

A DEFENSELESS DEFENSE

HAKİKAT ADALET HAFIZA MERKEZİ
TRUTH JUSTICE MEMORY CENTER

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A DEFENSELESS DEFENSE

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FOREWORD

This report was prepared within the scope of a joint project by the Association for Monitoring Equal Rights (*Eşit Haklar İçin İzleme Derneği – EŞİD*), Netherlands Helsinki Committee (NHC) and Truth Justice Memory Center (*Hafıza Merkezi*), which aims to increase support for human rights defenders (HRDs) in Turkey. The website “*Keep the Volume Up for Rights Defenders in Turkey*” (*Hak Savunucuları İçin Sessiz Kalma* on www.sessizkalma.org), a product of the project, follows developments regarding violations against HRDs. In times when many HRDs—from women’s rights defenders to Academics for Peace, environmental activists to lawyers, and journalists to members of non-governmental organisations (NGOs)—have become targets, we want to draw attention to the pressure lawyers face. Lawyers play a crucial role in defending human rights, as they defend those whose rights have been violated or abused, and defend HRDs who have been prosecuted for their legitimate and peaceful work to advance human rights and democracy. It can be seen in Turkey that lawyers are being targeted in connection with the clients they represent. As the focus of this report lies on lawyers – the defenders of defenders – Lawyers for Lawyers (L4L) has also provided its expertise in this field.

This report was prepared during the COVID-19 pandemic. Interviews and data collection for the report were conducted digitally. This implies some research problems, e.g. not all the intended interviews could be realised. However, reliable data has been obtained from bar associations and lawyer groups under attack. This was complemented by information presented in legal documents, e.g. indictments, rulings and case transcripts, and by critical media articles. More specifically, for this report, which deals with the restrictions targeting the pillar of legal defence, interviews were conducted with lawyers affiliated with the Istanbul, Ankara, Izmir, Diyarbakır, Van and Adana Bar Associations. The report further draws on the work of the Bar Associations’ Lawyers’ Rights Centres, as well as open sources.

This report contains two main sections, one describing the persecution and limitation of rights that lawyers have increasingly been subjected to in Turkey,

and a second one outlining resistance against these developments by the lawyer community.

The report was written by Faruk Eren and edited with the contribution of the four NGOs mentioned. We would like to thank all who participated and shared their sources.

INTRODUCTION

The Justice and Development Party (AKP), led by President Recep Tayyip Erdoğan, has ruled Turkey since 2002. Despite earlier on adopting some liberalizing reforms, the AKP government has since shown growing contempt for political rights and civil liberties as time passed. During the 2013 Gezi Park protests, which were oppressed with disproportionate police violence, democratic backsliding and a degradation of the rule of law were clearly observed. The Party's authoritarian grip was fully consolidated following the 2016 coup attempt, which in its aftermath triggered a dramatic crackdown on (perceived) opponents of the government by use of emergency decrees.¹

Shrinking civic space became more widespread after the adoption of the presidential system in 2018, which brought undemocratic measures along with it.² The most vocal parts of civil society were attacked. The government also managed to concentrate a large part of media ownership within a small group of people close to the President. Consequently, key critical journalists were removed, many of them by imprisonment, effectively silencing the rest. Today all mainstream media is under the control of the government.³

¹ Freedom in the World 2020: Turkey (*Freedom House*): <https://freedomhouse.org/country/turkey/freedom-world/2020>

² Turkey is rated "Not Free" in Freedom in the World 2020, Freedom House's annual study of political rights and civil liberties worldwide: <https://freedomhouse.org/country/turkey/freedom-world/2020>

³ Mission Report: Turkey's journalists on the ropes (30 November 2020; *European Centre for Press and Media Freedom*): <https://www.ecpmf.eu/mission-report-turkeys-journalists-on-the-ropes/>

Another targeted group were academics. The petition "*We will not be a party to this crime!*" was signed by 1,128 academics on January 11, 2016.⁴ In the petition, academics called for an end to human rights violations (including curfews) in southeast Turkey and for a permanent solution to the armed conflict between the Kurdistan Workers' Party (PKK) and the Turkish army, which had resumed in southeast Turkey after the peace process collapsed. Of the signatories, 822 were tried, some detained, and some imprisoned. Most of them lost their jobs and their passports were confiscated – a situation referred to as "civil death" since there are no chances of re-employment or travelling abroad for re-employment.

In addition to the attack on critical media and academia, civil society organisations have also been under immense pressure. In 2020, two controversial trials targeting civil society through groups of HRDs were concluded, namely the Büyükada (the so-called "Istanbul 10") and Gezi/Osman Kavala trials.

On July 5, 2017, police raided a workshop on coping with trauma and digital safety, held on Büyükada—an island off the coast of Istanbul. Under the instructions of the Istanbul Islands' Chief Public Prosecutor's Office, ten HRDs were taken into custody. Amnesty International Honorary Chair Taner Kılıç's ongoing investigation was subsequently merged with that of the ten defenders. The trial was filled with infringements of fair trial rights and lasted three years. In July 2020, four of the defendants were convicted of terrorist charges.⁵ Within three months, the appeal court upheld the ruling, sending a chilling message to civil society.⁶

⁴ "We will not be a party to this crime!" (10.01.2016; *Academics for Peace*): <https://barisicinakademisyenler.net/node/63>

⁵ Defending Human Rights is not a Crime: Turkey's ruling against Istanbul 10 (09.07.2020; *Netherlands Helsinki Committee*): <https://www.nhc.nl/defending-human-rights-is-not-a-crime-turkeys-ruling-against-istanbul-10/>

⁶ Turkey: NHC concerned about Court upholding "Istanbul 10" decision (04.12.2020; *Netherlands Helsinki Committee*): <https://www.nhc.nl/turkey-nhc-concerned-about-court-upholding-istanbul-10-decision/>

The other trial and investigations were organised around businessman and philanthropist Osman Kavala, who had pioneered efforts to promote democracy, human rights, and multiculturalism in Turkey through his companies and civil society organisations. Kavala has been behind bars since October 18, 2017 on charges of "attempting to change the Constitutional order" and "to overthrow the government." The scope of Kavala's investigation was expanded through new police operations. In November 2018, police forces raided the homes of 13 academics and HRDs, accusing

7 Amnesty International: Do the right thing and free Osman Kavala (18.12.2020; *Bianet*): <https://bianet.org/english/human-rights/236228-amnesty-international-do-the-right-thing-and-free-osman-kavala>

Av. Köksal Bayraktar:
"Müvekkilim Osman
Kavala 'Benim
Sığınm Nedir, diye
sorarak 16 ay
beklemiştir..."



Gezi Duruşması / Silivri / 2. Gün



Avukat Turgut Kazan savunması
Gezi iddianamesini mahkeme
heyetine gösteriyor.

GEZİ DAVASI
25.06.2016



them of being involved in a hierarchical structure with Kavala.⁸ Separate from this police operation, the so-called “Gezi trial” indictment was prepared against him, in which 15 other members of civil society were accused of working “in hierarchy with Osman Kavala to overthrow the Constitutional order.” In December 2019, The European Court of Human Rights (ECtHR) ruled there was a lack of reasonable suspicion that Kavala had committed an offense, and called on authorities to secure his immediate release.⁹ In February 2020, he and the other eight Gezi defendants were acquitted of all charges by a Turkish court.¹⁰ Despite this ruling and the ECtHR decision, after the trial Kavala was immediately taken into custody and sent to prison again — this time on charge of “political or military espionage.”¹¹ Kavala is currently still in jail, despite the final ruling of the ECtHR. In January 2021, a regional court lifted the acquittals of the Gezi trial,¹² and in February 2021, Kavala’s two trials were merged: the overturned Gezi trial and the trial in which he was accused with “political or military espionage.”¹³

During the course of these two high-profile trials, hundreds of other civil society representatives were investigated, taken into custody, tried and convicted— most frequently under Turkey’s Anti-Terrorism Law. Dozens of executives of Turkey’s largest grassroots organisation, Human Rights Association (*İnsan Hakları Derneği - İHD*), have stood trial and been convicted. Moreover, health rights defenders were investigated for challenging government information about the pandemic; hundreds of unionists were taken into custody for protesting their employers and being forced to work during the pandemic; environmental activists were fined; women were taken into custody for protesting the possibility of withdrawing from the Istanbul Convention; and

⁸ Civil Society Leaders Detained in Turkey: Call to Action (16.11.2018; *Netherlands Helsinki Committee*): <https://www.nhc.nl/civil-society-leaders-detained-in-turkey-call-to-action/>

⁹ *Kavala v. Turkey* ECHR 28749/18 (10.12.2019; *ECtHR*)

¹⁰ Turkish court acquits defendants in Gezi Park trial (18.02.2020; *Deutsche Welle*): <https://www.dw.com/en/turkish-court-acquits-defendants-in-gezi-park-trial/a-52416955>

¹¹ Defendants in Gezi Park trial acquitted but new arrest warrant issued for Osman Kavala (18.02.2020; *France 24*): <https://www.france24.com/en/20200218-turkey-acquits-defendants-of-terrorism-charges-gezi-park-osman-kavala-landmark-trial>

¹² Turkish appeals court overturns acquittal in Gezi trial (22.01.2021; *Reuters*): <https://www.reuters.com/article/us-turkey-security-gezi-idUSKBN29R1Y2>

¹³ Court merges Osman Kavala’s ‘espionage’ case with Gezi trial (05.02.2021; *Bianet*): <https://bianet.org/english/law/238819-court-joins-osman-kavala-s-espionage-case-with-gezi-trial>



smear campaigns targeted LGBTI+ rights defenders. In addition to journalists, critical academics and HRDs, practitioners of law also increasingly came under attack. Not only were they harassed in, and even kicked out of courtrooms; they were prosecuted and convicted as a result of the defendants they defend. Even further, the Law on Lawyers (*Avukatlık Kanunu*) was amended to weaken the power of large and critical bar associations.

ATTACK ON LAWYERS

Currently we find ourselves in an environment in Turkey where international human rights and constitutional regulations are violated every day. This also directly affects the right of defence, one of the fundamental principles of the right to a fair trial.

One major reason for this is the human rights violations caused by the vague Anti-Terror Law and its implementations in Turkey. Different bodies of the United Nations (UN) and the Council of Europe have prepared several reports setting warnings and outlining recommendations to navigate the ambiguous borders between the fight against terrorism and upholding fundamental rights and freedoms, especially the freedom of expression.¹⁴ Despite ECtHR judgments and case law, we are witnessing the conviction of defendants in a multitude of lawsuits violating fundamental rights. In these lawsuits, statements that clearly fall within the scope of freedom of expression are being considered evidence of membership in an armed organisation or assistance to such an organisation as regulated in Article 314 of the Turkish Criminal Code.

¹⁴ Please see examples of sources commenting on the arbitrary use of Anti-Terror legislation in Turkey: Impact of measures to address terrorism and violent extremism on civic space and the rights of civil society actors and human rights defenders (01.03.2019; *UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/057/59/PDF/G1905759.pdf?OpenElement>; *Protesting as a Terrorist Offense: The Arbitrary Use of Terrorism Laws to Prosecute and Incarcerate Demonstrators in Turkey* (01.11.2010; *Human Rights Watch*): <https://www.hrw.org/report/2010/11/01/protesting-terrorist-offense/arbitrary-use-terrorism-laws-prosecute-and>; *Abuse of the Anti-Terrorism Provision by Turkey is steadily increasing: 2013-2019* (06.07.2020; *The Arrested Lawyers Initiative*): <https://arrestedlawyers.org/2020/07/06/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>; *Misuse of anti-terror legislation threatens freedom of expression* (04.12.2018; *Human Rights Comment Council of Europe*): https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ320PEoxOkq/content/misuse-of-anti-terror-legislation-threatens-freedom-of-expression/pop_up?_101_INSTANCE_xZ320PEoxOkq_viewMode=print&_101_INSTANCE_xZ320PEoxOkq_languageld=en_GB

In recent years, emergency decrees, issued during the State of Emergency period (following the 2016 coup attempt), have continued to be applied or were eventually enacted into law. A consequence of this is the gradual shrinking of space for defence to the point of its near complete removal, despite it being one of the founding elements of justice. Increasingly, lawyers began to be accused and convicted for being “members of terrorist organisations,” especially in connection to the defendants they defended.¹⁵

While this report was being prepared, two arrested lawyers were on hunger strike demanding “a fair trial and the administration of justice in Turkey.” One of them was Ebru Timtik. This lawyer, a member of the Progressive Lawyers’ Association (Çağdaş Hukukçular Derneği), who had been in prison since September 12, 2018, died on August 27, 2020, the 238th day of her hunger strike.¹⁶ Following this dramatic development, her colleague Aytaç Ünsal was released on his 213th day of hunger strike, which he ended following the decision of the Court of Cassation to halt the execution of his punishment until he got better.¹⁷

The Court’s decision was only taken after the shock of the death of Timtik and the strong international condemnations that followed. Eight UN Special Rapporteurs and members of the Working Group on Arbitrary Detention issued a press release in Geneva on September 2, 2020, stating that the death of human rights lawyer Ebru Timtik after a long hunger strike was entirely preventable and calling on Turkey to release other HRDs currently imprisoned. In their statement, the group declared that “[n]o one should have to die in pursuit of a fair trial. This is an utter waste of a human life, and we are greatly dismayed at the death of this courageous woman human rights defender, as well as the circumstances that led to her death.”¹⁸

¹⁵ Examples of such cases covered in this report include the Lawyers of the Human Rights Association (p.8), The Asrın Law Bureau (p. 9), The Progressive Lawyers Association (p. 9 and 18), and The Law Bureau of the Oppressed (p. 17), all examples in which lawyers were accused in relation with their clients.

¹⁶ Commemoration of Ebru Timtik (07.09.2020; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/commemoration-of-ebru-timtik/>

¹⁷ Aytaç Ünsal released (04.09.2020; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/aytac-unsal-released/>

¹⁸ Turkish human rights lawyer dies after hunger strike (02.09.2020; *United Nations Human Rights Council*): <https://www.ohchr.org/EN/HRBodies/HRC/Pages/NewsDetail.aspx?NewsID=26203&LangID=E>

The Council of Europe Commissioner for Human Rights Dunja Mijatović made the following statement in the aftermath of the death of Timtik, “Ms. Timtik’s death is a tragic illustration of the human suffering caused by a judicial system in Turkey that has turned into a tool to silence lawyers, human rights defenders and journalists, through systematic disregard for the most basic principles of the rule of law. Lawyers have borne the brunt of these developments in their double capacity as human rights defenders and as a fundamental component of an increasingly hostile judicial system.”¹⁹

At the same time, bar associations working for their member’s rights and for the rule of law have also increasingly come under attack. Investigations and several cases have been brought against several bar associations and lawyers unions/groups.

While this report was being prepared, presidents of 60 bar associations started to march to Ankara to defend the legal profession in response to the government preparing to change the election system of bar associations.

¹⁹ Commissioner reiterates her call to restore and uphold the role of lawyers as human rights defenders in Turkey in the aftermath of the death of lawyer Ebru Timtik (28.08.2020; *Council of Europe Portal – Commissioner for Human Rights*): <https://www.coe.int/en/web/commissioner/-/commissioner-reiterates-her-call-to-restore-and-uphold-the-role-of-lawyers-as-human-rights-defenders-in-turkey-in-the-aftermath-of-the-death-of-lawyer>

OBSTRUCTION OF THE PROFESSION

The “International Day of the Endangered Lawyer”²⁰ (January 24), created to call attention to the persecution of lawyers as a result of their defence activities, has been dedicated to lawyers in Turkey twice in recent history (in 2012 and 2019 respectively).²¹

²⁰ January 24 has been chosen as the International Day of the Endangered Lawyer. On this day in 1977, four lawyers and a coworker were murdered in Madrid (known as Massacre of Atocha). For further information see: <http://dayoftheendangeredlawyer.eu/backgrounds/>

²¹ Endangered Lawyers 2019 – Solidarity with Turkish and Kurdish Lawyers (24.01.2019; *Day of the Endangered Lawyer*): http://dayoftheendangeredlawyer.eu/wp-content/uploads/2019/04/Basic-Report_Turkey2019.pdf



The right to defence is presently significantly restricted as a result of several legislative amendments, emergency decrees that remained in use after the State of Emergency period ended, the non-implementation of laws and court decisions, and practices such as expulsions from courtrooms by judges, disregard on the part of the panel of judges, and criminalization of the verbal content of defence statements.

To facilitate a better understanding of this process, we would like to introduce a very short overview of periods in the last 20 years that mark a significant shift in terms of democracy and democratization in Turkey's recent history:

"Between 1999-2004, in the context of the negotiations for full membership to the European Union (EU), guided by the Copenhagen criteria, the state made various legal amendments in the name of 'democratization.' Since Turkey was unable to solve the Kurdish question in a democratic manner and ensure a peaceful environment, this reform process came to a halt in 2005 and remained stationary until 2013. The 'Peace and Solution Process' that was initiated in 2013 with the ambition to solve the Kurdish question by democratic means lasted until 2015. In this interim period, claims/statements regarding 'democratization' gained momentum again, but the reform process was completely terminated following the eruption of armed conflicts in July 2015. During this period, Turkey became the stage for dramatic developments such as the intense armed conflict [between the state and the PKK], the country's military intervention in Syria, and the coup attempt of July 15, 2016. The State



On the 24th of January 2019 The Day of The Endangered Lawyer, lawyers marching through İstiklal Street, İstanbul. (Capshot from "Shrinking Civic Space 2: Right to Defence" video, by Fatih Pınar)



*of Emergency that was declared all across Turkey on July 21, 2016 was lifted as of July 18, 2018. During the State of Emergency, Turkey was governed by emergency decrees; subsequently the country was/still is governed by presidential decrees."*²²

²² İHD Special Report on Human Rights Advocacy and Repressive Policies against İHD (29.07.2020; Human Rights Association): <https://ihd.org.tr/en/ihd-special-report-on-human-rights-advocacy-and-repressive-policies-against-ihd/>

BEFORE THE STATE OF EMERGENCY

One important incident was a 1993 operation carried out against lawyers carried (long before AKP came to power).²³ In this Diyarbakır-based operation, nearly 30 lawyers, amongst them Tahir Elçi, were taken into custody on the grounds that they were “linked to terrorist organisations.”²⁴ The lawyers were subjected to severe torture. Their lawsuit was brought before the ECtHR and the *Judgment in the Case of Tahir Elçi and Others / Turkey*²⁵ became a crucial document in the fight against torture.

The pressure on defence has become more apparent every year under the rule of the AKP. One may recall how disturbed the executive was by speeches of high judicial representatives and presidents of bar associations during the opening ceremonies of judicial years or the anniversaries of the establishment of high courts. Higher judicial bodies became less critical of the executive following judiciary transformations, which took place between 2002 and 2016 through work done by an alliance of the AKP and Gülen Movement. Instead, criticism started to be raised by the defence, namely by bar associations at these ceremonies. Subsequently,

Sezgin Tanrikulu and Tahir Elçi, both former Presidents of Diyarbakır Bar Association, on a business trip abroad Turkey.



the government began not inviting representatives of the Union of Turkish Bar Associations (TBB) to these kinds of ceremonies. Reciprocal recriminations ensued and this tension reached a point at which the government directly intervened in bar associations (Details regarding this situation, which continues to be a relevant issue at present, are provided on page 24).

But another dimension to the tension between the government and defence emerged in the meantime. The defence, i.e. lawyers, began to be directly and systematically accused and even arrested, either individually or collectively.

²³ The AKP first came to power as a result of the 2002 general elections and has been ever since.

²⁴ Türkiye’de 90’lardan Bugüne Avukatların Durumu (*Hukuk Politik*): <https://www.hukukpolitik.com.tr/2020/02/20/turkiyede-90lardan-bugune-avukatlarin-durumu/>

²⁵ *Elçi and others v. Turkey* ECHR, 23145/93 and 25091/94

THE ERGENEKON TRIALS²⁶

Lawyers were among those who were detained and interrogated, with one lawyer being arrested in the course of the Ergenekon investigations that started in 2008. Lawyers' offices were raided in violation of laws regulating rights and obligations of lawyers. Bureaus were searched without the presence of lawyers, and there were claims that security forces planted evidence in the bureaus during these searches. The lawyers representing the defendants in these cases were restricted in their right of defence, frequently interrupted in their speeches and discharged from courtrooms. In addition, it was revealed that many lawyers' meetings with their clients during these trials had been unlawfully recorded.²⁷

The government, which had applauded the Ergenekon trials at that time, started to call these cases a "plot" after its alliance with the Gülen Movement fell apart.²⁸

²⁶ Ergenekon Trials: In these trials, taking place from 2008 to 2019, high-ranking military members were tried in connection to a series of assassinations and military coup attempts on evidence put together by prosecutors and judges, many of whom later fled abroad or were convicted during the operations against the Gülen Movement after the 2016 coup attempt. Although the legality of the cases is questionable, it can be said that these interventions, with the support of the current government, have eliminated the army's pressure on politics.

²⁷ 8 lawyers were detained and trialed in the final Ergenekon trials conjoining 23 different trials. In 2014, several of them were convicted of being members of an armed terrorist group. After the decision of Court of Cassation in 2019, they were all acquitted. During the 11 years of the course of these trials, Turkey had the same political party, AKP, in government.

²⁸ An analysis of the change of rhetoric of the governing party AKP can be seen in Sedat Ergin's article. Ergin states that then-Prime Minister Erdoğan was seen by the general public stating "I am the prosecutor of the Ergenekon Trials" (2008) whereas the opposition Party CHP's leader announced himself as the defence lawyer. Later during the course of the trial (2011), Prime Minister Erdoğan stated, "We are not the judges, not prosecutors and not defence lawyers of this trial." [Erdoğan'ın Ergenekon söyleminin evrimi (02.04.2011; *Hürriyet*): <https://www.hurriyet.com.tr/erdogan-in-ergenekon-soyleminin-evrimi-17439829>] and in 2015 he said, "Myself first, all of Turkey was exposed to this conspiracy. We were all deceived." [Erdoğan'dan Ergenekon ve Balyoz itirafı (23.03.2015; Sözcü): <https://www.sozcu.com.tr/2015/gundem/erdogandan-ergenekon-ve-balyoz-itirafi-777944/>]

PROSECUTION OF LAWYERS OF THE İHD

On May 12, 2009, the houses and offices of Human Rights Association (İHD) Deputy Secretary General Hasan Anlar, lawyer and İHD Central Executive Board member Filiz Kalaycı, former İHD Board member Halil İbrahim Vargün, and lawyer and HRD Murat Vargün were raided by Anti-Terror forces.²⁹ They were taken into custody on the allegation of "aiding an illegal organisation."

Filiz Kalaycı, who was arrested but released after several days, was re-arrested on May 27, 2009 on request of the prosecutor on the grounds of "preventing crime for the sake of public order."

In the indictment filed against the lawyers and against Nedim Taş, former President of the Association for Solidarity with the Families of Inmates and Convicts (*Avukatlar ve Tutuklu ve Hükümlü Aileleri ile Yardımlaşma Derneği* - THAY-DER), the following were used as evidence to back the charges of "PKK/Kongra-Gel membership": press conferences and Newroz celebrations which the lawyers attended, phone calls, correspondences, and documents pertaining to NGOs. The indictment also stated that the investigation was launched upon a notification sent via e-mail to the Ankara Police Department by a lawyer named A. Türk Yurtbey on March 29, 2007. However, there was no lawyer registered with the bar association under this name.

Three-hundred lawyers became intervening parties to the hearing, which started in the Ankara 11th Assize Court on November 9, 2009, but only 150 of them were able to attend. During the hearing, defense lawyer Ercan Kanar stated that this case was an attack on the immunity and independence of the defence and requested the evidence, such as the unlawful e-mail notification and the statements given against them to be withdrawn. At a later hearing, a witness who had testified against them stated that police officers had forced

²⁹ Turkey: Release of Ms. Filiz Kalayci (29.01.2010; *International Federation for Human Rights*): <https://www.fidh.org/en/region/europe-central-asia/turkey/Turkey-Release-of-Ms-Filiz-Kalayci>

him to make false statements while he was in custody.³⁰

The case was concluded on January 24, 2013 in the Ankara 11th Assize Court. The court convicted them for being “members of an illegal organisation” and sentenced Taş to 10 years and 6 months, Kalaycı to 7 years and 6 months, and Hasan Anlar, Halil İbrahim Vargün and Murat Vargün to 6 years and 3 months each in prison.³¹

The statement made by İHD concerning this decision concluded that the lawyers were punished for their professional activities and their work as HRDs.³²

³⁰ Human Rights Defender Kalaycı Released (01.02.2010; *Bianet*): <https://m.bianet.org/english/print/119766-human-rights-defender-kalayci-released>

³¹ Turkey: Sentencing of four lawyers members of IHD Ankara Branch (05.02.2013; *International Federation for Human Rights*): <https://www.fidh.org/en/region/europe-central-asia/turkey/Turkey-Sentencing-of-four-lawyers-12830>

³² İnsan Hakları Savunuculuğu ve İHD'ye Baskılar (13.04.2020; *Human Rights Association*), p. 26-27: https://www.ihd.org.tr/wp-content/uploads/2020/04/20200413_IHDIHSBaskilarOzelRaporu.pdf



Newroz Celebrations in Diyarbakir.
(Fotography: Nar Photos)

ASRIN CASE

Direct and systematic interventions against lawyers started in 2011. The 46 lawyers of PKK leader Abdullah Öcalan, who is held in a prison on İmralı Island, were taken into custody on November 22, 2011 in a synchronous operation in various provinces. Prior to the operation, the lawyers had been targeted through media outlets known for their close ties to the government. Of the lawyers taken into custody, 36 of the 46 were arrested on charges of “membership of a terrorist organisation” and “directing a

terrorist organisation.”³³ Some of the lawyers who were released at intervals remained in detention for 2.5 years. As in many subsequent cases, the indictment rife with errors with respect to procedural and substantive law, including the violation of attorney-client privileges.³⁴ Even the interrogations of the lawyers on trial were not conducted in line with procedures. Despite violating the laws, the lawyers’ meetings with their client (Abdullah Öcalan)

³³ 70 Arrests in Istanbul and Diyarbakir (28.11.2010; *Bianet*): <https://bianet.org/english/minorities/134338-70-arrests-in-istanbul-and-diyarbakir>

³⁴ Turkey Joint letter for Turkish lawyers (16.07.2012; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/en/turkey-joint-letter-for-turkish-lawyers/>

had been recorded and presented as evidence of crime in the indictment.

Many years later, during the State of Emergency after the coup attempt, a majority of the police organising the operation at the time, and the prosecutor and the judge assigned to this still ongoing case were arrested on grounds that they were linked with the Gülen Movement.³⁵ This is a case in Turkey where a great number of lawyers have been put on trial. The indictments would later show that the lawyers on trial were accused of being “members of a terrorist organisation” because of their client.³⁶

³⁵ This is one of the examples of delayed justice in Turkey. Usually, after several years of first-degree trials, the Court of Cassation takes several years to decide and in cases of applications to the Constitutional Court, it takes approximately 3-5 years for the final decision. However if the government is in a hurry to finalize a political case, it occurs. If the case is not a politicized one, it takes years for a final decision.

³⁶ Istanbul 19. Assize Court, File No. 2014/235 E.

ATTACKS AGAINST THE PROGRESSIVE LAWYERS ASSOCIATION AND PEOPLE'S LAW BUREAU

In January 2013, members of the Progressive Lawyers' Association (ÇHD) were taken into custody and their offices were raided. A lawsuit was filed against 22 lawyers, nine of which were arrested, including the Association's Chairman Selçuk Kozağaçlı and lawyers from the People's Law Bureau (HBB).³⁷

In the indictment, the lawyers were accused of being members or leaders of the Revolutionary People's Liberation Party/Front (DHKP-C) and of an attempted murder. As is all too common in such cases, different media

³⁷ L4L observed hearing in the CHD-1 trial (12.07.2019; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/l4l-observed-hearing-in-the-chd-1-trial>

outlets backed the operation and the accusations in their coverage of the case. In March 2014, a year later, the lawyers appeared before a judge. Three-thousand lawyers submitted their power of attorney for the case, and over one thousand lawyers gathered at the courtroom in front of the Silivri Prison to defend their colleagues. Evidently, not all lawyers fit in the courtroom. During the first hearing, the court released all of the detained lawyers. The case is still ongoing in Istanbul.³⁸

³⁸ Istanbul 18. Assize Court, File No. 2014/117 E.

ASSASSINATION OF THE LAW: TAHİR ELÇİ

Lawyer Tahir Elçi was killed on November 28, 2015.³⁹ Elçi was the lawyer of HRDs and of the Saturday Mothers (*Cumartesi Anneleri*)—the relatives of victims of enforced disappearances. At the time, he was also the President of the Diyarbakır Bar Association.

On October 14, 2015, after having been persistently questioned, Elçi stated that “*the PKK is not a terrorist organisation, it is an armed political movement,*” during a programme broadcasted on CNN Türk. Consequently, a lynching campaign was launched against him, through mainstream media and social media. Elçi was arrested on October, 20 2015.⁴⁰ He was brought from his home in Diyarbakır to Istanbul, where the court released him under judicial control. The indictment filed against him alleged that he had “made propaganda for a terrorist organisation” and requested a prison sentence of up to 7.5 years.⁴¹

³⁹ Tahir Elci shooting: Pro-Kurdish lawyer killed in Diyarbakir, Turkey (28.11.2015; *BBC News*): <https://www.bbc.com/news/av/world-europe-34954856>

⁴⁰ President Diyarbakir Bar arrested for comments in TV interview (23.10.2015; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/en/turkey-dean-diyarbakir-arrested-for-comments-in-tv-interview/>

⁴¹ The Radio and Television Supreme Council (RTÜK) imposed a 700,000 TL (at the time approx. 70,000 EUR) fine on CNN Türk because of Tahir Elçi's statements.

In the same year, clashes resumed between the PKK and military forces in and around Diyarbakır, Mardin and Hakkari, resulting in the death of many civilians. On November 28, 2015, Elçi held a press conference in front of the historical Four-Legged Minaret in Diyarbakır's Sur district in order to stop these armed conflicts and to prevent historical monuments from being damaged by the clashes. Shooting broke out while he was referring to the fact that the conflict had damaged the historical minaret, of which he was standing in front. Elçi was shot and died, recorded by cameras.⁴²

The Diyarbakır Public Prosecutor's Office filed an indictment five years after the killing. Claiming that there had been a shootout between three police officers and two PKK members in the area where Elçi had died, the prosecutor, without relying on any ballistic examination, claimed that two PKK members might have shot Elçi.⁴³ On the other hand, the indictment requests prison sentences up to 6 years for the three police officers who are also standing trial for "causing death by culpable negligence."⁴⁴ The case is still ongoing.⁴⁵

⁴² Case concerning the killing of Tahir Elci and lack of effective investigation into his death (28.11.2020; *Sessizkalma*): <https://www.sessizkalma.org/en/case-concerning-the-killing-of-tahir-elci-and-lack-of-effective-investigation-into-his-death/>

⁴³ *Ibid.*

⁴⁴ Tahir Elçi (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/tahir-elci-2/>

⁴⁵ Diyarbakır 10. Assize Court, File No. 2020/3943 E.

THE LAWSUIT AGAINST THE ASSOCIATION OF LAWYERS FOR FREEDOM

In 2016, a combined investigation was launched against members and executives of the Association of Lawyers for Freedom (ÖHD) and the executives of the Association of Solidarity with Prisoners' Families (*Tutuklu Aileleri Dayanışma Derneği* - TUAD). The lawyers were accused of being coordinators of the PKK. Approximately 10 lawyers were taken into custody



within the scope of a confidential investigation. After their release, three lawyers were re-arrested upon the prosecutor's objection to their release. One of the lawyers was released after 15 days in custody, and the other two were released after 6 months.⁴⁶ The trial of the lawyers and TUAD executives continues before Istanbul 14th Assize Court.⁴⁷

⁴⁶ Good news: Ramazan Demir and Ayse Acinikli released (08.09.2016; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/en/turkey-good-news-ramazan-demir-and-ayse-acinikli-released>

⁴⁷ İstanbul 14. Assize Court, File No. 2016/189 E.

THE NORMALIZATION OF THE STATE OF EMERGENCY

Shortly after the coup attempt on July 15, 2016, a State of Emergency was declared on July 21. That day, Turkey reported to the Secretary-General of the UN⁴⁸ and the Council of Europe⁴⁹ that several fundamental rights had been suspended as a result. In the course of the State of Emergency, many laws were amended through emergency decrees. An important share of them have since become permanent. Some of the changes that became permanent introduced restrictions to the right to defence and thus created difficulties with respect to the practice of the legal profession. Moreover, even after the end of the State of Emergency on July 18, 2018, recent practices and new legal regulations indicate that the mind-set of the State of Emergency still prevails. Here is a brief summary of the changes that opened the door to the violations of fundamental principles of criminal justice, such as the right to a fair trial and the principle of equality of arms:

■ By virtue of Emergency Decree Law No. 676,⁵⁰ Article 149/2 of the Code

⁴⁸ C.N.580.2016.TREATIES-IV.4 (02.08.2016; *International Covenant On Civil and Political Rights New York*, 16 December 1966): <https://treaties.un.org/doc/publication/cn/2016/cn.580.2016-eng.pdf>

⁴⁹ Secretary General receives notification from Turkey of its intention to temporarily suspend part of the European Convention on Human Rights (21.07.2016; *Council of Europe Communications*): <https://rm.coe.int/168071f08e>

⁵⁰ Emergency Decree Law No. 676 entered into force after being published in the Official Gazette on October 29, 2016: <https://www.resmigazete.gov.tr/eskiler/2016/10/20161029-5.htm>

of Criminal Procedure (CMK) was amended introducing the rule that “a maximum of three lawyers can be present at hearings in proceedings conducted with respect to crimes committed within the framework of organisation activities.” Considering that indictments alone can comprise hundreds of pages and the overall documents amount to tens of thousands of pages in some cases, this rule actually contains features that both harm the right of defence and hamper the practice of the legal profession;

■ By virtue of the same emergency decree (Decree Law No. 676), a new clause was added to Article 154 of CMK. This clause includes the provision that suspects can be restricted in their right to see a lawyer for 24 hours if taken into custody in a series of crimes listed in the Turkish Criminal Code, crimes within the scope of the Anti-Terror Law, and crimes related to the production and trade of drugs committed within the scope of organisational activities. This provision is striking since it involves a restriction of the right of defence and opens the door to circumvention of the prohibition of torture and ill-treatment;

■ Another important change that was introduced via emergency decree is the new exception to the rule stipulated in Article 188/1 of CMK. This article lists the situations that require the mandatory presence of a lawyer. Here, the following exception was added, “If the lawyer leaves the hearing without an excuse, the hearing can be continued without the attendance of a lawyer.” This paved the way for a continuation of trials in the absence of a lawyer. Later, Emergency Decree No. 69651 expanded this exception by adding that hearings can continue in “the absence of lawyers who do not attend hearings without an excuse;” and

■ Emergency Decree Law No. 694 also cleared the way for judgments to be delivered in the absence of lawyers. Article 216/3 of CMK states that “the last word before the judgment is given to the defendant who is present before the court.” The Decree added that “the absence of mandatory counsel at this stage does not prevent the announcement of the verdict.”⁵²

⁵¹ Emergency Decree Law No. 696 entered into force after being published in the Official Gazette on December 24, 2017: <https://www.resmigazete.gov.tr/eskiler/2017/12/20171224-22.htm>

⁵² Emergency Decree Law No. 694 entered into force after being published in the Official Gazette on August 25, 2017: <https://www.resmigazete.gov.tr/eskiler/2017/08/20170825-13.pdf>

Even after the State of Emergency ended, further restrictions were announced by emergency decrees and subsequently accepted by Parliament. The Regulation on the Management of Penal Institutions and the Execution of Sentences and Security Measures,⁵³ published in the Official Gazette on March 29, 2020, contains a number of provisions that lack any legal basis and violate the principle of confidentiality of communication between lawyer and client, and the lawyer's legally founded duty of confidentiality. Article 72 of the Regulation contains two critical provisions which demonstrate this violation:

■ Article 72(2d) states lawyers who come to prison to see their convicted client must declare in writing whether the documents and files they bring with them are related to the defence. The law requires that documents and files "related to the defence" are not to be examined under any circumstances; and

■ However, Article 72(2e) of the Regulation contradicts the previously described provision. It states that in meetings between lawyers and those convicted of crimes within the scope of Article 220 and Book 2, Part 4, Sections 4, 5, 6 and 7 of the Turkish Criminal Code and the Anti-Terror Law, documents and files the lawyer declares to be pertinent to the defence as well as handwritten notes taken by the lawyer during the meeting can be searched.

These two provisions contradict the essence of the right of defence and the confidentiality of the lawyer-client relationship laid down in international human rights jurisprudence.⁵⁴ Twenty Bar Associations applied to the Council of State for the suspension of the regulation.⁵⁵ There has been no development with regards to the objection at the time of this report's publication.

⁵³ Regulation on the Management of Penal Institutions and the Execution of Sentences and Security Measures (29.03.2020); <https://www.mevzuat.gov.tr/MevzuatMetin/21.5.2324.pdf>

⁵⁴ See for example European Court of Human Rights, *S. v. Switzerland*, App. Nos. 12629/87 13965/88 (Judgment of 28 November 1991) paragraph 48; and *Campbell v. the United Kingdom*, App. No. 13590/88 (Judgment of 25 March 1992), paragraph 46. 12 *Mariya Alekhina and others v. Russia*, App. No. 3804/12 (Judgment of 17 July 2018), para. 168

⁵⁵ 20 baro, avukatın savunmaya ilişkin belgelerinin fiziki olarak aranmasını sağlayan yönetmelik için iptal başvurusu yaptı (*Bursa Bar Association*); <https://www.bursabarosu.org.tr/gundem-haberler-20-baro-avukatın-savunmaya-iliskin-belgelerinin-fiziki-olarak-aranmasını-saglayan-yonetmelik-icin-iptal-basvurusu-yapti.html>

STATE OF EMERGENCY MEASURES

More than 50 thousand people were arrested subsequent to the 2016 coup attempt. Although there are no exact figures about the number of lawyers; one study states that 1500 lawyers were tried; 605 were arrested and 441 were convicted.⁵⁶ Those arrested were also restricted in their right of defence. Their right of confidential access to a lawyer was restricted since these meetings were accompanied by government officials. Moreover, all of the lawyers' meetings with their clients were recorded. Consequently, investigations were opened against lawyers as a result of to these meetings.

On November 11, 2017, the Turkish Bars Association (TBB) organised a conference on the "Restriction of Lawyers' Defence Rights in Investigations and Prosecutions under the State of Emergency." At the conference, which was attended by 121 lawyers from 70 bar associations, the unlawful occurrences in the process from custody to arrest during the State of Emergency, and the rights violations against the lawyers themselves and their relationship with their clients were summarised in 25 points.⁵⁷

Below are some of the prominent issues identified by the lawyers:

■ During investigations, spaces were searched without search warrants, which were obtained post factum. Moreover, lawyers' objections during searches either did not enter the record or there was unwillingness to record them. Lawyers were also prevented from contacting prosecutors, or there were attempts to do so;

■ The existing legislation was not abided by during searches against lawyers.

⁵⁶ Mass Prosecution of Lawyers in Turkey (August 2020; *The Arrested Lawyers Initiative*): <https://arrestedlawyers.files.wordpress.com/2020/07/mass-prosecution-of-lawyers-in-turkey-aug-2020.pdf>

⁵⁷ OHAL Sapsamındaki Soruşturma ve Kovuşturmalarda Avukatların Savunma Haklarının Kısıtlanması Konulu Arama Konferansı Sonuç Raporu (11.11.2017; *Turkish Bars Association*): http://d.barobirligi.org.tr/2017/20171127_ohalsonucraporu.pdf

Belongings of lawyers not related to the investigation were seized. Moreover, images from their digital equipment were not captured, but instead the devices themselves were confiscated. All this evidence obtained unlawfully were used in indictments, arrest warrants and sentences;

■ Accusations were not stated in detail at the time of being detained by the police, even when lawyers reminded law enforcement officers that this is their right;

■ Lawyers were often prevented from seeing their clients, and faced various excuses and difficulties when trying to access their clients in custody and prison;

■ Restrictions were imposed on files, and lawyers had to present a defence without knowing the evidence used against their clients;

■ Files that were restricted to lawyers were accessible to the press; and

■ Arrest warrants were routinized.

Allegations of torture and ill-treatment during the interrogations of both lawyers themselves and their clients were ignored and testimonies were prevented in some courts. These mostly arbitrary treatments identified by bar associations aggravate the problems for the lawyers while they are merely executing their professional duties. This situation mainly emerged with the State of Emergency conditions.

The Ankara March of the Heads of Bar Associations protesting the changes in the law about Bar Associations. July 29th 2020 (Fotograph: Sibel Tekin Archive)



ARBITRARY PRACTICES

Arbitrary decisions and practices constitute another dimension of the illegal repressions against lawyers. For example, the Ministry of Justice, disregarding the presumption of innocence, stopped granting licenses to



practice law to trainee lawyers who are subject to criminal prosecution.⁵⁸ This was an attempt to disable lawyers through arbitrary practices of judges and law enforcement agents. A selection of complaints recorded by Lawyers' Rights Centres of various bar associations in Turkey from several weeks in early months of 2019 serve as examples of these arbitrary practices:

■ "Following the filing of a criminal complaint by the Van 2nd High Criminal Court against lawyer Harika Günay Karataş Kurt due to the defence she submitted in a file at the court, and after an indictment was prepared in absence of an investigation permit, charging her with 'making propaganda for a terrorist organisation,' the first hearing was conducted by the Van 2nd High Criminal Court on January 18, 2019, and the hearing was postponed to a later date."

■ "On February 8, 2019, a disciplinary investigation was launched by the Istanbul Bar Association against Selahattin Demirtaş's lawyer Ramazan Demir at the request of the Ministry of Justice. A colleague requested that the Lawyers'

⁵⁸ For a comprehensive review regarding the individuals who are not admitted to the profession see: Lawyers Without Licenses - Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession (August 2020; Tahir Elçi Foundation): [https://www.tahirelcivakfi.org/storage/files/ae36e3a1-90bd-44bf-8817-08321ade8533/Ruhsatsız-Avukatlar---INGILIZCE-\(1\).pdf](https://www.tahirelcivakfi.org/storage/files/ae36e3a1-90bd-44bf-8817-08321ade8533/Ruhsatsız-Avukatlar---INGILIZCE-(1).pdf)

Rights Centre followed up on the complaint that she was to file with the Council of Judges and Prosecutors (HSK) on the grounds that her right of defence was prevented and her reputation damaged in front of her colleagues and her client after she had been rudely denied from asking questions to the witness by the court judge at the İzmir 10th Family Court on March 7, 2019 and also met with refusal with respect to including this incident in the trial record."

■ "A criminal complaint was lodged by the Ankara Bar Association about a colleague, who had been taken into custody by the Ankara Police Anti-Smuggling and Organised Crime Department on March 10, 2019. The complaint stated that he had been tortured and ill-treated while in custody."

■ "On March 11, 2019, our colleague who was waiting for the interrogation of his client at the Ankara 1st Criminal Court of Peace was battered by the police and taken to the hospital after having sustained injuries.⁵⁹ On the same day, the request of our colleague to examine the documents regarding his client and to see the latter was arbitrarily rejected at the Ankara Police Department Narcotics Branch. The incident was recorded by the Lawyers' Rights Centre."

■ "On March 12, 2019, a colleague was threatened and insulted by an officer at the Ankara Chief Public Prosecutor's Office Attorney and Notary Crimes Investigation Bureau. The incident was recorded by the Lawyers' Rights Centre."

■ "On March 12, 2019, the Lawyers' Rights Centre observed and took the minutes of a hearing after a colleague had lodged a complaint about the fact that the judges of the Istanbul 28th and 33rd Assize Courts obstructed the defence and violated the right to a fair trial."

■ "On March 14, 2019, the Lawyers' Rights Centre provided legal assistance in the case of a lawyer who had been among the passengers of an intercity bus that was stopped for a general check by the police at the toll booths in Kurtköy, Istanbul, and who was taken into custody at the police checkpoint after he had stated that he refused to be subjected to a criminal record check."

⁵⁹ This is not the only incident where lawyers were harassed or ill-treated. Lawyer Zeycan Balci, participating in a press statement in the Çağlayan Court House, became disabled after a police attack against lawyers on March 30, 2016 when she was injured. Some presidents of the bar associations were attacked and battered during their march to protest the new Law on Lawyers in Ankara, on June 22, 2020.

■ "On March 14, 2019, a colleague attended a hearing at the Van 6th Assize Court with his authorization certificate instead of the court-appointed lawyer, but his authorization certificate was not accepted and he was expelled from the courtroom by law enforcement agents. The incident was recorded by the Lawyers' Rights Centre."

■ "On March 14, 2019, a colleague was subjected to verbal insults and threats of police officers at the Ankara Police Department Demirfirka Police Station and the incident was recorded by the Lawyers' Rights Centre."

■ "On March 22, 2019, our colleagues' requests to review the files of their clients at the Anti-Terror Branch Office in Diyarbakır were rejected, although there was no confidentiality order [in the investigation]. As a result of the efforts of the Lawyers' Rights Centre, the problem could only be solved temporarily. Similarly, some judges did not allow for files to be examined during the hearing, which was included in the trial records. At its meeting on March 27, 2019, the Board of Directors of the Bar Association decided to hold a convene with the Justice Commission and the Office of the Chief Prosecutor to discuss this issue. Although the situation remained stable for a while after these meetings, comparable arbitrary practices by some court judges resumed and lawyers continue to frequently see their professional activities obstructed as they are not allowed to examine files in the courtroom or at the police station, and to meet their clients."

■ "On March 22, 2019 22.03.2019, a warrant for custody was issued on behalf of 106 lawyers across the country, who were taken into custody after their residences and offices were searched. Within the scope of this investigation, many of our colleagues who were continuing their professional activities were arrested. Since a confidentiality order has been imposed on the investigation file, the nature of the file is yet unknown. However, this situation causes other lawyers to be anxious while practicing their profession."⁶⁰

⁶⁰ During the preparation of this report, 47 lawyers were arrested after home raids on September 11, 2020, in a similar manner. Such mass operations targeting lawyers show that identifying lawyers with their clients and accusing them of terrorism allegations is an accustomed tactic in regard to the destruction of the right to a fair trial, and the right to a legal defense. [Turkey: Lawyers Arrested in Terror Probe - Abusive Mass Arrests Damage Rule of Law, Expose Detainees to Covid-19 Risk (16.09.2020; *Human Rights Watch*): <https://www.hrw.org/news/2020/09/16/turkey-lawyers-arrested-terror-probe>]

■ “On March 25, 2019, one of our colleagues wanted to have his requests signed by the bailiff at Diyarbakır Bailiff’s Office, but the bailiff arbitrarily rejected this request and insulted our colleague after the ensuing quarrel. After this incident, the Lawyers’ Rights Centre intervened in the incident and as a result of the Centre’s attempts, the executive director signed the said requests, but the situation was recorded anyway to prevent arbitrary treatment of our colleague in the future.”

■ “On March 25, 2019, a colleague reacted to being continuously interrupted and prevented from exercising his right of defence effectively at the Diyarbakır 4th Civil Court of First Instance. In response, the court judge arbitrarily declared that he ended the hearing and tried to have our colleague forcefully removed from the courtroom. On March 26, 2019, the judge prepared a trial record that did not reflect the truth, and after having it signed by the bailiff and clerk working under his order, he sent this record to the Bar Association in order for action to be taken against our colleague. However, because other colleagues had witnessed the incident, an Additional Record was prepared by the same judge on March 27, 2019, where it was stated that the judge, bailiff or clerk had not engaged in any threats, insults, swearing or similar actions against our colleague.”

■ “On April 2, 2019, the Van T Type Prison administration requested to restrict the visits of a lawyer on the grounds that organisational communication and orders were allegedly delivered to a prisoner on hunger strike via the lawyer. The request was accepted by the Van 4th Assize Court despite a lack of concrete evidence. While the decision on the ongoing file violated the presumption of innocence, the lawyer was at the same time identified with the file and the crime, although there was not even an investigation launched against her. This decision reveals the judiciary’s attitude towards lawyers and the defence.”

PURGES AND APPOINTMENTS IN THE JUDICIARY

As mentioned above, the Gülen Movement’s influence on the judiciary had been a constant topic of debate before the 2016 coup attempt. These allegations were voiced loudly in the Ergenekon, Sledgehammer (*Balyoz*) and OdaTV⁶¹ trials among others. After the coup attempt, a major purge took place in the judicial bureaucracy. During the State of Emergency, thousands of judges and prosecutors, who were allegedly linked with the Gülen Movement, were dismissed from the judiciary. A number of these judges and prosecutors were arrested. Prosecutors like Zekeriya Öz,⁶² who had once been held in high regard, fled abroad.⁶³

According to the “Situation Report – State of Emergency” prepared by the Human Rights Joint Platform (*İnsan Hakları Ortak Platformu - İHOP*), as of March 2018, the number of dismissed judges and prosecutors on the grounds of allegedly being Gülenists was 4,133.⁶⁴ This means that approximately 30 per cent of the judiciary was liquidated. The purges continued after the State of Emergency was lifted. A large number of new judges and prosecutors were recruited to fill the vacuum that emerged after this massive purge.

⁶¹ In the OdaTV Trial, 14 journalists and authors were detained in 2011 with the accusation of “supporting the Ergenekon organization through media.” They were kept in prison for different periods. Eventually, all defendants were acquitted at the last hearing that was held in April 2017 [Turkey: acquittal in OdaTV case welcome but scores of journalists still detained (12.04.2017; *PEN International*): <https://pen-international.org/es/noticias/turkey-acquittal-in-odatv-case-welcome-but-scores-of-journalists-still-detained>]

⁶² Zekeriya Öz is a well known prosecutor who conducted the investigations against the Ergenekon Organization and the corruption investigation of 2013 against the government. He was dismissed by the High Council of Judges and Prosecutors in May 2015 and fled abroad after a coup attempt in July 2016 [Zekeriya Öz yurtdışına kaçtı! (11.08.2015; *Sözcü*): <https://www.sozcu.com.tr/2015/gundem/zekeriya-oz-yurtdisina-kacti-906253/>].

⁶³ In the course of this “purge,” tens of thousands of people were irrevocably removed from the judicial bureaucracy, academia, schools and various state offices. The term “civil death” was used to describe the situation of these people who were stripped of their pension rights and whose accounts were in part blocked and sequestered.

⁶⁴ 21 July 2016 – 20 March 2018 State of Emergency in Turkey – Updated Situation Report (17.04.2018; *Human Rights Joint Platform*): http://www.ihop.org.tr/wp-content/uploads/2018/04/SoE_17042018.pdf

The opposition and bar associations frequently claimed that the newly appointed judges and prosecutors were not adequately trained and that their professional competencies were questionable. The employment of judges and prosecutors, based not on competence but rather their affiliations with the governing party, was criticised by many politicians and related civil society actors also emphasizing the danger this poses to fair trials.⁶⁵ The most serious allegation was that some of the newly appointed judges and prosecutors were drawn from the cadres of the AKP. The leading opposition party Republican People's Party (CHP) applied to the judiciary for the annulment of the employments.⁶⁶

Bariş Yarkadaş, a journalist and at the time the CHP Istanbul deputy, published a list of those who were appointed as judges and prosecutors while actively working in the AKP.⁶⁷ He noted that they had been disproportionately appointed to the most important cities, namely Ankara and Istanbul. According to Yarkadaş, this violated the impartiality of the newly appointed judges. Claiming that the newly appointed judges passed the exam after only a 45 second-interview, Yarkadaş remarked, "*The judiciary and the justice institutions have never seen such great damage. First, they lifted the 70-points threshold so that the AKP's lawyers could pass the written exam, because many of them had previously failed to achieve the 70 points required to become a judge or prosecutor. Candidates who achieved 92 points in the exam were eliminated at the interview stage. However, those who had received 60-65 points successfully passed the interviews, which lasted only 45 seconds. Those who could show references from the AKP were appointed as judges and prosecutors. Can we expect justice from such injustice? These judges and prosecutors cannot become members of a fair court, but merely of an 'AKP court.'*"⁶⁸

⁶⁵ Ankara'nın yargı reformu hazırlıklarına eleştirisi (07.11.2018; *Deutsche Welle*): <https://www.dw.com/tr/ankaranin-yargi-reformu-hazirlıklarına-eleştirisi/a-46178560>

⁶⁶ CHP'li Tanal'dan hakimlik mülakatı için iptal başvurusu (28.04.2017; *Hürriyet*): <https://www.hurriyet.com.tr/chpli-tanaldan-hakimlik-mulakati-icin-iptal-b-40441159>

⁶⁷ *Ibid.*

⁶⁸ AKP'nin yargı teşkilatı (21.03.2018; *Birgün*): <https://www.birgun.net/haber/akp-nin-yargi-teskilati-208799>

This novel state of the judiciary has been a constant cause of complaint, especially by lawyers representing the defence. The allegation of politicising the judiciary in favour of the governing parties serves as a basis for the debates on judicial independence. While hundreds of journalists and ordinary citizens were investigated and convicted for insulting the President and government officials because of their news articles or Tweets, insults and threats against the government critics were considered protected under freedom of speech. One example is the case of Sedat Peker, known as a mafia leader who threatened Academics for Peace with "we will shed your blood and take shower in your blood," for which he was acquitted.⁶⁹

⁶⁹ Sedat Peker Acquitted of Trial of Threatening Academics (16.07.2018; *Bianet*): <https://bianet.org/english/law/199221-sedat-peker-acquitted-of-trial-of-threatening-academics>

THE OPERATION AGAINST THE LAW BUREAU OF THE OPPRESSED

In an operation mounted on October 19, 2017, two lawyers of the Law Bureau of the Oppressed (*Ezilenlerin Hukuk Bürosu*), Sezin Uçar and Özlem Gümüştaş, and a large number of other persons, including journalists and politicians, were taken into custody and arrested.⁷⁰ In addition to the two arrested lawyers, two additional lawyers, Gülhan Kaya and Ali Haydar Doğan, who were not arrested, were also tried. The trial began in July 2018. At the first hearing, it was decided to continue the pre-trial detention of Uçar and Gümüştaş. They were released after a total of one year in pre-trial detention.⁷¹

In the case, the actions taken by the lawyers on behalf of their clients within the scope of their professional activities and press releases they attended

⁷⁰ 'Bureaus Raided, Although Attorneys Voluntarily Suggested to Give Deposition' (19.10.2017; *Bianet*): <https://bianet.org/english/print/190765-bureaus-raided-although-attorneys-voluntarily-suggested-to-give-deposition>

⁷¹ 2 Lawyers from Law Bureau Of Oppressed Released (05.10.2018; *Bianet*): <https://m.bianet.org/english/law/201426-2-lawyers-from-law-bureau-of-oppressed-released>



Lawyer Sezin Uçar.
(Capshot from
"Shrinking Civic Space
2: Right to Defence"
video, by Fatih Pınar)

were considered as evidence for "membership to a terrorist organisation" and "making propaganda for a terrorist organisation."⁷²

When Gümüştaş and Uçar had learned about the investigation they applied to the prosecutor conducting the investigation to give a statement. Although they applied themselves to give a statement, they were arrested on suspicion that there was a risk of fleeing and hampering evidence.⁷³ One year later, they were released on the grounds that there was no such suspicion. This is still an ongoing trial.⁷⁴

⁷² L4L and FTW in Istanbul for hearing Ezilenlerin Hukuk Bürosu (22.07.2018; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/l4l-and-ftw-in-istanbul-for-hearing-ezilenlerin-hukuk-buros/>

⁷³ 'Bureaus Raided, Although Attorneys Voluntarily Suggested to Give Deposition' (19.10.2017; *Bianet*): <https://bianet.org/english/politics/190765-bureaus-raided-although-attorneys-voluntarily-suggested-to-give-deposition>

⁷⁴ Istanbul 27. Assize Court, File No. 2018/19 E.



**"THAT HE TRIED TO
JUSTIFY HIS CLIENT..."**

Nadide Özdemir and Ömer Kavili were the lawyers in the *Grup Yorum*⁷⁵ trial held in the Istanbul 28th Assize Court in Silivri on October 5, 2018. A dispute broke out between Kavili and the presiding judge regarding the procedure of the hearing. After the discussion, the presiding judge ruled to have Kavili dismissed from the courtroom.⁷⁶ When Kavili reacted to this decision, he was forcibly removed from the courtroom.

Özdemir wanted to record the forceful removal of Kavili with her phone. Thereupon, the presiding judge ordered that Özdemir's phone be seized. When the trial resumed, the presiding judge filed a criminal complaint against Özdemir and Kavili. The next day, Kavili and Özdemir,⁷⁷ who were on their way to the court in Silivri again, were taken into custody by the gendarmerie. The Criminal Judgeship of Peace issued a decision for the arrest of Kavili. This decision included the following statement:

"In consideration that the aim of suspect Ömer Kavili was not to exercise the holy right of defence but, on the contrary, to justify his client and himself by presenting himself and his client as victims in an act of reverse psychology, that the suspect used his actions to try to dilute the case in which he acted as defender, and that, in light of all these actions, the suspect's aim was to discredit the judiciary and the courts in the eyes of the public, in fact, to shake public trust in these institutions, that the actions of the suspect were newsworthy and caused indignation in the society, that the evidence had not yet been gathered, and that there was a possibility that the suspect could escape or hamper the evidence, it was decided that the suspect be arrested for the imputed crime."

⁷⁵ Grup Yorum is a band from Turkey known for its political songwriting.

⁷⁶ Justice Monitoring Report: Freedom of Expression Trials in Turkey June – December 2018 (*Media and Law Studies Association; Für die Freiheit; International Press Institute*) p. 12: https://freeturkeyjournalists.ipi.media/wp-content/uploads/2019/01/MLSA_IPI_Trials_Turkey_Jan2019.pdf

⁷⁷ Avukat Ömer Kavili tutuklandı (05.10.2018; *Gazete Duvar*): <https://www.gazeteduvar.com.tr/gundem/2018/10/05/grup-yorum-davasini-izleyen-iki-avukat-gozaltina-alindi>

Lawyers reacted to this decision. The Lawyers for Democracy (*Demokrasi İçin Hukukçular*) made a statement entitled “The legal profession as a whole is in danger.”⁷⁸ President of the TBB Metin Feyzioğlu also protested the decision with a number of Tweets.⁷⁹ Lawyer Kavili was released a day later. The lawsuit against him is ongoing.

⁷⁸ *Ibid.*

⁷⁹ See: (05.10.2018; Metin Feyzioğlu): <https://twitter.com/metinfeyzioglu/status/1048293158382194689> ; (05.10.2018; Metin Feyzioğlu): <https://twitter.com/metinfeyzioglu/status/1048312529842257920>

THE SECOND LAWSUIT AGAINST ÇHD-HHB

The repressions against lawyers increased exponentially during the State of Emergency. After the action in 2013 (see page 9), on September 12, 2017, another operation was carried out against The Progressive Lawyers' Association (ÇHD) and Peoples' Law Bureau (HHB). Seventeen lawyers and two trainee lawyers were taken into custody after their homes and offices were raided.⁸⁰ After 8 days in custody, 15 lawyers were arrested.⁸¹

At a rally on November 3, 2017, President Erdoğan stated that, “Unfortunately, the extreme left provokes families by taking advantage of them. They are playing them false. We know very well who they are. Our martyrs' families have to throw a wrench into their games.”⁸² Allegedly, with these words, President Erdoğan was targeting the lawyers— including ÇHD Chairman Selçuk Kozağaçlı— of the families of those who lost their lives in the Soma mining disaster.⁸³

⁸⁰ Lawyers from the Contemporary Lawyers' Association (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association/>

⁸¹ *Ibid.*

⁸² Erdoğan'dan Soma'da şehit olan madencilerin ailelerine müjde (03.11.2017; *Sabah*): <https://www.sabah.com.tr/ekonomi/2017/11/03/erdogandan-somada-sehit-olan-madencilerin-ailelerine-mujde>

⁸³ On May 13, 2014, an explosion occurred in the Eynez coal mine in the Turkish town of Soma, causing an underground fire

Five days after President Erdoğan's statement, Kozağaçlı was taken into custody. He was arrested on November 13, 2017.⁸⁴

Approximately one month later, with the arrest of lawyer Yaprak Türkmen, the number of detained lawyers increased to 17. On March 22, 2018, a lawsuit was filed against 20 lawyers, 17 of whom were under arrest. In the indictment, the lawyers were accused of being “members of an illegal organisation” based on the statement of one single witness and the prosecution was requesting long prison sentences.⁸⁵

The lawyers were brought before the judge between September 10 and 14, 2018— a year after their initial arrest. In the first hearing, held in the Bakırköy Courthouse, 17 detained lawyers were beaten by the gendarmerie in front of the panel of judges, their clothes were torn and they were handcuffed inside the courtroom.⁸⁶ On the fifth day, the panel of judges ruled that the trial would be moved to the courtroom adjacent to the Silivri Prison. More than 300 lawyers attended the hearings that lasted five days.

On the last day, the panel of judges ordered the release of all detained defendants.⁸⁷ The decision was announced around 10:00 PM on September 14, 2018. The 9 lawyers held in the Silivri Prison were released at 6:30 AM the next day; the 8 lawyers held in the Bakırköy Prison at 4:30 AM.

On September 15, 2018, upon the objection of the prosecutor against the decision to release the defendants, the panel of judges convened on Saturday evening, and unanimously decided to re-arrest 12 of the lawyers they had unanimously decided to release the day before.⁸⁸

which killed 301 mineworkers, thus making it the worst mine disaster in the history of Turkey.

⁸⁴ Lawyers from Contemporary Lawyers' Association (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association/>

⁸⁵ *Ibid.*

⁸⁶ ÇHD duruşmasında arbede: Avukatlar tekmelendi (10.09.2018; *Cumhuriyet*): <https://www.cumhuriyet.com.tr/haber/chd-durusmasinda-arbede-avukatlar-tekmelendi-1078879>

⁸⁷ Lawyers from Contemporary Lawyers' Association (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association/>

⁸⁸ *Ibid.*

Lawyers Aycan Çiçek, Aytaç Ünsal, Engin Gökoğlu and Behiç Aşçı were taken into custody by the Anti-Terror police on the street in front of the Istanbul Bar Association where a celebration, dedicated to their release, was planned to take place. On the same day, lawyer Ahmet Mandacı, who was returning home from a visit to his family, was taken into custody in Çanakkale.

The lawyers were once again arrested by the court before which they appeared on September 16, 2018.⁸⁹ ÇHD Chairman Selçuk Kozağaçlı, who was considered a fugitive, came to the court on his own initiative and was arrested.⁹⁰ At the hearing on March 20, 2019, the panel of judges did not allow defence lawyers into the courtroom. The judgment was announced in the courtroom in the absence of the defendants, who were protesting the situation. The lawyers were sentenced to a prison sentence of a total of more than 159 years.⁹¹ The decision was approved by the Court of Cassation with a large majority in September 2020, and the case was transferred to the Constitutional Court on October 5, 2020.⁹²

⁸⁹ *Ibid.*

⁹⁰ For a more detailed account of the process, please refer to lawyer Tora Pekin's article entitled "Akababanın Üç Günü [Three Days of the Condor]" published in the hardcopy issue Fall 2018 issue of *Express* magazine.

⁹¹ The prison sentences of the lawyers are as follows: Barkın Timtik: 18 years 9 months; Özgür Yılmaz: 13 years and 6 months; Ebru Timtik: 13 years and 6 months; Behiç Aşçı: 12 years; Şükriye Erden: 12 years; Selçuk Kozağaçlı: 10 years and 15 months; Engin Gökoğlu: 10 years and 6 months; Aytaç Ünsal: 10 years and 6 months; Süleyman Gökten: 10 years and 6 months; Aycan Çiçek: 9 years; Naciye Demir: 9 years; Ezgi Çakır: 7 years and 12 months; Yağmur Ereren: 3 years 9 months; Yaprak Türkmen: 3 years 9 months; Didem Baydar Ünsal: 3 years 9 months; Ayşegül Çağatay: 3 years 9 months; Zehra Özdemir: 2 years 13 months; and Ahmet Mandacı: 2 years and 13 months [Lawyers from Contemporary Lawyers' Association (Sessizkalma): <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association/>]; Turkish Bar statement [Adil Yargılanma Hakkı Noktasında çok Ciddi İhlal Tespitlerimiz Vardır (21.03.2019; *Union of Turkish Bar Associations*): <https://www.barobirlik.org.tr/Haberler/adil-yargilanma-hakki-noktasinda-cok-ciddi-ihlal-tespitlerimiz-vardir-80551>]; Statements by bar associations after the verdict in Turkish [Dün, İstanbul 37. Ağır Ceza Mahkemesi Tarafından, 18 Meslektaşımız Hakkında, 3 Yıl (*Ankara Bar Association*): http://www.ankarabarosu.org.tr/HaberDuyuru.aspx?DUN_ISTANBUL_37_AGIR_CEZA_MAHKEMESI_TARAFINDAN_18_MESLEKTASIMIZ_HAKKINDA_3_YIL_DOKUZ_AYDAN_18_YIL_DOKUZ_AYA_KADAR_VARAN_HAPIS_CEZALARI_VERILMIS_IKI_MESLEKTASIMIZ_HAKKINDAKI_DOSYA_ISE_TEFRIK_EDILMISTIR&=2677]

⁹² Lawyers from Contemporary Lawyers' Association (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/contemporary-lawyers-association/>

THE LAWYERS' RESISTANCE

Lawyers responded to these practices and the trials they were involved in, with collective protests – some related to specific cases and others as a general resistance against increasing rights violations. The following section will reflect on the movements that have come to existence as a result.

The most well-known of these protests, "The Justice Watch" (*Adalet Nöbeti*), established ground for a long-standing and a wide-spread movement throughout the whole country.

THE JUSTICE WATCH

On October 31, 2016, an operation was carried out against the newspaper *Cumhuriyet*.⁹³ As a result of the operation that continued in the following days, 11 executives and employees of the newspaper were arrested. Among those arrested were lawyer and *Cumhuriyet* Foundation Chief Executive Officer Akın Atalay, and the newspaper's lawyers, as well as the foundation's executive and advisory board members Bülent Utku and Mustafa Kemal Güngör. In the following days, the protests for the freedom of these lawyers turned into a periodic action called "The Justice Watch." Many lawyers marched from the Çağlayan Courthouse to the building of the *Cumhuriyet* newspaper to protest the arrests.

Lawyer Kemal Aytaç suggested holding a "Justice Watch" at the courthouse in order to raise greater awareness among the general public.⁹⁴ His proposal came to life as a result of the support of the companions of those arrested in the context of the *Cumhuriyet* Trial.

The first Watch was held on April 6, 2017 in front of the Çağlayan Courthouse. Lawyers started to gather at noon in front of the statue of Themis— a symbol of

⁹³ Turkey detains editor and staff at opposition *Cumhuriyet* newspaper (31.10.2016, *The Guardian*): <https://www.theguardian.com/world/2016/oct/31/turkey-detains-editor-and-staff-at-opposition-cumhuriyet-newspaper>

⁹⁴ Kemal Aytaç (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/kemal-aytac-2/>



justice. In their hands, they held photographs of detained lawyers Atalay, Utku and Güngör and placards that read “The Defence Cannot be Arrested.”

The police that filled the courthouse on that day forcefully expelled the lawyers from the courthouse. Lawyers were dragged across the ground and many of them were injured due to the excessive force used by the police. Lawyer Gökmen Yeşil's nose and lawyer Erkan Ünüvar's ankle broke. The violence against lawyers in the courthouse provoked great reactions among all who were attending the hearing in solidarity with the tried lawyers, including lawyers, deputies who supported the protests, and members of the general public as well.⁹⁵ Nine lawyers were taken into custody and were released on the same day.⁹⁶

Following the first Watch, lawyers gathered again the following Thursday at noon in front of the Themis statue. The protest started this way and continued for 87 weeks. After their silent protests, lawyers, who gathered with the photographs of their detained colleagues, would issue press statements in front of the courthouse. Attempts to prevent the Watch sometimes gave rise to funny situations. When the lawyers arrived in front of the Themis statue for the 28th Watch, they saw that the area was closed because it was being cleaned. Lawyers picked up mops, cleaned the area themselves and continued the Watch. In its further course, the Watch that had started in solidarity with the arrested lawyers of the *Cumhuriyet* evolved into one that addressed pressure against lawyers more generally.

After the first 87 weeks, the Justice Watches started to be held once a month in a different city, rotating among 12 cities. The protests were suspended in March 2020 due to the Covid-19 outbreak. During the pandemic, the “Justice Watchers” once gathered online, where they were joined by the presidents of 21 Bar Associations.⁹⁷ Suspension of physical gatherings were still in place at the writing of this report.

⁹⁵ Day of shame at the judicial complex: Violent police intervention (07.04.2017; *Cumhuriyet*): <https://www.cumhuriyet.com.tr/haber/day-of-shame-at-the-judicial-complex-violent-police-intervention-715706>

⁹⁶ The Governorship of Istanbul filed a criminal complaint against these 9 lawyers, claiming that 8 police officers had been injured during the intervention. The lawyers were tried and eventually acquitted.

⁹⁷ On April 24, 2020, the Justice Watch was broadcasted online [Bir kez daha “Adalet” demek için. Baro Başkanlarının Katılımıyla #AdaletNöbeti (24.04.2020; *Adalet Nöbeti*): <https://www.youtube.com/watch?v=fbX8NxyVSY0>]



The 56th Justice Watch. Lawyer Akin Atalay, Chairperson of the Cumhuriyet Executive Board a day after he was released from prison.

An investigation was launched against Aytaç as a result of the Justice Watch. He was acquitted on November 10, 2020.⁹⁸

The Justice Watch not only became a voice for detained lawyers but also for different groups seeking justice in Turkey. The Justice Watch also supported the Saturday Mothers,⁹⁹ who used to gather at Galatasaray Square in Istanbul at noon every Saturday to demand information about the fate of, and commemorate the victims of enforced disappearances. Since the Saturday Mother's 700th week of protest, in August 2018, they had been facing obstacles and been banned from gathering. The Watch also amplified the voices of Academics for Peace.¹⁰⁰

Similarly, the Justice Watch supported the Central Council of the Turkish Medical Association (*Türk Tabipler Birliği* - TTB), who called for peace by issuing

⁹⁸ Kemal Aytaç (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/kemal-aytac-2/>

⁹⁹ Saturday Mothers/People (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/saturday-mothers-people/>

¹⁰⁰ Academics for Peace (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/academics-for-peace/>

a statement entitled “War is a public health problem”¹⁰¹ in response to the Afrin operation launched on January 20, 2018. The doctors who signed the declaration were immediately taken into custody.¹⁰² This was protested on the 44th week of the Justice Watch, where the declaration of the TTB was read out aloud. For this reason, Aytaç’s house was raided in order to take him into custody. Aytaç, who was not at home at the time of the raid, later went to the prosecutor and gave his statement.

The Justice Watch also inspired action in wider society. On June 14, 2017, CHP MP Enis Berberoğlu was arrested and sentenced to 22 years in prison in the context of the so-called “MIT truck trials.”¹⁰³ In response to the arrest of the CHP MP, CHP Chairman Kılıçdaroğlu started a March for Justice from Güvenpark, Ankara, on June 15, 2017. The March, supported by various groups, had up to 20 thousand participants, and ended with a rally held in Maltepe, Istanbul, on July 9, 2017, where 500,000 to 1 million people gathered.¹⁰⁴ CHP Group Deputy Chairperson Özgür Özel attended the 52nd week of the Justice Watch and in his speech he stated, “*One of the inspirations of the March for Justice is Ghandi’s ‘Salt March.’ One of the sources of inspiration for the name of the March was the Justice Watch. Here, our act of resistance fills our hearts with a spirit of resistance and solidarity.*”¹⁰⁵

¹⁰¹ War is a public health problem! (24.01.2018; *Turkish Medical Association*): https://www.ttb.org.tr/haber_goster_eng.php?Guid=28de85da-00e5-11e8-a05f-429c499923e4

¹⁰² Şeyhmus Gökalp (*Sessizkalma*): <https://www.sessizkalma.org/en/defender/seyhmus-gokalp-2/>

¹⁰³ Berberoğlu was accused of revealing information on several lorries allegedly belonging to the Turkish National Intelligence Service, which were transporting weapons to Syria [CHP MP Berberoğlu Arrested in MIT Trucks Case, Sentenced to 25 Years in Prison (14.06.2017; *Bianet*): <https://m.bianet.org/bianet/politics/187432-chp-mp-berberoglu-arrested-in-mit-trucks-case-sentenced-to-25-years-in-prison>]

¹⁰⁴ The distance is approximately 400 km.

¹⁰⁵ Adalet Nöbeti 1.yılında: Gazeteciler tutuklu oldukça hepimiz tutukluyuz (29.03.2018; *Cumhuriyet*) <https://www.cumhuriyet.com.tr/haber/adalet-nobeti-1yilinda-gazeteciler-tutuklu-oldukca-hepimiz-tutukluyuz-950525>

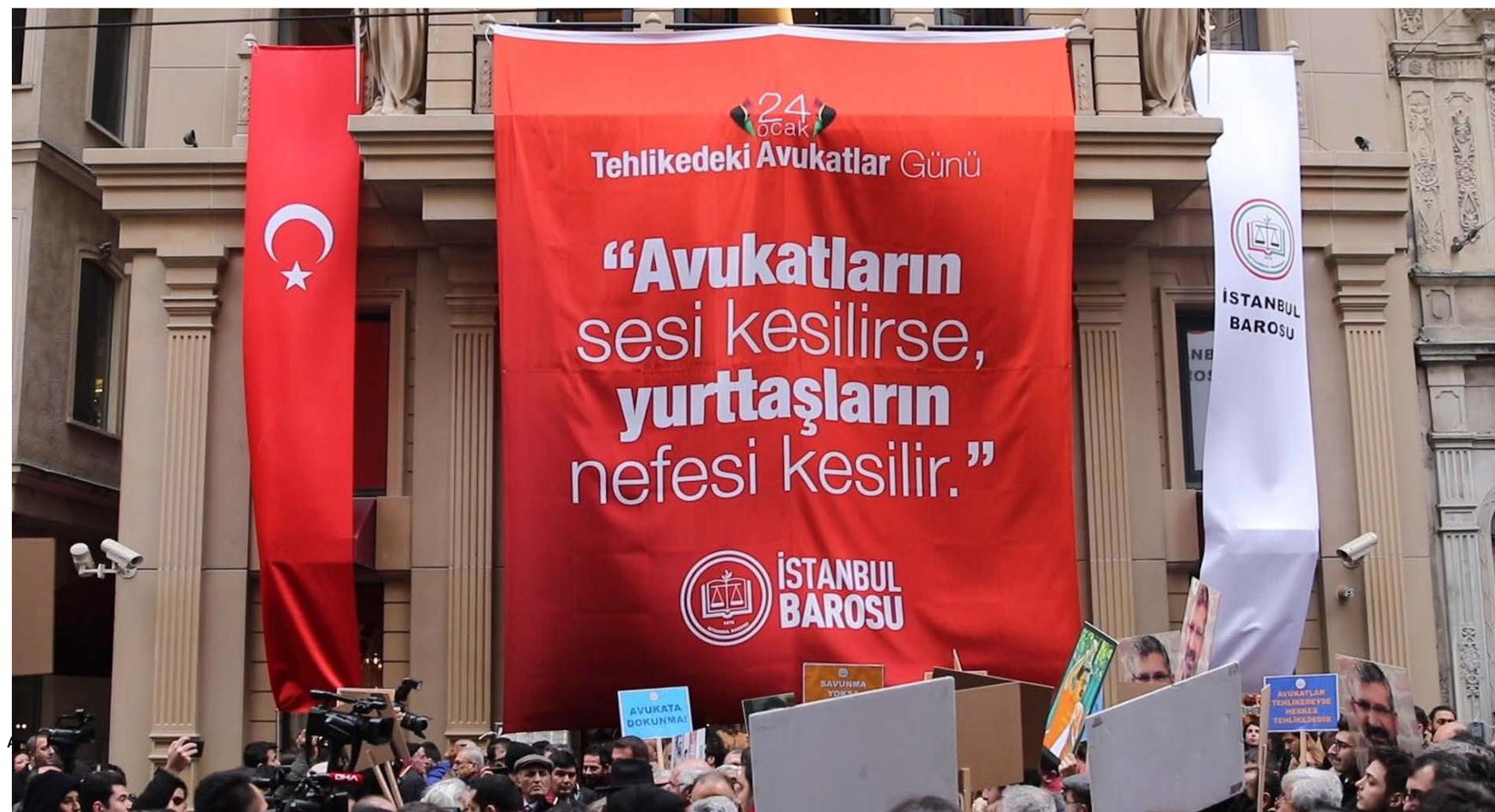
THE MARCH OF JANUARY 24

In addition to long-term initiatives such as the Justice Watch, lawyers also took to the streets many times demanding justice and democracy. In 2019, on the International Day of the Endangered Lawyer, the Istanbul Bar Association organised a march from Galatasaray Square to the Bar Association’s building in the Tünel area. The main slogan of the March was “*If Lawyers Lose Their Voice, Citizens Lose Their Breath.*”¹⁰⁶ Presidents of other cities’ bar associations also came in support of the March.

Addressing the lawyers at the end of the March from the balcony of the Istanbul Bar Association building, the President of the Association, Mehmet Durakoğlu, made the following statement, “*No other*

Lawyers in front of the Istanbul Bar Association on The Day of The Endangered Lawyer, January 24. (Capshot from “Shrinking Civic Space 2: Right to Defence” video, by Fatih Pınar)

¹⁰⁶ ‘If Lawyers Lose Their Voice, Citizens Lose Their Breath’ (25.01.2019; *Bianet*): <https://m.bianet.org/bianet/human-rights/204821-if-lawyers-lose-their-voice-citizens-lose-their-breath>





stage of the history of law in Turkey has meant such great danger for lawyers. We were already caught up in a painful trajectory but now we have become the primary target of the State of Emergency regime. In our resistance against the obliteration of the right to defence that is restricted by the emergency decrees, we were threatened, beaten, expelled from trials, arrested, and moreover, we have suffered the collective assassination of Tahir Elçi.¹⁰⁷

The Press statement on April 5th İstanbul, on İstiklal Street, İstanbul for the Day of lawyers. (Capshot from "Shrinking Civic Space 2: Right to Defence" video, by Fatih Pınar)

¹⁰⁷ 24 Ocak Tehlikedeki Avukatlar Günü (25.01.2019; *Istanbul Bar Association*): <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=14135&Desc=24-Ocak-Tehlikedeki-Avukatlar-G%C3%BCn%C3%BC>

THE DEMOCRACY WATCH

During the March 2019 local elections, the ruling party AKP lost several of its municipalities. The Peoples' Democratic Party (HDP) took back nearly all of the municipalities in which trustees had previously been appointed by the government. But the greatest shock for the government was the loss of



Ankara and İstanbul—big cities that it had ruled for many years. After an initial challenge, the votes were recounted in İstanbul, but even after the recount CHP candidate Ekrem İmamoğlu won the election. However, giving in to a high amount of pressure by the government, the Supreme Election Council decided that new elections should take place for the İstanbul Metropolitan Municipality. A trustee was appointed to replace İmamoğlu, despite having had already received his mandate.

49 bar associations made a joint statement claiming that the decision was unlawful.¹⁰⁸ One of the strongest reactions to the decision came from the İstanbul Bar Association. It said, "It's not the election but the decision to cancel it that is dubious."¹⁰⁹ İstanbul Bar Association President Mehmet Durakoğlu announced a six-point action plan for the renewed elections. The Bar Association, which had previously sent one lawyer to each polling station, announced that they would have one lawyer at each ballot box during the renewed election. In addition, the Cultural Centre of the Bar in Galata was allocated as the İstanbul Bar Association's Base for Election Law.¹¹⁰

Another decision they took was to gather daily and surveil the front of the İstanbul Bar Association's building on İstiklal Street. Gathering between 8:00 PM and 9:00PM every evening, the lawyers commenced their "Solidarity Watch for Democracy" (*Demokrasi İçin Dayanışma Nöbetleri*). The Watch was not only supported by lawyers but also by NGO representatives, intellectuals, artists and trade unionists. The Watch, which included small concerts in a festival-like atmosphere on İstiklal Street, was held until just before the re-election, which resulted in Ekrem İmamoğlu being elected a second time.

¹⁰⁸ 'A Black Mark in Our History of Democracy and Law' (09.05.2019; *Bianet*): <https://bianet.org/english/politics/208325-a-black-mark-in-our-history-of-democracy-and-law>

¹⁰⁹ *Ibid.*

¹¹⁰ Demokrasi Mücadelesi, İstanbul Barosu İçin Varlık nedenidir (07.05.2019; *Istanbul Bar Association*): <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=14559&Desc=Demokrasi-M%C3%BCcadelesi,-%C4%B0stanbul-Barosu-%C4%B0%C3%A7in-Varl%C4%B1k-nedenidir>

THE WATCH FOR TAHİR ELÇİ

Lawyers affiliated with the Diyarbakır Bar Association have been holding a “Justice Watch” since their president Tahir Elçi was murdered on November 28, 2015. The lawyers have been gathering in front of the Diyarbakır Courthouse every Friday at 1:30 PM to demand the perpetrators who killed Elçi to be found and brought to justice. Here, lawyers and representatives of various NGOs started to articulate the problems they faced. The Watch, which was supported by lawyers from other provinces from time to time, last took place on March 6, 2020, before being interrupted in its 218th week due to the outbreak of the Covid-19 pandemic. This makes it the second longest act of civil disobedience in Turkey following the Saturday Mothers’ weekly vigil.

The Justice Watch arranged in a different city monthly. On the 4th year Commemoration of Tahir Elçi’s murder in Diyarbakır organized by 18 Bar associations. November 29th 2019.

The Tahir Elçi Watch organized by Diyarbakır Bar association on June 28th 2018



THE ONE-PERSON WATCH

In response to the arrest of lawyers affiliated with the Progressive Lawyers’ Association (ÇHD) and Peoples’ Law Bureau (HHB) (see page 19), another watch for justice began in front of Çağlayan Courthouse. After the defendants of the case were released and then subsequently re-arrested on September 15, 2018, lawyer Didem Ünsal started a “Justice Watch” in front of the Çağlayan Courthouse. Ünsal is the wife of detained lawyer Aytaç Ünsal, and herself a defendant in the case for which she had been detained for a period of time.

Claiming that the trial was illegitimate, Ünsal protested every Thursday between 1:00 PM and 2:00 PM by herself in front of the courthouse, for which she was taken into custody then released several times. On February 3, 2020, detained lawyers Ebru Timtik and Aytaç Ünsal, who were defendants in the same case, launched a hunger strike that turned into a death fast on April 5, 2020. Once the Forensic Medicine Institute reported that Timtik and Ünsal were unable to stay in prison, they were hospitalized on July 30, 2020.¹¹¹

¹¹¹ Lawyers Ebru Timtik and Aytaç Ünsal not released (31.07.2020; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/lawyers-eburu-timtik-and-aytac-unsal-not-released/>



The press Conference by lawyers of İstanbul Bar Association to support the demands of lawyers Ebru Timtik and Aytaç Ünsal in a hunger strike demanding fair trial, August 20th 2020. (Capshot from "Shrinking Civic Space 2: Right to Defence" video, by Fatih Pınar)

On August 11, 2020, the Constitutional Court rejected Timtik and Ünsal's application for an eviction measure on the grounds that "there is no serious danger to their material or moral integrity." On the 238th day of her death fast, Ebru Timtik passed away, on August 27, 2020. Aytaç Ünsal was released on September 3, 2020, the 213th day of his death fast, by a decision of the 16th Chamber of the Supreme Court.¹¹² In the decision, it is stated that the execution of Ünsal's sentence would be stopped and he would be immediately released until his recovery, "as it is understood that staying in prison conditions would be life-threatening." On December 10, 2020, Ünsal was taken into custody again with the accusation of trying to flee the country.¹¹³

It was not journalists and television channels but the police who recorded every press release during the Watch held by Didem Ünsal.

¹¹² Aytaç Ünsal released (04.09.2020; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/aytac-unsal-released/>

¹¹³ Concerns about Aytaç Ünsal (01.02.2021; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/en/concerns-about-aytac-unsal/>

THE DISPUTE BETWEEN BAR ASSOCIATIONS AND THE EXECUTIVE

As mentioned above, there have been frequent tensions between bar associations and the executive in Turkey. Debates generally revolved around the issue of secularism. For example, one of the disagreements took place in 2004, between then-Prime Minister Recep Tayyip Erdoğan and the TBB Chairman at the time, Özdemir Özok. Özok had stated that he found it unacceptable that a graduate of a religious vocational high school (*İmam Hatip Lisesi*) had become prime minister.¹¹⁴

In 2008, the young TBB Chairman Metin Feyzioğlu's face-to-face discussion with Erdoğan, Prime Minister at the time, was another major event reported in newspapers and TV news headlines. In May 2014, on the anniversary of the founding of the Council of State, Feyzioğlu gave a speech in which he touched upon the problems in the justice system and expressed his concerns about the upcoming elections. Erdoğan, disturbed by the speech, accused Feyzioğlu of "doing politics" and subsequently left the hall.¹¹⁵

Some time later, Feyzioğlu began to take a much more pro-government position, showing respect to the executive in the State of Emergency period, and backing the unlawful practices devised under the pretext of the coup attempt. Many bar associations, particularly the İstanbul Bar Association, which has the greatest number of members in Turkey (and also one of the largest worldwide), began issuing statements criticizing the attitude of the TBB Chairman.

On November 8, 2019, 12 Bar Associations (Adana, Ankara, Antalya, Aydın, Bursa, Diyarbakır, İstanbul, İzmir, Mersin, Şanlıurfa, Tunceli and Van) issued a

¹¹⁴ 'İmam hatipli başbakanı sindiremem' davasına ret (20.04.2005; *Hürriyet*): <https://www.hurriyet.com.tr/gundem/imam-hatipli-basbakani-sindiremem-davasina-ret-313156>

¹¹⁵ Feyzioğlu'na kızan Başbakan töreni terk etti (10.05.2014; *Hürriyet*): <https://www.hurriyet.com.tr/gundem/feyziogluna-kizan-basbakan-toreni-terk-etti-26391061>

statement that Feyzioğlu was no longer representing them, and requested an extraordinary general assembly. When the TBB administration rejected the request,¹¹⁶ the issue was taken to court. The Ankara 5th Administrative Court considered the TBB administration's decision unlawful and granted a motion for stay of execution. However, the court's decision was quashed by the 12th Administrative Law Department of the Ankara Regional Administrative Court upon the objection of the TBB.¹¹⁷

The Ankara March of the Heads of Bar Associations protesting the changes in the law about Bar Associations. July 29th 2020 (Fotography: Sibel Tekin Archive)

¹¹⁶ The TBB Board of Directors' decision, rejecting 12 bar associations' request to convene an extraordinary general assembly (in Turkish): Türkiye Barolar Birliği'nin Olağanüstü Genel Kurula Davet Edilmesine Dair Taleplere İlişkin Yönetim Kurulu Kararı (08.11.2019; *Union of Turkish Bar Associations*): <https://www.barobirlik.org.tr/Haberler/turkiye-barolar-birligi-nin-olaganustu-genel-kurula-davet-edilmesine-dair-taleplere-iliskin-yonetim--80939>

¹¹⁷ TBB'deki olağanüstü kongre süreci ile ilgili mahkemeden yeni karar (23.04.2020; *Anadolu Ajansı*): <https://www.aa.com.tr/tr/turkiye/tbbdeki-olaganustu-kongre-sureci-ile-ilgili-mahkemeden-yeni-karar/1815725>

THE 'DEFENSE MARCH'

In early 2020, the government was preparing to take action against the profession chambers in regard to judicial, medical, engineering and architecture. Many observers saw this as an attempt to limit the power of bodies that are traditionally led by leftist, socialist, and Kemalist cadres. In order to break this opposition, discussions about transitioning to a multi-system were initiated, sparking great controversy.

In spring 2020, following a dispute over the Ankara Bar Association's rejection of a statement¹¹⁸ in which the Presidency of Religious Affairs (*Diyanet*) suggested that homosexuals and persons with HIV+ were the cause of the pandemic, the government decided to speed up the process of submitting a bill in line with Turkey's commitments of judicial reform. The majority of

A press statement by the Bar Association Presidents during the march to Ankara.

¹¹⁸ Diyanet İşleri Başkanı Ali Erbaş'ın İnsalığı Bir Kesimini Nefretle Aşağılayıp (26.04.2020): *Ankara Bar Association*: http://www.ankarabarosu.org.tr/HaberDuyuru.aspx?DIYANET_ISLERI_BASKANI_ALI_ERBAS%E2%80%99IN_INSANLIGIN_BIR_KESIMINI_NEFRETLE_ASAGILAYIP_KITLELERE_HEDEF_GOSTERDIGI_KONUSMASIYLA_ILGILI_BASIN_ACIKLAMASI&=4986





the bar associations reacted strongly to the envisaged amendments to the Law on Lawyers, and the attempts to regulate bar association elections. The presidents of dozens of bar associations marched to Ankara on June 19, 2020 to protest the draft law that would replace the system of one bar administration per province, by making it possible for multiple bar associations to be founded in provinces where they currently represent at least 2,000 lawyers.¹¹⁹ Traditionally, in elections for the leadership of provincial bar associations in which all lawyers registered can participate, government opponents have often won.

Prevented from entering Ankara, the presidents were also not allowed to receive food and clothing that were sent to them during this march.¹²⁰ Following talks they were eventually able to enter Ankara the next day.

The police preventing the presidents of bar associations to enter Ankara was protested with mass demonstrations in Istanbul, namely in front of the Çağlayan Courthouse and the building of the Istanbul Bar Association. There were also demonstrations in front of many other bar associations throughout the country.¹²¹

The bar associations also decided to engage in a “Standing President” protest on the way to the Parliament on the day that the proposal was referred to the Parliamentary Commission. They aimed to lobby against the proposal in the Parliament, to submit an appeal to the Constitutional Court (AYM) with an action for annulment if the proposal would be enacted, and to hold a “Last Watch” while the case was discussed at the Constitutional Court.¹²²

The draft law was debated at the Justice Commission of the Parliament in the first days of July 2020. The heads of bar associations were not permitted

¹¹⁹ Concerns about draft bill on the reform of Turkish Bar Associations (02.07.2020; *Lawyers for Lawyers*): <https://lawyersforlawyers.org/concerns-about-draft-bill-on-the-reform-of-turkish-bar-associations/>

¹²⁰ Police intervention against lawyers at the entrance of Ankara (23.06.2020; *Bianet*): <https://bianet.org/english/human-rights/226143-police-intervention-against-lawyers-at-the-entrance-of-ankara>

¹²¹ Turkey: plan to divide, undermine legal profession (08.07.2020; *International Commission of Jurists; Human Rights Watch*): <https://www.icj.org/turkey-plan-to-divide-undermine-legal-profession/>

¹²² Eylemlilik Sürecini Başlatıyoruz (25.06.2020; *Istanbul Bar Association*): <https://www.istanbulbarosu.org.tr/HaberDetay.aspx?ID=15821&Desc=EYLEMLILIK%20SÜRECINI%20BAŞLATIYORUZ>



into the sessions held by the Commission. The same happened when the draft law was under discussion at the Parliament after being approved by the Commission on July 6, 2020. As a consequence of this process, the articles of the law passed one by one at the Parliament between July 8 and July 11 without any consultations with bar associations.¹²³ The main opposition party CHP appealed the law to the Constitutional Court. On October 1, 2020, this application was rejected.¹²⁴

At the request of the Monitoring Committee, on October 9, 2020, the Venice Commission adopted an opinion on the 2020 amendments to the Law on Lawyers.¹²⁵

¹²³ 'Sad day for rule of law' as Turkey passes legal bill (11.07.2020; *Arab News*): <https://www.arabnews.com/node/1703351/middle-east>

¹²⁴ Constitutional Court rejects appeal against law on 'multiple bar associations' (01.10.2020; *Bianet*): <https://bianet.org/english/law/231931-constitutional-court-rejects-appeal-against-law-on-multiple-bar-associations>

¹²⁵ The Venice Commission concluded that “it was not clear how the new system would improve the quality of services or training provided by the UTBA or the Bar Associations to the attorneys.” It pointed out that “the creation of alternative bar associations may lead to incoherent practice in disciplinary matters and create administrative instability.” And there was “a real risk that the creation of multiple bar associations in the same city, based on voluntary membership, will lead to further politicization of the legal profession. This is incompatible with the neutral role which the attorneys should normally play. It will also endanger the independence of attorneys, which is implicitly required by the international human rights treaties, by the soft law standards, and which is one of the requirements of the rule of law.” (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 July 2020 Amendments to the Attorneyship Law of 1969 (8-9 October 2020; *European Commission for Democracy Through Law – Venice Commission*): [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)029-e)

CONCLUSION

All of these practices and the violations by judges in the courts, especially with respect to procedural law, renders the defence, as an essential pillar of the judicial system, increasingly weakened in Turkey. It is causing the country to move ever further away from being governed by a belief in the rule of law.

The defence has never been considered as one of the essential elements of the judicial system in Turkey, but at the same time, it has never been criminalized and silenced as it is now. However, the defence is there to protect the rights and freedoms of citizens, to contribute to revealing the truth and to ensure a

fair trial. In this context, the ability of lawyers to carry out their duties freely and independently is not their personal privilege but a privilege granted to their profession on behalf of those they represent.

The defence is presently perceived as a chain around the neck of the authorities, which must be prevented from getting in the way. If progress is to be made, it is necessary to start by addressing this frame of mind first before proceeding with adopting and implementing a series of legal amendments that are needed.

Confidential access to their clients—who are exposed to violations—throughout all stages of the judicial process, and providing legal advice within the scope of professional ethics without any obstruction or pressure, are basic rights and duties of lawyers. They are guaranteed under national and international law. In this respect, lawyers cannot be criminalized because they carry out their profession and their defence strategies.

Interference with work of the defence, including by preventing access to case files at various stages of the investigation and prosecution, exclusion of lawyers from the trial process, restrictions of the right to have confidential and private meetings with arrested or convicted clients, unequal treatment of prosecution and defence in accessing information and documents during investigations, and the practice of hearing anonymous witnesses—which all constitute violations of the right to a fair trial—should be resolved in accordance with the principles set out in Articles 5 and 6 of the European Convention on Human Rights (ECHR),¹²⁶ Article 14 of the International Covenant on Civil and Political Rights (ICCPR),¹²⁷ and the UN Basic Principles on the Role of Lawyers.¹²⁸ In light of this, we make the following recommendations:

¹²⁶ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 5; Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR) art 6

¹²⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art. 14

¹²⁸ The UN Basic Principles on the Role of Lawyers provide a concise description of international norms relating to the key aspects of the right to independent counsel. The Basic Principles were unanimously adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders in Havana, Cuba on September 7 1990. Subsequently, the UN General Assembly “welcomed” the Basic Principles in their ‘Human rights in the administration of justice’ resolution, in a resolution that was adopted without a vote on December 18 1990 in both the session of the Third Committee and the plenary session of the General Assembly [OHCHR ‘Basic Principles on the Role of Lawyers’ UN Congress on the Prevention of Crime and the Treatment of Offenders 8th Session (07 Dec 1990).



■ The legal regulations introduced by the emergency decrees, the Criminal Code, and the Law on the Execution of Sentences and Security Measures should be brought in line with the requirements of international standards. All legal and practical obstacles that keep lawyers from effectively carrying out their profession should be removed, and it should be ensured that law enforcement agents and the prosecution behave responsibly in this regard. The criminalization and maltreatment of lawyers through arbitrary detention, arrest and punishment due to the way they perform their defence duties, as well as the interventions in bar associations need to end;

■ In criminal proceedings, it is essential to concretize whether a crime was committed and it needs to be specified by whom, how and in what way. It is unacceptable to identify lawyers with their clients and to silence the defence by associating them with “terrorist crimes” without any concrete evidence and reasonable suspicion;

■ In light of the October 2020 opinion of the Venice Commission, the 2020 amendments to the Law on Lawyers of 1969, which could lead to further politicization of the legal profession, should be repealed and alternative solutions ensuring a meaningful involvement of the community of lawyers in the discussions should be implemented; and

■ Anti-Terror legislation must be amended and implemented in line with international law, replacing its vague nature that allows exploitation of the law with legal certainty.

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Currently we find ourselves in an environment in Turkey where international human rights and constitutional regulations are violated every day. This also directly affects the right of defence, one of the right to fundamental principles of the right to a fair trial.

In recent years, emergency decrees, issued during the State of Emergency period (following the 2016 coup attempt), have continued to be applied or were eventually enacted into law. A consequence of this is the gradual shrinking of space for defence to the point of its near complete removal, despite it being one of the founding elements of justice. Increasingly, lawyers began to be accused and convicted for being 'members of terrorist organisations,' especially in connection to the defendants they defended.

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