiated disciplinary proceedings against lawyer **Ramazan Demir**, shortly after he shared a photo of his client at the Bakırköy Courthouse. It relied on 2016 criminal proceedings, which followed the arrest of twelve lawyers by Istanbul law enforcement for allegedly being members of the PKK. These disciplinary proceedings are still pending.<sup>39</sup>
24. The obstacles to admission are unacceptable interferences with the capacity of individuals to practice their chosen profession. As the UN Special Rapporteur on the independence of judges and lawyers has affirmed, “States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such processes”.<sup>40</sup> Similarly, suspensions or revocations of lawyer licenses as an act of reprisal for the exercise of their legitimate rights and freedoms not only adversely impact the exercise of the rights of the lawyers, but also the rights of their clients to be represented by the lawyer of their choosing.<sup>41</sup> The Special Rapporteur has repeatedly stressed that disbarment “should only be imposed in the most serious cases of misconduct” and “only after a due process in front of an independent and impartial body granting all guarantees to the accused lawyer”, in line with Principles 27, 28, and 29 of the UN Basic Principles.<sup>42</sup> Such

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<sup>34</sup> Articles 5 and 136 of the Attorneyship Law, available at: [https://venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)064-e](https://venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)064-e)

<sup>35</sup> See *Infra*, Section III. Interference with lawyers’ activities, Criminal prosecution

<sup>36</sup> See Article 153 of the Attorneyship Law.

<sup>37</sup> Lawyers for Lawyers, ‘Trial monitoring mission for the hearing in the trial against lawyers from Ezilenlerin Hukuk Bürosu’ (17 July 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-for-the-hearing-in-the-trial-against-lawyers-from-ezilenlerin-hukuk-burosui/>>.

<sup>38</sup> MLSA, ‘Istanbul Bar Association initiates disciplinary probe into lawyer Uçar over legal practice-related activities’ (02 March 2024) <<http://www.mlsaturkey.com/en/istanbul-bar-association-initiates-disciplinary-probe-into-lawyer-sezin-ucar-over-lawyering-related-activities/>>.

<sup>39</sup> Human Rights Watch, ‘Lawyers on Trial, Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey’ (10 April 2019), <<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>> accessed 22 August 2024.

<sup>40</sup> UN Human Rights Council, ‘Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán’ (22 August 2016) A/71/348, para 77.

<sup>41</sup> UN Human Rights Committee, ‘General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial’, (23 August 2007) CCPR/C/GC/32, para 34; Principle 12 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

<sup>42</sup> UN General Assembly, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers’, (22 August 2016), A/71/348, para 96.

authorities must be “free from any influence or pressure from the legislative or the executive branches of power or any other party”.<sup>43</sup>

**The interveners request that the Human Rights Committee recommend that the government of Türkiye:**

- **Amend or repeal the legislative, executive, and constitutional provisions that impede on the independence and impartiality of the judiciary and bring them in line with international standards on judicial independence and Article 14 of the ICCPR;**
- **Introduce measures to ensure that the appointment of judges and prosecutors is conducted in a transparent manner, in accordance with objective, standardised and pre-established criteria;**
- **Refrain from interfering with the admission to the legal profession as well as disciplinary proceedings against lawyers; and**
- **Introduce measures to ensure that disciplinary measures and disbarment instances are independent and fair, in accordance with international law and standards.**

### **III. Interference with lawyers’ activities (Articles 2, 7, 9, 14, 19 and 22)**

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25. The following information is provided in response to the Committee’s request for information on harassment, intimidation and threats against human rights defenders, including those who have faced criminal charges for their work and the exercise of their ICCPR rights (LoIPR, para. 23). Since 2016, members of the legal profession in Türkiye have faced widespread harassment from authorities, with sustained arbitrary detention, imprisonment, and unfair trials, often charged with overbroad and vague counter-terrorism offences, in violation of the ICCPR, as well as the UN Basic Principles. The following section will discuss trends identified with regards to the (a) safety and security of lawyers, and (b) interference with lawyers’ exercise of their rights to freedom of expression, association, and assembly.

#### **a. Safety and security of lawyers**

##### **Physical attacks and deaths**

26. Lawyers in Türkiye operate under precarious conditions, with repeated reports of intimidation, threats and violence against lawyers. On the night of 27 June 2024, lawyers **Şehnaz Altunkaya** and **Bahtiyar Kandeğer** visited the Istanbul Directorate of Organized Crime to inquire about the whereabouts and welfare of two clients who were reportedly detained without formal arrest warrants. They were informed that their clients were being held but were denied access to them. When they attempted to re-enter the station later, at approximately 1am, **Şehnaz Altunkaya** reported being surrounded and attacked by 7-8 male officers, including being pushed downstairs, repeatedly kicked, spat upon, and handcuffed with excessive force behind her back. **Bahtiyar Kandeğer** was reportedly also

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<sup>43</sup> UN General Assembly, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers’, (5 September 2018), A/73/365, para 67.

restrained and beaten by several officers, resulting in significant physical injuries to his head and a torn ear.<sup>44</sup>

27. In October 2015, **Tahir Elçi**, a human rights lawyer and acting president of the Diyarbakır Bar Association, was targeted by pro-government news outlets and faced harassment and death threats after he publicly questioned the renewed use of armed violence by the State for solving the 'Kurdish issue'. Mr. Elçi was killed while holding a press conference on 28 November 2015, when an armed clash took place between police officers and two fleeing PKK militia members. Following his death, the authorities failed to carry out an effective independent investigation. The onsite investigation commenced 110 days after the incident, resulting in the loss of important evidence including crucial CCTV-footage. The criminal procedure started over four years after the killing, only prompted by an incriminating independent report by Forensic Architecture on the involvement of police.<sup>45</sup> On 12 June 2024, the Diyarbakır 10th High Criminal Court acquitted the three police officer defendants of all charges, following a criminal process that lacked due process.<sup>46</sup>

### Torture and ill-treatment

28. In November 2023, an international delegation representing 27 legal and human rights organisations, including the LSEW, conducted a fact-finding mission to Türkiye to interview detained lawyers and observe court hearings. Among the eight interviewed lawyers, at least five reported being subjected to torture and ill-treatment while in detention.<sup>47</sup> In 2017, **Özgür Yılmaz** was reportedly subjected to torture while in police detention in Istanbul. In 2016, **Barkin Timtik** reported being beaten while being transferred from prison. **Oya Aslan** reported during her trial that she had been tortured following her arrest in 2019, but no action was taken by the Court or other authorities. **Engin Gökoğlu's** arm was broken by prison officers during a transfer from one facility to another. He submitted a complaint about his injury to the authorities, but this resulted in him being charged with an additional offence of resisting a public officer and facing a further trial. In 2018, **Aytaç Ünsal** reported being beaten while transferred to the prison. He made an individual application to the Constitutional Court. On 14 December 2023, the Court accepted the application and announced that the state violated the prohibition of torture and ill-treatment.
29. The injuries sustained by **Özgür Yılmaz, Oya Aslan, Engin Gökoğlu, Barkin Timtik** and **Aytaç Ünsal** while in detention constitute a breach of Türkiye's obligation under Article 7 of the ICCPR. They also indicate the use of force in a manner and context that is contrary to the UN Nelson Mandela Rules.<sup>48</sup> The authorities have also failed to carry out a prompt, impartial and thorough effective investigation into the allegations of torture and ill-treatment, nor have they provided access to effective remedies, in breach of Türkiye's

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<sup>44</sup> The Arrested Lawyers Initiative, "Severe Police Brutality Against Two Lawyers at Istanbul Police Station" (1 July 2024) <<https://arrestedlawyers.org/2024/07/01/severe-police-brutality-against-two-lawyers-at-istanbul-police-station/>>

<sup>45</sup> Forensic Architecture, "The killing of Tahir Elçi" <<https://forensic-architecture.org/investigation/the-killing-of-tahir-elci/>>

<sup>46</sup> Lawyers for Lawyers, "Impunity prevails in the case of the killing of lawyer Tahir Elçi: Diyarbakır High Criminal Court acquits defendants" (19 June 2024) <<https://lawyersforlawyers.org/impunity-prevails-in-the-case-of-the-killing-of-lawyer-tahir-elci-diyarbakir-high-criminal-court-acquits-defendants/>>

<sup>47</sup> 'Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings' (6-10 November 2023), < [https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report\\_Turkey\\_Final.pdf](https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf)>.

<sup>48</sup> Rule 82(1) of the Nelson Mandela Rules requires that prison staff shall not use force "except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director." Rule 43 also states that instruments of restraint must never be used as a sanction for disciplinary offences.

obligations under article 2(3) and 7 of the Covenant. Regarding the complaint made by **Engin Gökoğlu**, he has faced reprisals.

#### Arbitrary and Criminal prosecution

30. The arrest and detention of lawyers, often in violation of article 9 of the Covenant, usually appears linked to their professional duties, and frequently in relation to human rights defence or political dissent. A pattern has emerged of coordinated early morning raids on the premises of lawyers, followed by their arrest and detention, which often do not follow requirements set out in the Code of Criminal Procedure (CCP) or article 9 of the Covenant. On 13 October 2023, the homes of lawyers **Ceren Yılmaz**, **Fatih Gökçe**, **Bilgi Topçu**, and **Ilgin Gökçe**, all members of Çağdaş Hukukçular Derneği ('ÇHD', the Progressive Lawyers' Association), were raided and the lawyers were arrested. The raids and arrests reportedly took place before an investigation number had been issued and without the prosecutor obtaining a decision from the Criminal Judgeship of Peace, as required by the CCP, which is arbitrary in violation of article 9 of the Covenant.<sup>49</sup>
31. Similarly, on 2 July 2024, armed police officers executed early-morning raids on the residences of two more ÇHD lawyers, **Naim Eminoğlu** and **Doğa İncesu**, and took them into custody for several days. Contrary to requirements under Turkish law, neither the prosecutor nor a representative of the bar association was present at the raids, the lawyers were not informed of the charges against them, and they were denied contact with their lawyers until approximately 15:00 on 3 July, which exceeds the 24 hours from the time of arrest permissible under the Anti-Terror Law. Their treatment is in clear breach of Türkiye's obligations under 9(2) of the Covenant. Police also seized Mr Eminoğlu's laptop and the mobile phones of both lawyers, which contain privileged client information, raising concerns about violations of lawyer-client confidentiality.<sup>50</sup> As of 17 July, the lawyers' devices had still not been returned, limiting their ability to access clients' documents and contact information.
32. In 77 of Türkiye's 81 provinces, lawyers have been arbitrarily detained, prosecuted, and convicted for alleged terror-related offences.<sup>51</sup> As of 2024, this has resulted in the prosecution of over 1,700 lawyers, with at least 553 lawyers sentenced to a total of 3,380 years in prison.<sup>52</sup> All 553 lawyers have been charged with terror-related offences; the two main charges brought against them are membership of an armed terrorist organisation, and forming and leading an armed terrorist organisation.
33. The two most relevant laws in Türkiye's anti-terrorism legislation are the **Turkish Penal Code No. 5237 (TPC)** and the **Anti-Terror Law No. 3713**. Article 314 of the TPC criminalises the establishment and/or commanding of an armed terrorist organisation, and membership of an armed organisation,<sup>53</sup> offences which carry a penalty of 7.5 to 22.5 years

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<sup>49</sup> The lawyers were subsequently released on or around 15 October 2023, and Ceren Yılmaz was prohibited from leaving Türkiye. See intervention letter by the Law Society of England and Wales, under 'October 2023'

<https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/intervention-letters>

<sup>50</sup> See intervention letter by the Law Society of England and Wales, under 'July 2024'

<https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/intervention-letters>

<sup>51</sup> IBAHRI and TALI, 'A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey' (14 February 2024) <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.

<sup>52</sup> Ibid.

<sup>53</sup> Article 314 (1) Any person who establishes or commands an armed organisation with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years. (2) Any person who becomes a member of the organisation defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years. (3) Other provisions relating to the forming of an organisation in order to commit offences shall also be applicable to this offence. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)011-e)

imprisonment. Additionally, the TPC establishes the offences of committing a crime on behalf of a terrorist organisation, even without being a member of said organisation, and aiding and abetting a terrorist organisation knowingly and intentionally by those not belonging to the hierarchical structure of the organisation. Further, the Anti-Terror Law regulates two offences that restrict freedom of expression in a manner non-compliant with limitation provisions of article 19 of the Covenant: making propaganda for a terrorist organisation and disclosing or publishing the identity of public officials who have taken part in the fight against terrorism or targeting them in this way.

34. These anti-terrorism laws have been arbitrarily used to target dissidents, particularly lawyers, journalists, and opposition politicians. The law's ambiguous and overbroad definition of terrorism and membership of a terrorist organisation enables the classification of lawyers, including human rights defenders, as "terrorist offenders". On 30 December 2022, **Günay Dağ**, a lawyer at the International Bureau of the People's Law Office and a member of ÇHD, was added to the "list of wanted terrorists" published on the official website of the Ministry of Interior, despite never being convicted of a criminal act of terrorism by a court.<sup>54</sup>
35. Inclusion on the list is arbitrary since it lacks a proper legal basis for its implementation. While a decree of the Ministry of the Interior regulates remuneration for informants, there is no legal provision that regulates the establishment of the list, how it is managed, and how people can be named on it or be removed. Despite the serious consequences for the person concerned, including risk of imprisonment, stigmatisation and human rights violations, inclusion on the list lacks due process and there is no procedure for review by a judicial authority. The list therefore contravenes the principles of legality, presumption of innocence, right to a fair trial and right to private and family life (Articles 14, 15 and 17).
36. Article 314 of the TPC does not contain a definition of an armed organisation or an armed group. This lack of legal definitions and criteria, and the crime of membership in such an armed terrorist organisation, make them prone to arbitrary application. The vague formulation of the criminal provisions on the security of the state and terrorism, and their overbroad interpretation by Turkish judges and prosecutors, make all lawyers and other human rights defenders a prospective victim of judicial harassment when carrying out their legitimate professional duties. In 2020, the European Court of Human Rights (ECtHR) concluded that judicial authorities systematically adopt a broad interpretation of Article 314, which equates conduct of protected freedom of expression with belonging to or leading an armed organisation.<sup>55</sup>
37. Lawyers charged with terrorism-related offences face a reversed burden of proof, in violation of the presumption of innocence, in contravention of article 14(2) of the ICCPR. The Turkish Court of Cassation has ruled that the mere use of a certain bank account or secure messaging app constitutes evidence of membership of, as well as aiding and abetting, a terrorist organisation. In 2023, in response to this systematic practice by the courts and its adjudication over the use of the ByLock app, the ECtHR ruled that such an approach violated Article 7 of the ECHR to provide effective safeguards against arbitrary prosecution, conviction and punishment.<sup>56</sup> This judgment is also evidence that Türkiye is

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<sup>54</sup> European Association of Lawyers for Democracy & World Human Rights, "Turkey's terror list: An attack on lawyers and human rights", (11 February 2023) <<https://eldh.eu/en/2023/02/turkeys-terror-list-an-attack-on-lawyers-and-human-rights/>>

<sup>55</sup> *Selahattin Demirtaş v. Turkey (No. 2)*, no. 14305/17 (ECtHR, 22 December 2020), paras 278-280.

<sup>56</sup> *Yüksel Yalçınkaya v. Türkiye*, no. 15669/20 (ECtHR, 26 September 2023).

in breach of article 15 of the Covenant. According to the ECtHR, this landmark judgment affects more than 8,000 pending cases and 100,000 potential cases linked to convictions under Article 314 of the TPC. The court also ordered a retrial of the applicant and the adoption of general measures to prevent similar violations.<sup>57</sup>

38. However, in total disregard of the ECtHR rulings, which serve as directly applicable precedents for the case at hand, the Ankara Regional Appeal Court on 27 December 2023 sentenced **19 lawyers** to more than 125 years for conducting their legitimate professional activities, including client representation.<sup>58</sup> The Court stated: “Although some of the defendants and their legal counsels have claimed in their oral and written submissions that the judgment of the ECtHR in *Yüksel Yalçınkaya v. Türkiye* constitutes a precedent for them, there is no final judgment of the ECtHR regarding the violation of the European Convention on Human Rights (ECHR) and its additional protocols concerning the defendants. In light of the ECtHR judgment (...) it has been concluded that the violations referred to in that judgment relate only to the finding of violations specific to the application in that particular case and that the violations of the principles of the right to a fair trial under Article 6, ECHR, and the principles of legality in criminal matters and punishment under Article 7 ECHR referred to in the judgment are not applicable to the defendants”.<sup>59</sup>
39. The case of Yalçınkaya further demonstrates that Türkiye has refused to implement the judgments of ECtHR in breach of its obligations. Failure by the State to take necessary corrective action, such as a refusal by national courts to apply the ECtHR ruling, constitutes a failure to execute the judgment in accordance with Article 46. A failure to execute a ruling of the Court to which the State is party is a failure to implement the provisions of the treaty.

**The interveners request the Human Rights Committee to recommend to the government of Türkiye:**

- **To immediately cease all acts of intimidation and harassment, including arbitrary arrest and detention, against lawyers in Türkiye in compliance with article 9 of the Covenant; and ensure that all lawyers can practice their profession without undue interference and in a free and enabling environment, in compliance with international standards on the independence of the legal profession.**
- **To take urgent steps to ensure that lawyers in Türkiye are not identified with their clients and clients’ causes, regardless of the types of cases in which they act, in accordance with the UN Basic Principles. Lawyers who have been prosecuted solely because they were doing their professional activities should be released and remedied, and charges against them should be dropped.**
- **To repeal or amend the overbroad and vague provisions of the anti-terrorism legislation, including the TPC and Anti-Terror Law, as recommended by the Council of Europe, the ECtHR, and the European Union, to align these with international standards and define offences sufficiently precisely so that arbitrary application is prevented, in compliance with article 15 ICCPR.**

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<sup>57</sup> Yıldız, Ali ‘Strasbourg Weighs In On Political Persecution In Turkey’ (*Verfassungsblog*, 31 October 2023) <<https://verfassungsblog.de/strasburg-weighs-in-on-political-persecution-in-turkey/>>

<sup>58</sup> The Arrested Lawyers Initiative, ‘Ankara Appeal Court Defies ECHR, Sentences 19 Lawyers to 125+ years’ (31 January 2024) <<https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/>>.

<sup>59</sup> Ankara Regional Appeal Court’s 22nd Criminal Chamber, 27 December 2023.



- To urgently and fully implement all ECtHR rulings, particularly those related to torture and ill-treatment of lawyers, and to ensure accountability for officials responsible for these violations in compliance with article 2(3) and article 7 of the ICCPR. In addition, Türkiye should conduct an independent and impartial investigation into all allegations of torture and ill-treatment and bring any suspected perpetrators to justice, in trials meeting international standards for a fair trial.

**b. Restrictions on freedom of expression, association, and assembly (ICCPR articles 19, 21, 22)**

40. Lawyers in Türkiye are often subjected to harassment, intimidation, hindrance, and improper interference because of their expressed views. This includes scrutinising the conduct of law enforcement officials; general expressions on the rule of law and human rights on social media; and expressions of solidarity with other lawyers. Lawyers have also faced criminal prosecution, arrest and detention because of their peaceful exercise of the right to assembly or their professional association. There has also been a trend consisting of disproportionately imposing disciplinary measures on lawyers once they are already imprisoned, to deny their conditional release, in retaliation for actions that constitute the legitimate exercise of their right to freedom of expression, such as chanting slogans.<sup>60</sup> These restrictions on the exercise of freedom of expression are taken without complying with any of the conditions for limitations specified in article 19 of the ICCPR.

Criminalisation of freedom of expression

41. In 2020, the ex-president of the Izmir Bar Association and the ex-members of the Bar Association condemned rhetoric of the then-active head of the Presidency of Religious Affairs, Ali Erbaş, that associated COVID-19 with homosexuality, unmarried people, and people living with HIV.<sup>61</sup> This led to their prosecution for “insulting a public official” and “publicly denigrating the religious values adopted by a section of the population”, for which they were later acquitted.<sup>62</sup> Similarly, the ex-president and the ex-board members of the Ankara Bar Association described the statements made by Erbaş as hateful and promoting enmity,<sup>63</sup> for which they were also prosecuted and are still on trial.<sup>64</sup> The Diyarbakır Public Prosecutor’s Office also initiated an investigation against board-members of the Diyarbakır Bar Association who issued a statement against the same rhetoric.<sup>65</sup> These cases were

<sup>60</sup> ‘Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings’ (6-10 November 2023), <[https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report\\_Turkey\\_Final.pdf](https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf)> p 16.

<sup>61</sup> Freedom House, ‘The Systematic Decline of Freedom of Expression in Turkey’ (July 2022) <[https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4\\_The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf](https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4_The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf)> p 3.

<sup>62</sup> Lawyers for Lawyers, ‘Board of the Izmir Bar acquitted on all charges’ (1 May 2023), <<https://lawyersforlawyers.org/board-of-the-izmir-bar-acquitted-on-all-charges/>>.

<sup>63</sup> BBC News Turkey, ‘Ali Erbaş: Why was the President of Religious Affairs criticized, how did President Erdoğan defend Erbaş?’ (27 April 2020) <<https://www.bbc.com/turkce/haberler-turkiye-52447722>>.

<sup>64</sup> Lawyers for Lawyers, ‘Board of the Izmir Bar acquitted on all charges’ (1 May 2023), <<https://lawyersforlawyers.org/board-of-the-izmir-bar-acquitted-on-all-charges/>>.

<sup>65</sup> Sessiz Kalma, ‘Diyarbakır Bar Association, which reacted to Diyanet’s “hate speech”, was also investigated’ (28 April 2020) <<https://www.sessizkalma.org/tr/haberler/diyanetin-nefret-soylemine-tepki-gosteren-diyarbakir-barosuna-da-sorusturma-acildi>>

followed by a statement of the President of Türkiye declaring that “attacking the presidency of religious affairs is attacking the Turkish State itself”.<sup>66</sup>

42. Additionally, the investigation of the Diyarbakır Bar Association’s statements for Armenian Genocide Remembrance Day on the atrocities committed against the Armenian population of the Ottoman Empire in 1915, was authorized by the Ministry of Justice.<sup>67</sup> According to a 2021 report prepared by the Diyarbakır Bar Association's Lawyers' Rights Center, 78 investigations and lawsuits were filed against 69 lawyers and members of the Diyarbakır Bar Association, including its President and board members who served between 2016 and 2020.<sup>68</sup>
43. Lawyer **Mehmet Emin Aktar** is currently being prosecuted for “knowingly targeting persons involved in counter-terrorism”, following his sharing of a photo of a hand-written search report on social media while commenting about irregularities that took place during a search of his colleague Resul Temur’s office on 25 April 2023, which included the name of a well-known public prosecutor who was present during the search. In another case, **Aryen Turan**, a human rights lawyer and board member of the Izmir Branch of the Association of the Lawyers for Freedom, was arbitrary detained on 3 November 2022. This followed her speech at the General Assembly of the Izmir Bar Association, where she read a statement on issues concerning the judiciary and the legal profession and highlighted human rights violations in Türkiye. She also mentioned reports on the alleged use of chemical weapons by the Turkish Armed Forces. Subsequently, an indictment was issued against her on 7 November 2022, accusing her of “aiding and abetting the organisation knowingly and willingly [PKK/KCK]”.<sup>69</sup>
44. Lawyer and member of ÇHD, **Berrak Çağlar**, was tried for “being a member of an armed terrorist organisation” after expressing solidarity with imprisoned lawyers in Türkiye. Her trial was initiated on 31 March 2021, and although she was acquitted of all charges on 23 November 2023, an appeal by the public prosecutor is pending. The Chief Public Prosecutor’s Office also initiated criminal investigations against lawyers **Sezin Uçar** and **Seher Eriş** for making statements during the general assembly of the Istanbul Bar Association.<sup>70</sup>
45. On 13 October 2022, the Parliament passed **Law No. 7418**, consisting of 40 articles amending the Anti-Terror Law, as well as the TPC.<sup>71</sup> This law has been dubbed draconian, as it allows the State to prosecute any person who criticises the government on social media, and forces tech companies to comply with any content blocking, removal request or demand to hand over user data.<sup>72</sup> Law No. 7418 also introduced a new provision to the

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<sup>66</sup> Freedom House, ‘The Systematic Decline of Freedom of Expression in Turkey’ (July 2022)

<[https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4 The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf](https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4%20The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf)>, p 3.

<sup>67</sup> <<https://www.agos.com.tr/tr/yazi/30084/diyarbakir-barosu-na-bir-soykirim-davasi-daha>>, 04 April 2024.

<sup>68</sup> <<https://artigercek.com/guncel/diyarbakir-barosuna-bagli-avukatlara-78-sorusturma-ve-dava-acildi-159316h>>, 05 April 2021.

<sup>69</sup> PEN Norway, Lawyers for Lawyers, ‘Legal Report on Indictment: Aryen Turan’ (5 October 2023) pp 3-4

<[https://norskpen.no/eng/wp-content/uploads/2023/10/PEN-Norway\\_Legal-Report-on-Indictment-A-Turan-Eng.pdf](https://norskpen.no/eng/wp-content/uploads/2023/10/PEN-Norway_Legal-Report-on-Indictment-A-Turan-Eng.pdf)>.

<sup>70</sup> Lawyers for Lawyers, ‘Concerns about the possible initiation of a criminal investigation of three lawyers in Turkey’ (11 April 2022) <<https://lawyersforlawyers.org/en/concerns-about-the-possible-initiation-of-a-criminal-investigation-of-three-lawyers-in-turkey/>>.

<sup>71</sup> Human Rights Watch, ‘Turkey: Dangerous, Dystopian New Legal Amendments, New Censorship Threat with Elections Looming’ (14 October 2022) <[www.hrw.org/news/2022/10/14/turkey-dangerous-dystopian-new-legal-amendments](http://www.hrw.org/news/2022/10/14/turkey-dangerous-dystopian-new-legal-amendments)>.

<sup>72</sup> Ibid; and Freedom House, ‘The Systematic Decline of Freedom of Expression in Turkey’ (July 2022)

<[https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4 The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf](https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4%20The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf)> p 3.

TPC criminalising “disinformation”. According to the Venice Commission, the restriction on the exercise of the right to freedom of expression would be neither necessary nor proportional to any legitimate purpose.<sup>73</sup> Several lawyers have already been prosecuted under this new legislation. **Eyüp Akinci**, a lawyer and member of the Istanbul Bar Association was charged with “publicly disseminating misleading information” for a tweet highlighting the bribery allegations against the Küçükçekmece Courthouse.<sup>74</sup> He was acquitted in July 2024, after spending nine months under house-arrest.<sup>75</sup>

#### Restrictions to freedom of association and assembly

46. Following the declaration of the state of emergency in 2016, 34 lawyers’ associations were arbitrarily shut down by decree laws,<sup>76</sup> on the grounds of alleged affiliation to a “terrorist organisation”.<sup>77</sup> State authorities confiscated the assets of the associations without any compensation, and initiated prosecutions against their members.<sup>78</sup> This action did not meet the requirements for limitation on freedom of association under article 22(2) of the Covenant.
47. In 2022, human rights lawyer and elected member of parliament **Can Atalay** was sentenced to 18 years in prison after being accused of “attempting to overthrow the Government of the Republic of Turkey or to prevent it from performing its duties”, for participating in and allegedly organising an environmental protest at Gezi Park in 2013.<sup>79</sup> In reaching this conclusion, the Court of Cassation ignored two ECtHR rulings on Osman Kavala<sup>80</sup> and the Constitutional Court’s ruling on Can Atalay.<sup>81</sup> Recently, on 2 April 2024, **13 lawyers** were arrested for reading a press statement at the Çağlayan courthouse in Istanbul, protesting the revocation of the mayor-elect’s rights in Eastern Türkiye.<sup>82</sup>
48. These measures are violations of the rights to freedom of expression, association and assembly, recognised by Articles 19, 21 and 22 of the ICCPR. Principle 23 of the UN Basic Principles, further affirms that lawyers have the right to freedom of expression, belief, association and assembly, including taking part in public discussion of matters concerning the law, the administration of justice, and the promotion and protection of human rights, and to join or form organisations and attend their meetings, without suffering any professional restrictions by reason of the exercise of their rights. In this context, this

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<sup>73</sup> Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Penal Code regarding the provision on “false or misleading information” - Issued pursuant to Article 14a of the Venice Commission’s Rules of Procedure, CDL-PI(2022)032-e, Opinion no. 1102 / 2022, 7 October 2022

<sup>74</sup> The Arrested Lawyers Initiative, ‘Istanbul lawyer Akinci faces prosecution over his tweet’ (1 December 2023) <<https://arrestedlawyers.org/2023/12/01/istanbul-lawyer-akinci-faces-prosecution-over-his-tweet/>>.

<sup>75</sup> Free Freedom of Expression, ‘Attorney Eyüp Akinci acquitted’ (12 July 2024) <<https://www.dusun-think.net/en/news/attorney-eyup-akinci-acquitted/>>.

<sup>76</sup> UN General Assembly, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers’ (5 September 2018) A/73/365, para 36.

<sup>77</sup> UN Office of the High Commissioner for Human Rights, ‘Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East’ (March 2018), para 9.

<sup>78</sup> UN General Assembly, ‘Report of the Special Rapporteur on the Independence of Judges and Lawyers’, (5 September 2018), A/73/365, para 36.

<sup>79</sup> Columbia University Global Freedom of Expression, ‘The Case of Şerafettin Can Atalay’ (n.d.) <<https://globalfreedomofexpression.columbia.edu/cases/the-case-of-serafettin-can-atalay/>>.

<sup>80</sup> Kavala v. Turkey, no. 28749/18, 10.12.2019; Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye [GC], 11.07.2022.

<sup>81</sup> Şerafettin Can Atalay (2) [GK], B. No: 2023/53898, 25/10/2023.

<sup>82</sup> Lawyers for Lawyers, ‘Statement on Lawyers’ Day in Turkey’ (5 April 2024), <<https://lawyersforlawyers.org/statement-on-lawyers-day-in-turkey/>>.

Committee has stressed that States should take measures to protect against attacks aimed at silencing those exercising their right to freedom of expression, including lawyers.<sup>83</sup>

**The interveners request the Human Rights Committee to recommend the government of Türkiye to:**

- **Take measures to guarantee lawyers' rights to freedom of expression, assembly, and association and cease any unlawful prosecution based on their legitimate exercise of these rights.**
- **Align its legislation with international standards on the rights to freedom of expression, assembly, and association under Articles 19, 21, and 22 of the ICCPR, as well as Principle 23 of the UN Basic Principles.**

**IV. Restrictions on access to clients, rights of the defence (Articles 7, 9, 10 and 14)**

49. The following information is provided in response to the Committee's request to receive information on allegations of the systematic denial of a right to a fair trial, particularly in cases involving terrorism-related charges, including the denial of the defendant's right to choose and communicate in private with their legal counsel and the denial of defendants' right to access information against them (LoIPR, para 18).
50. Prior to the state of emergency, lawyers in Türkiye were already hindered in carrying out their professional activities, and this interference has subsequently increased, including through: (i) restrictions on access to clients; (ii) breaches of lawyer-client confidentiality; (iii) lack of access to case files, including evidence and indictments.<sup>84</sup> During the state of emergency, new restrictions were introduced by decrees, which were later enacted into law, becoming permanent.
51. As this Committee has repeatedly stressed, derogations from article 14 of the ICCPR, or limitations to the rights thereunder, are only permissible in states of emergency when they are strictly necessary to meet a specific threat to the life of the nation.<sup>85</sup> Derogation and restrictions can in no circumstances undermine the fundamental principles a fair trial.<sup>86</sup>

**Right to access and communicate in confidence with a lawyer of one's choice**

52. Regarding restrictions on access to clients, Article 154/2 of the CCP authorises investigating judges to restrict access to a lawyer for 24 hours for individuals accused of crimes included in the Anti-Terrorism Law.<sup>87</sup> However, in practice, the police often restricts lawyers' visits to clients for longer periods.<sup>88</sup> The inability to access a lawyer from the

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<sup>83</sup> UN Human Rights Committee, 'General Comment No. 34, Article 19: Freedoms of opinion and expression' (12 September 2011), CCPR/C/GC/34, para 23.

<sup>84</sup> See, for reference, Human Rights Committee, AL TUR 18/2020.

<sup>85</sup> HRC, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32.

<sup>86</sup> HRC, General comment no. 32, Article 14, Right to equality before courts and tribunals and to fair trial, 23 August 2007, CCPR/C/GC/32; General Comment No. 29: Article 4: Derogations during a State of Emergency, CCPR/C/21/Rev.1/Add.11, para. 11.

<sup>87</sup> Emergency Decree Law No. 676, amending Article 154/2 of the Code of Criminal Procedure. See, also OHCHR Report on the impact of the state of emergency on human rights in Turkey (2018) paras 40(j) and 83(a), available at: [http://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf). See, also, European Commission for Democracy and Law (Venice Commission) in its opinion No. 865 / 2016 on Decree Laws no. 667-76, 12 December 2015, para. 154, available at: [default.aspx \(coe.int\)](http://www.coe.int)

<sup>88</sup> See, for example, *Supra* Section III, para 31, the case of Naim Eminoğlu and Doğa İncesu.

moment of arrest increases the risk of torture and ill-treatment. There have been several reports of lawyers being subjected to torture or ill-treatment by police after arrest.<sup>89</sup>

53. Moreover, several provisions enacted through Emergency Decrees significantly erode the ability of lawyers to communicate with their clients in confidence. Under Article 6 of Decree 676 authorities may record, observe, and interrupt meetings between lawyers and clients if there is a threat to public security and the client has been convicted of a terrorist offence.<sup>90</sup> It has been reported that such restrictions have been widely implemented and have become the rule rather than the exception for detainees accused of certain terrorism offences.<sup>91</sup>

54. **Lawyers from Asrın Hukuk Bürosu** (Asrin law firm) have reported severe difficulties in accessing and communicating with their clients detained at İmralı F-Type High Security Prison. According to information received, lawyers were allowed to meet their clients anytime and in any form until 2005, when the law changed and visits were restricted to one hour per week, contingent upon the public prosecutor's permission. The visits were to be held in the presence of a prison guard and subject to being recorded. Since July 2011, no visits by lawyers have been granted. Even after lifting the state of emergency in July 2018, all prisoners in İmralı Island Prison continued to be denied visits by their lawyers (and family).<sup>92</sup> Clients who have been detained since 2015 were also not allowed to correspond with their lawyers via email or telephone. Prior to the European Committee for the Prevention of Torture visit between 6 and 17 May 2019 to İmralı Island Prison,<sup>93</sup> the judicial ban on lawyers' visits was lifted, which allowed lawyers from Asrin law firm to visit their client Abdullah Öcalan for the first time since July 2011.<sup>94</sup> Following the visit, Asrin lawyers were able to visit their clients another four times before requests were systematically refused again from 7 August 2019 onwards. Since March 2021, clients are kept in complete isolation. The UN Committee against Torture, in its recently adopted Concluding Observations, expressed profound concern over the incommunicado detention and lack of access to legal counsel for over nine years.<sup>95</sup>

#### Raids and unlawful confiscation of privileged communications

55. As described above,<sup>96</sup> lawyers in Türkiye have widely been targeted by criminal investigations, primarily under the pretext of counter-terrorism, which are often accompanied by arbitrary searches of their offices and/or residences that disregard procedural safeguards, where police authorities confiscate electronic devices and other

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<sup>89</sup> See *Supra* Section III, paras 28-29. Also, see for example, UN Special Rapporteur on Torture report, A/HRC/37/50/Add.1 (2017) para 26 onwards.

<sup>90</sup> Emergency Decree Law No. 676, codified by Law No 6749, article 6(d). Available at: Başbakanlık Mevzuatı Geliştirme ve Yayın Genel Müdürlüğü (resmigazete.gov.tr) see also OHCHR, 'Working Group on protecting human rights while countering terrorism, Guidelines for the right to a fair trial and due process in the context of countering terrorism' (October 2014) p. 19.

<sup>91</sup> Human Rights Watch, 'Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey' (2019) p 16.

<sup>92</sup> Lawyers for Lawyers, 'Lawyers of Asrın Hukuk Bürosu severely hindered in assisting their clients' (5 April 2022)

<<https://lawyersforlawyers.org/en/lawyers-of-asrin-hukuk-burosusu-severely-hindered-in-assisting-their-clients/>>. Decisions to refuse access to lawyers were repeatedly taken by the competent enforcement judge, each time for a period of six months, on the basis of section 59 of the Law on the Execution of Sentences and Security Measures.

<sup>93</sup> Report to the Turkish Government on the visit to Turkey carried out by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment (CPT) From 6 May to 17 May, CPT/Inf (2020) 24.

<sup>94</sup> The European Court of Human Rights found violations of Articles 3, 5(4) and 6 of the European Convention on Human Rights, inter alia, due to the restrictions on access to lawyers for Mr Öcalan, see *Öcalan v Turkey (no. 1)*, Application no. 46221/99 (2005), available at: <https://hudoc.echr.coe.int/eng?i=001-69022>; *Öcalan v Turkey (no. 2)*, Applications nos. 24069/03, 197/04, 6201/06 and 10464/07 (2014), paras. 131-135, 146, available at: <https://hudoc.echr.coe.int/eng?i=001-142087>

<sup>95</sup> CAT, Concluding Observations on the fifth periodic report of Türkiye, CAT/C/TUR/CO/5 (adopted on 25 July 2024) para 16.

<sup>96</sup> See *Supra*, Section III.



items such as case files and notebooks that contain privileged information, in violation of the principle of lawyer-client confidentiality.

56. During raids on 25 April 2023 in Diyarbakir,<sup>97</sup> media lawyer **Resul Temur**'s office was searched and all computers, telephones, and digital materials, in addition to 18 bags of documents, journals, and books, including case files of his clients, were confiscated. Among the documents were the indictment and preparatory defence materials in a case against 16 journalists who are currently being prosecuted for membership of a terrorist organisation. In violation of procedural safeguards, the bags containing the confiscated files were not sealed and there was no judicial intervention by the Criminal Judgeship of Peace as required by law.<sup>98</sup> This is a breach of lawyer-client confidentiality, in violation of Article 14 of the ICCPR and Principle 22 of the UN Basic Principles.

#### Amendments to the Anti-Money Laundering Law

57. A new bill that requires lawyers to provide 'financial intelligence' to law enforcement on their clients or related transactions was submitted by the ruling AKP on 6 July 2024 to Parliament, which has reportedly sparked concern over possible infringements of the principle of lawyer-client confidentiality.<sup>99</sup> Amending the Law on Anti-Money Laundering, Article 2 of **Law No. 5549**,<sup>100</sup> obligates lawyers to report suspicious transactions involving real estate deals and the establishment and management of companies, foundations and associations as well as the management of banks and security accounts, in relation to cases they work on to the Financial Crimes Investigation Board.<sup>101</sup> Similar legislation previously faced criticism and was annulled by the Constitutional Court on 3 April 2024 due to concerns over its implication for the independence of the legal profession.<sup>102</sup>

#### Lack of access to case files and evidence

58. Measures undermining equality of arms and the adversarial aspects of trial proceedings are often implemented in violation of article 14(1) and 14(3) of the Covenant. The former Special Rapporteur on the right to freedom of opinion and expression, following a visit to Silivri prison in Türkiye, reported that in most instances, neither lawyers nor their clients are informed of the specific charges against them and are thereby severely hampered in preparing their defence.<sup>103</sup>
59. Other measures introduced during the state of emergency but later codified into existing laws, include granting courts the power to carry out hearings and issue verdicts without lawyers present,<sup>104</sup> rejecting lawyers requests to hear witnesses if the court rules the aim is to prolong the trial,<sup>105</sup> and hearing some protected witnesses remotely, altering their

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<sup>97</sup> See, for example, Reuters 'Turkey arrests 110 over alleged Kurdish militant ties ahead of election' (26 April 2023) <[www.reuters.com/world/middle-east/turkey-arrests-110-people-over-alleged-kurdish-militant-ties-sources-2023-04-25/](https://www.reuters.com/world/middle-east/turkey-arrests-110-people-over-alleged-kurdish-militant-ties-sources-2023-04-25/)>. During these raids, lawyer Süleyman Sahin was also arrested, see *Infra* Section V, paras 66-67.

<sup>98</sup> Articles 58-61 of the Law on Attorneyship No. 1136; in conjunction with CCP No 5271, article 130. The Criminal Judgeship of Peace will need to decide on the privileged nature of the seized documents within 24 hours after confiscation.

<sup>99</sup> Stockholm Center for Freedom, 'Turkey's ruling party unveils new legislation to turn lawyers into informants' (10 July 2024) <<https://stockholmcf.org/turkeys-ruling-party-unveils-new-legislation-to-turn-lawyers-into-informants/>>

<sup>100</sup> Articles 20-21 of the Law on Amendments to Certain Decree Laws, No. 7521 (amending the Law on the Prevention of Laundering Proceeds of Crime, Article 2 of Law No. 5549), published in the *Official Gazette* on 26 July 2024. Available here: [cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y2/KanunMetni/78110eed-c1dc-4976-b002-041ad1d2a7e5.htm](https://cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y2/KanunMetni/78110eed-c1dc-4976-b002-041ad1d2a7e5.htm).

<sup>101</sup> Kronos, 'K'Yeni torba teklifte avukatlara muhbirlik görevi geliyor (New omnibus bill assigns whistleblowers role to lawyers)' (7 July 2024) <<https://kronos37.news/yeni-torba-teklifte-avukatlara-muhbirlik-gorevi-geliyor/>>

<sup>102</sup> Decision of the Turkish Constitutional Court, Official Gazette No. 32509 (3 April 2024) available at: <https://www.resmigazete.gov.tr/eskiler/2024/04/20240403-4.pdf>.

<sup>103</sup> Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3 (7 June 2017) paras 37, 72-74.

<sup>104</sup> CCP articles 188/1 and 216/3.

<sup>105</sup> CCP article 178.



voices or screening their faces, rather than bringing them to court hearings where they could be cross-examined in person.<sup>106</sup>

60. Monitoring missions of the trial against **18 lawyers from the Halkın Hukuk Bürosu (HHB) and ÇHD** demonstrated that these rights of the defence during the proceedings were systematically violated. This included arguments made by the prosecution based on digital records which were not in the case file and not made available to the defence, the judge not allowing the defence to speak or to engage in any effective manner to challenge evidence, and the judge's rejection of a request to facilitate the collection of further evidence and investigation. The judges also interrupted a request by the defence for the recusal of the presiding judge, they did not allow them to finish their submission and then had all the defendants and their lawyers removed from the court. Lengthy prison sentences were issued the following day, 20 March 2019, without the defendants and their lawyers being allowed to return to court to submit their final defence statements and participate further in the proceedings.<sup>107</sup>
61. The lack of full disclosure is a violation of international fair trial standards and undermines the principle of equality of arms. In accordance with Article 14 of the Covenant, accused persons must have adequate facilities to prepare a defence. Principle 21 of the UN Basic Principles also stipulates that the authorities must ensure that lawyers have access to appropriate information, files and documents in the authorities' possession or control in sufficient time to enable defence lawyers to provide effective legal assistance to their clients.

**The interveners request that the Human Rights Committee recommend that the government of Türkiye:**

- **Take measures to ensure that laws and practices which currently restrict the number and length of lawyer-client meetings where individuals are held in pre-trial detention, is brought in line with the obligations under article 14 of the Covenant, and that meetings can take place in private without any requirement for authorisation by law enforcement authorities.**
- **Take measures to guarantee lawyer-client confidentiality, both in respect of oral and written communications between lawyers and their clients in detention as well as confidential documents or files which may be confiscated during searches, and ensure confidentiality is strictly ensured in practice, regardless of the types of charges against the individuals. Searches of lawyers' offices and residence should be conducted in compliance with the CCP, and no legislation should be enacted that contravenes the principle of lawyer-client confidentiality as guaranteed by Article 14 ICCPR and Principle 22 of the UN Basic Principles.**
- **Take immediate measures to guarantee full access to case files, including indictments and evidence, both in law and practice. Such access should be afforded in all cases, without undue delay or restrictions, and any restrictions on access, in particular categories of cases, should ensure that rights under Article 14(3) ICCPR are respected.**

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<sup>106</sup> CCP article 139/3.

<sup>107</sup> Lawyers for Lawyers, 'Joint letter on 18 sentenced and imprisoned HHB and ÇHD lawyers' (20 May 2019) <<https://lawyersforlawyers.org/joint-letter-on-18-sentenced-and-imprisoned-hhb-and-chd-lawyers/>>

## V. Individual cases of lawyers prosecuted, convicted or imprisoned

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62. Recent years have been characterised by an unprecedented level of prosecutions of lawyers, which appear to be initiated because of their professional activities in defence of their clients. Lawyers in Türkiye are often charged with the same terrorism related offences as their clients, in violation of Principles 16 and 18 of the UN Basic Principles. Their prosecution demonstrates a pattern of reliance on single witness testimonies, unfair trials that take many years to complete, with lawyers held in pre-trial detention for extended periods. The interveners highlight just the few following cases, which may also be taken as illustrative of similar violations in many other cases.

### **CHD-1 and CHD-2**

63. In November 2022, after a five-day hearing in a mass trial case that started in January 2013, the Istanbul 18<sup>th</sup> Heavy Penal Court sentenced **19 lawyers and members of ÇHD** to prison sentences up to 20 years and 6 months in the so-called CHD-1 case.<sup>108</sup> They were mostly convicted for being members of a “terrorist” organisation,<sup>109</sup> “terrorist” propaganda,<sup>110</sup> and resisting and preventing a public official from executing their duty.<sup>111</sup>

64. This is a case, representative of other similar cases, in which the court systematically refused requests by the defence to hear witnesses and to further investigate issues, while at the same time the accusations in the file have been largely based on actions of the accused lawyers in the execution of their professional activities. As far as international observers at the hearings were able to observe, no evidence of any criminal acts was presented by the prosecutor.<sup>112</sup> Many of the lawyers had spent long periods in pre-trial detention, which will be deducted from their sentences. **Barkın Timtik, Oya Aslan and Selçuk Kozağaçlı** were still in pre-trial detention at the time of the verdict, for five years and three months, six years and two months and two years and nine months, respectively.

65. Several of the lawyers had been convicted before in the so-called CHD-2 case, in which **18 lawyers** were sentenced to long prison sentences on 20 March 2019.<sup>113</sup> That trial too was plagued by a distortion of procedural process and characterized by Amnesty International as “a travesty of justice [that] demonstrate yet again the inability of courts crippled under political pressure to deliver a fair trial”.<sup>114</sup> In that case, **Naciye Demir, Özgür Yılmaz** and **Şükriye Erden** had already been convicted for membership of a terrorist organisation and sentenced to nine years, 13.5 years and 12 years respectively. Their new sentences for propaganda in the CHD-1 case are in addition to the previous sentences, which have become irreversible. **Özgür Yılmaz** was in prison serving his first sentence at the time of the verdict.

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<sup>108</sup> The mass trial began involving 22 lawyers. The cases against two lawyers, Günay Dağ and Zekir Rüzgar, were separated from this case and the case against Ebru Timtik was dropped. Ebru passed away on 27 August 2020 after a long hunger strike protesting the lack of a fair trial in Türkiye. See paras 12 and 41 above for details.

<sup>109</sup> Article 314(2) of the TPC.

<sup>110</sup> Article 7(2) of the Anti-Terror Law.

<sup>111</sup> Article 265(1) of the TPC

<sup>112</sup> Lawyers for Lawyers, “Lawyers convicted to long prison sentences (again)” (15 November 2022)

<<https://lawyersforlawyers.org/en/lawyers-convicted-to-long-prison-sentences-again/>>

<sup>113</sup> Lawyers for Lawyers, “Joint letter on 18 sentenced and imprisoned HHB and ÇHD lawyers” (20 May 2019)

<<https://lawyersforlawyers.org/en/joint-letter-on-18-sentenced-and-imprisoned-hhb-and-chd-lawyers/>>

<sup>114</sup> Amnesty International, “Turkey: Conviction of lawyers deals heavy blow to right to fair trial and legal representation” (20 March 2019) <<https://www.amnesty.org/en/latest/press-release/2019/03/turkey-conviction-of-lawyers-deals-heavy-blow-to-right-to-fair-trial-and-legal-representation/>>

### **Sezin Uçar, Özlem Gümüştas and Gülhan Kaya**

66. Since 2017, **three lawyers from Ezilenlerin Hukuk Bürosu (EHB, law firm of the oppressed)** are prosecuted on suspicion of membership of a terrorist organisation<sup>115</sup> and terrorist propaganda,<sup>116</sup> which is likely related to their representation of the families of people who died in Syria whilst fighting ISIS. The evidence in the case is partly based on statements of anonymous witnesses which are, according to the defence lawyers, largely copied from similar statements that are used in other cases. The defence maintains there is no evidence for any of the accusations in the case file.<sup>117</sup>
67. In 2023, the lawyers were again accused of being a member of a “terrorist” organisation. As in 2017, the case is based on the statements of witnesses (five). One witness claims that the lawyers asked for no payment for their legal services, implying that they did not work as lawyers. The fact that the lawyers reminded their clients that they have the right to remain silent is also used against them in this case. **Sezin Uçar** and **Özlem Gümüştas** were already in pre-trial detention from 19 October 2017 to 5 October 2018. **Gülhan Kaya** was under judicial control up until 29 November 2018. She was arrested on 10 June 2023 and was in pre-trial detention until 9 November 2023.
68. Hearings have taken place since 2017 on a regular basis. The case is still ongoing, and hearings keep being adjourned.<sup>118</sup> The defendants, as well as their lawyers, have asked the court to lift the restrictive measures placed upon them, which includes an obligation to regularly report to the police since October 2018 (twice a week) and a travel ban further restricting their freedom of movement.

### **Süleyman Şahin**

69. **Süleyman Şahin** is a human rights lawyer of the Diyarbakir Bar Association and the Association of Lawyers for Freedom (ÖHD). Together with **24 of his ÖHD colleagues**, Şahin is being charged with the same offence as his predominantly Kurdish clients: membership in the PKK, a designated “terrorist” organisation. If convicted, he faces up to 15 years in prison. Since commencement of the prosecution, all other 24 lawyers have been acquitted by the 4<sup>th</sup> Criminal High Court in Diyarbakır.
70. The prosecution’s case relies on a single witness statement by a ‘confessor witness’ named Ümit Akbiyik, who reportedly aided the police in identifying over 600 individuals allegedly involved in terrorism and is himself being prosecuted for multiple (terrorism) offences. In the first hearing of the case on 15 February 2024, the defence counsel raised various points on the lack of evidence, procedural violations, and strongly condemned the use of a confessor as the sole key witness. After questioning in the second hearing on 21 May 2024, the defence pointed out that in all 25 related cases, Ümit was the sole witness. They urged the prosecutor to present evidence to support Ümit’s claims, suggesting he was merely a “puppet” of the police, repeating memorised statements across different cases – undermining the integrity of the judicial process. The defence highlighted that several

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<sup>115</sup> Article 314(2) of the TPC

<sup>116</sup> Article 7(2) of the Anti-Terror Law

<sup>117</sup> Lawyers for Lawyers, “Trial monitoring mission for the hearing in the trial against lawyers from Ezilenlerin Hukuk Bürosu” (17 July 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-for-the-hearing-in-the-trial-against-lawyers-from-ezilenlerin-hukuk-buros/>>

<sup>118</sup> Lawyers for Lawyers, “Trial monitoring mission in the trial against the lawyers from Ezilenlerin Hukuk Bürosu” (7 April 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-in-the-trial-against-the-lawyers-from-ezilenlerin-hukuk-buros/>>

charges against Ümit had been dropped, indicating potential collusion, and argued that the case was a direct attack on Süleyman for his human rights work with ÖHD.<sup>119</sup>

### **Twelve ÖHD lawyers**

71. Since 2016, 12 lawyers, all members of the ÖHD have been prosecuted on suspicion of membership of a terrorist organisation (PKK): **Ramazan Demir, Ayşe Acinikli, Irfan Arasan, Hüseyin Boğatekin, Şefik Çelik, Adem Çalışçı, Tamer Doğan, Mustafa Rüzgar, Ayşe Gösterişlioğlu, Sinan Zincir, Raziye Öztürk and Ruşen Mahmutoğlu.**
72. Nine of the lawyers, who were home at the time of the raids, were arrested in March 2016. During their interrogation, they were questioned about their activities, including complaints they had filed with the ECtHR about human rights violations in Eastern Türkiye; visits to their clients in prison; interviews they had given to (Western) media; their activities with TUAD, an organisation that supports the families of prisoners of conscience; their tweets about the cases before the ECtHR; their defence of Gezi-activists and relationship with the international human rights community.<sup>120</sup>
73. The prosecutor claims that the lawyers are not being prosecuted for professional activities, but it is believed that these lawyers, like the others mentioned in this report, were arrested because of their work as lawyers representing clients suspected of terrorism or opposing the Turkish government. Several lawyers were charged with membership of a “terrorist organisation”,<sup>121</sup> “terrorist propaganda”,<sup>122</sup> and/or insulting the state.<sup>123</sup>
74. Hearings in the case have taken place since 2016 on a regular basis, which keep being adjourned and are still ongoing. At a hearing on 8 February 2024, the Court heard an anonymous witness who testified with a distorted voice. One of the defence lawyers accused the witness of reading a prepared statement and questioned his trustworthiness, especially since he is anonymous. As in the case of Süleyman Şahin above, another defence lawyer suspected the witness of collaborating with the police to avoid prosecution himself.

**The interveners request that the Human Rights Committee recommend the government of Türkiye to:**

- **Unconditionally release the imprisoned lawyers named above and others who have been subjected to arbitrary arrest and detention, and unfair trials; pending the release of these lawyers, ensure that they are held in conditions that are in conformity with Article 10 of the ICCPR, and other international standards for the treatment of prisoners.**
- **Ensure that an immediate independent review of cases is conducted in which lawyers are presently on trial or appealing sentences handed down against them for membership in, engaging in propaganda for, or facilitating the activities of a terrorist organisation.**

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<sup>119</sup> Lawyers for Lawyers, “Second hearing in the case of human rights lawyer Suleyman Sahin” (4 June 2024) <<https://lawyersforlawyers.org/second-hearing-in-the-case-of-human-rights-lawyer-suleyman-sahin/>>

<sup>120</sup> Lawyers for Lawyers, “Trial Observation Mission Report: hearing in the ongoing trial against ÖHD-lawyers” (16 February 2024) <<https://lawyersforlawyers.org/trial-observation-mission-report-hearing-in-the-ongoing-trial-against-ohd-lawyers/>>

<sup>121</sup> Article 314(2) of the TPC.

<sup>122</sup> Article 7(2) of the Anti-Terror Law.

<sup>123</sup> Article 301 of the TPC.