

Stakeholder Report for the United Nations Universal Periodic Review

Turkey: 49th session of UPR 4th Cycle

Situation of Lawyers in Turkey

Submitted by the International Observatory for Lawyers in Danger (OIAD)

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About the International Observatory for Lawyers in Danger (OIAD)

The International Observatory for Lawyers in Danger (OIAD) is an initiative founded by the French National Bar Council (CNB), the Italian National Bar Council (CNF), the Spanish National Bar Council (CGAE) and the Paris Bar. Launched in 2016, its aim is to defend lawyers threatened in the practice of their profession and to denounce situations that infringe the rights of the defense. The Observatory is currently supported by almost 50 members, mostly European bar associations, but also bar associations and lawyers' associations and unions from Turkey, Cameroon, Democratic Republic of the Congo and Mexico.

The Observatory's mandate is to assist lawyers who, in the exercise of their profession, are victims of threats and persecution, and to raise awareness among political stakeholders and civil society of the fundamental role played by lawyers in safeguarding rights and freedoms. To this end, the OIAD intervenes differently depending on the needs of each situation, by activating the available mechanisms: (1) advocacy, through alerts and communications; (2) missions in the field, whether to observe trials involving unjust accusations against colleagues or to carry out prospective missions to ascertain the situation of human rights lawyers in a specific country ; and (3) emergency aids, supporting lawyers in extremely dangerous situations providing financial and legal assistance.

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I. INTRODUCTION

1. The legal profession in Turkey is facing a crisis marked by systematic human rights violations and the eradication of judicial independence. For several years now, many lawyers have been victims of mass persecution, arbitrary detention and arrest because of their commitment to defending their clients' fundamental rights. This alarming situation is exacerbated by the fact that lawyers are often associated with their clients, making them vulnerable to reprisals by the authorities.
2. Furthermore, the lack of implementation of the decisions of the European Court of Human Rights underlines the growing disregard for international human rights standards. Allegations of torture and ill-treatment in detention highlight the inhumane conditions to which lawyers are subjected, compromising not only their safety but also the integrity of the judicial system as a whole. This report aims to examine this worrying reality and to highlight the challenges faced by lawyers in Turkey in the exercise of their profession.
3. To address this situation, the State must take concrete steps to protect lawyers, guarantee the independence of the Bar and respect international human rights commitments.

II. BRIEFING OF POLITICAL AND LEGAL CONTEXT

- **Attempted Coup in Turkey**
4. In Turkey, lawyers are being arrested and prosecuted on a massive scale following the attempted coup of 15 July, 2016. It all started with the arrest of the President of the Konya Bar Association and has continued ever since without losing any momentum. To date, **more than 1,700 lawyers have been prosecuted, with 700 lawyers remanded to pretrial detention. Thus far, at least 553 lawyers have been sentenced to a total of 3,380 years in prison.**¹
- **Anti-Terrorism Law 3713**
5. Article 314 (2) Turkish Penal Code 5237 (TPC), which criminalises membership in an armed group, does not contain a definition of what constitutes armed organizations and armed groups, nor the offense of membership. Furthermore, according to Article 220 (7) TPC, any person who aids and abets an organisation knowingly and willingly, although they do not belong to the structure of that organisation, shall also be sentenced for the offence of being a member of that organisation. The Court of

¹ [A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey](https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/), The International Bar Association's Human Rights Institute and The Arrested Lawyers Initiative, <https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>

Cassation has decided that the mere use of a certain bank account or secure messaging app constitutes evidence of membership of, as well as aiding and abetting a terrorist organization.

6. Lawyers' representation of certain clients, visiting them in prison, making statements to the press, tweeting about ECtHR cases, contacting international organizations, and criticizing state practices, have all been used as a basis for convicting lawyers. Finally, Article 5 (1) of the Anti-Terrorism Law 3713 increases the penalties of imprisonment by one half for terrorism-related offences.
7. Turkey has been arbitrarily using these anti-terrorism laws to target dissidents, particularly lawyers, journalists, and opposition politicians. The law's overly ambiguous and broad definition of terrorism and membership to a terrorist organisation enables the classification of lawyers, including human rights defenders, as "terrorist offenders", increasing arbitrary prosecutions and judicial intervention.
8. Art. 314 of the Penal Code does not contain a definition of either an armed organization or an armed group. The lack of legal definitions and criteria for an armed terrorist organization, and the crime of membership in such an armed terrorist organization, make them prone to arbitrary application.²
9. The Grand Chamber (GC) of the European Court of Human Rights concluded that Art. 314 was not foreseeable and did not bear the quality of law. Further, that Art. 314 does not afford adequate protection against arbitrary interference by national authorities, and that its broad interpretation, without concrete evidence, equates freedom of expression with belonging to or leading an armed organisation.³

III. MASSIVE PERSECUTION OF LAWYERS

- **Arrest and detention of the Lawyers related to their work**

10. Lawyers arrested in September 2020 were mainly questioned in relation to their professional activities such as the types of cases they litigate and the number of cases related to suspects alleged to have links with the Gülen movement; contractual and monetary relations with their clients; how they find their clients; the average fee charged to the clients and their professional relations with other lawyers, such as

² CDL-AD(2016)002-e Opinion on articles 216, 299, 301 and 314 of Penal Code of Turkey, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

³ Selahattin Demirtaş v. Turkey (No. 2) (Application no. 14305/17), <https://ahvalnews.com/selahattin-demirtas/turkeys-abuse-its-anti-terror-laws-and-significance-echrs-demirtas-judgment>
Yüksel Yalçınkaya v. Türkiye [GC] - 15669/20, 26.9.2023 [GC]

attending each other's hearings or allocating case files to each other, implying an organizational relationship. They were also interrogated in relation to their historic mobile traffic search (HTS) records and wiretapped telephone conversations with their clients and colleagues which should have remained confidential to protect lawyer-client confidentiality.⁴

11. In early 2023, in the context of elections, a number of operations were carried out in various regions of Turkey, some of which were predominantly Kurdish.⁵ Numerous people, including lawyers, were arrested without knowing the charges brought against them, due to restrictions imposed by the Turkish justice system.
12. These arrests of lawyers, often accused of links with extremist organisations for defending controversial individuals, reveal a pattern of systematic harassment. For example, lawyers have been arrested on the basis of simple anonymous denunciations⁶, highlighting the arbitrary nature of the prosecutions.
13. Finally, recent raids, in particular against lawyers who have often defended left-wing activists, have further reinforced the idea that the judiciary is being used for political ends.⁷

- **Prosecution of the lawyers and its special procedure**

14. The conduct and practice of lawyers within the legal profession of Turkey is regulated by Law No. 1136, which is also known as the Code of Lawyers (Avukatlık Kanunu).⁸ Article 1 of the Code of Lawyers classifies the legal profession as an independent public service and a liberal profession. As per the Code (Arts. 58- 60), a lawyer can only be prosecuted under a special procedure. Under this special procedure, lawyers cannot be detained and remanded for pretrial detention; lawyers can be prosecuted only if the Minister of Justice gives authorisation.

⁴ Amnesty International, 'Turkey: Politicians, lawyers, activists targeted in new wave of mass arrests' Public Statement on 26 October 2020, Index Number EUR 44/3221/2020, at p. 4. Available at: <https://www.amnesty.org/download/Documents/EUR4432212020ENGLISH.PDF>

⁵ International Observatory for Lawyers in Danger, "25 Turkish lawyers", 25 April 2023, Available at: <https://protect-lawyers.org/en/item/25-turkish-lawyers/>

⁶ International Observatory for Lawyers in Danger, "TURKEY: Lawyers arbitrarily arrested following an anonymous phone call", 19 October 2023, Available at : <https://protect-lawyers.org/en/item/bilgi-topcu-ceren-yilmaz-and-fatih-gokce/>

⁷ International Observatory for Lawyers in Danger, "TURKEY: the international legal community condemns the detention of four ÇHD lawyers and the raid on their office", 8 February 2024, Available at: <https://protect-lawyers.org/en/turkey-the-international-legal-community-condemns-the-detention-of-four-chd-lawyers-and-the-raid-on-their-office/>

⁸ Attorneyship Act No. 1136 of 1969 (AA)

15. Art. 61 of the Code of Lawyers exempts the situation of flagrante delicto⁹ where if a lawyer is caught in flagrante delicto, he/she can be prosecuted without seeking authorization for prosecution and can be detained and remanded for pretrial detention.¹⁰
16. However, in violation of the special procedure, some 1700 lawyers have been arrested and prosecuted without the ex-ante authorization that should be given by the Minister of Justice in order to prosecute them. Moreover, at least 655 lawyers have been remanded to pretrial detention through the widespread misinterpretation of in flagrante delicto and the misapplication of Art. 314 of Penal Code. Furthermore, lawyers charged with terrorism-related offences face a reversed burden of proof, in violation of the presumption of innocence.

• **Assessment of the implementation of the recommendations:**

17. Despite the numerous recommendations¹¹ made and supported by Turkey in these subjects during its previous Universal Periodic Review, we note that Turkey has failed to implement them. In particular the recommendation to "ensure that (...) lawyers are not subjected to intimidation or arbitrary arrest in undertaking their work"¹².
18. The number of arrests and prosecutions of lawyers in Turkey has been steadily increasing over the years on the basis of accusations without evidence or on the unfounded grounds set out in this report, ignoring the vast number of rulings of ECtHR on these matters.

IV. TORTURE AND OTHER ILL-TREATMENT UNDER ARREST

19. During a fact-finding mission in November 2023 by 27 legal and human rights groups, the Observatory gathered information on the detention conditions of lawyers in Turkey.
20. Of the eight detained lawyers interviewed, five reported being subjected to torture or ill-treatment. While the Constitutional Court acknowledged a violation in one

⁹ Article 2 of the Criminal Procedures Code.

¹⁰ In cases of discovery in flagrante delicto falling within the jurisdiction of the assize courts, the investigation shall be conducted in accordance with the rules of ordinary law. (<https://arrestedlawyers.org/2021/07/05/ecthr-arrest-and-pretrial-detentions-of-justices-erdal-tercan-and-alparslan-altan-is-unlawful/>)

In the judgments of *Alparslan Altan v Turkey* (App no. 12778/17) and *Erdal Tercan v Turkey* (App no. 6158/18), the ECtHR rendered that the Turkish Judiciary's interpretation of in flagrante delicto is not only problematic in terms of legal certainty, but also appears manifestly unreasonable.

¹¹ Recommendation 45.101 (Ireland) ; Recommendations 45.121 (Czechia)

¹² Recommendation 45.177 (New Zealand)

case, injuries sustained by several others suggest violations of international human rights laws, including the ECHR and UNCAT. Authorities have also failed to properly investigate the torture claims, with one lawyer, Engin Gökoğlu, facing reprisals for filing a complaint.¹³

21. Concerns have been raised about the harsh isolation conditions imposed on imprisoned lawyers, which severely restrict their interactions with others, including family, and friends. These conditions also deny them participation in recreational, cultural, and physical activities, contrary to the Nelson Mandela Rules. Such treatment may be seen as degrading and a violation of their human rights under international laws, including the ICCPR, ECHR, and UNCAT.
22. Turkey has ratified the ECHR, the ICCPR, which sets out fundamental civil and political rights, and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which details the obligations to prohibit and prevent these forms of abuse.

- ***Assessment of the implementation of the recommendations:***

23. Turkey has failed to implement the recommendation to “pursue its zero-tolerance policy against torture and continue with measures to prevent, investigate, prosecute and punish all acts of torture and ill-treatment”.¹⁴
24. The Turkey Tribunal report further emphasise the lack of effective investigations and the ongoing impunity for human rights violations. The documented cases of enforced disappearances, often involving individuals accused of terrorism-related offences, illustrate a pattern of state-sanctioned abuses that go unpunished.¹⁵

V. LACK OF JUDICIAL INDEPENDENCE AND FAIR TRIAL GUARANTEES

25. The executive's influence on the judiciary increased further following the failed coup attempt on 15 July 2016. One third of current judges and prosecutors were dismissed without any personal investigation or opportunity for defence.¹⁶ In order to decide

13 “Report of an Independent International Fact-finding Mission to Turkey - Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings”, published in February 2024. Available at: <https://protect-lawyers.org/wp-content/uploads/FACTF11.pdf>

¹⁴ Recommendation 45.109 (Nicaragua)

¹⁵ Turkey Tribunal, “Impunity in Turkey Today”, September 2020, Available at: https://turkeytribunal.org/wp-content/uploads/2021/11/ImpunityinTurkey_Turkey-Tribunal-Report_FINAL.pdf

¹⁶ Toplamda 4236 yargı mensubu, <http://bianet.org/bianet/siyaset/182400-ohal-de-yargi-kurumlarindan-ihracla>

on the dismissal of a judge, the law only requires ‘liaison’ or ‘association’ with a ‘structure, formation or group’ that the National Security Council has ‘determined to be operating against the national security of the State’.¹⁷ The fact that these concepts are rather vague and broad in scope creates a very strong possibility of arbitrary dismissal of judges and prosecutors in violation of judicial independence.

26. Although most of the dismissed judges and prosecutors have filed a lawsuit against their dismissal decisions before the Council of State, the Council of State has so far ruled on only one application and rejected the request. Therefore, to date, no one among the dismissed judges and prosecutors has been reinstated after a judicial decision.
27. Although the state of emergency ended in July 2018, the authority of the Council of Judges and Prosecutors to dismiss judges and prosecutors according to the same criteria as in the emergency legislation was extended for another three years by Law No. 7145 enacted in July 2018. Since then, at least 17 new judges and prosecutors have been arbitrarily dismissed according to this procedure.
28. In the words of the Council of Europe Commissioner for Human Rights, such mass dismissals have created ‘an atmosphere of fear among the remaining judges and prosecutors’. In July, a new law weakened the independence of bar associations, sparking widespread protests from lawyers. In September, 47 lawyers were detained on charges of "membership in a terrorist organization," based solely on their professional work, with 15 placed in pre-trial detention. Around the same time, the Court of Cassation upheld prison sentences for 14 other lawyers prosecuted under anti-terrorism laws.¹⁸

- **Assessment of the implementation of the recommendations:**

29. Turkey was unable to successfully apply the recommendation to “Strengthen the independence of the judicial system and follow due judicial process according to [its] international obligations and standards.”¹⁹
30. Turkey has been unable to uphold judicial independence, as judges and prosecutors were dismissed without fair investigation or the right to defend themselves, based on vague allegations of ties to groups labelled a security threat.

¹⁷ Article 3 of the Decree Law No. 667 on Measures Taken under the State of Emergency.

¹⁸ Amnesty international report 2020/21 page 364

¹⁹ Recommendation 45.133 (Norway).

31. Moreover, the continued use of emergency powers and the arbitrary arrests of lawyers for carrying out their legal duties highlight a failure to adhere to international standards of due process.

VI. RECOMMENDATIONS

1. Ensure that Turkish lawyers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.
2. Release lawyers who have been imprisoned for the legitimate exercise of their profession.
3. Recognise and value the key role of human rights lawyers in upholding human rights and the rule of law.
4. Ensure an independent judicial system in which lawyers can practice their profession effectively.
5. Transparently investigate incidents of harassment or intimidation of lawyers, torture and ill-treatment claims, with appropriate sanctions against the perpetrators of such actions.
6. Cease the persecution of imprisoned lawyers, ensure their fair treatment in line with international human rights standards, and protect their rights to due process, humane conditions of detention, and freedom from arbitrary punishment.