

## Formal Report on the Istanbul Bar Association Case

***Expanded analysis with legal precedents, international reactions, and implications***

***Date: January 5<sup>th</sup>-9<sup>th</sup> 2026***

***Silivri Campus Prison Court, Turkey***



### Background

The Istanbul Bar Association and members of its Executive Board are prosecuted criminally for a press statement that authorities claim amounted to (i) propaganda for a terrorist organisation and (ii) public dissemination of misleading information. The case proceeds before the 26th Criminal Chamber of the Istanbul Assize Court, with hearings transferred to Silivri under Code of Criminal Procedure art. 19/3, a move the defence contests as unconstitutional.

### Legal Framework (Domestic & ECHR)

- Domestic provisions: Article 7/2 of the Anti-Terror Law (propaganda) and Article 217/A of the Turkish Penal Code (public dissemination of misleading information). The Venice Commission warned that Article 217/A contains vague terms ("false or misleading

information”, “disturb public peace”) and that criminal sanctions pose a chilling effect, raising questions of legality and proportionality<sup>1</sup>,

- ECHR Article 10 (freedom of expression): Restrictions must be prescribed by law, pursue a legitimate aim, and be necessary in a democratic society. The ECtHR requires a contextual assessment (intent, content, and likely impact). Automatic repression of publications without such analysis breaches Article 10<sup>2</sup>.

### **Public Prosecutor's Opinion**

The Istanbul Public Prosecutor submitted closing arguments requesting punishment of the Bar's President and Board members. The Prosecutor alleges two crimes:

1. Propaganda for a terrorist organisation by portraying security forces as committing war crimes and referring to PKK members as journalists, allegedly legitimising violence and encouraging membership (up to 7 years 6 months under Anti-Terror Law art. 7/2).
2. Public dissemination of misleading information regarding national security and public order, allegedly creating a false perception and undermining trust in state institutions (up to 4 years 6 months under TPC arts. 217/A and 218).

He further proposes ancillary deprivations (voting and candidacy bans) and professional consequences and argues that where multiple offences arise from a single act, sentencing should rest on the most serious offence (propaganda).

### **Defence Arguments**

The defence contends the statement neither praised nor incited violence, lacked the requisite intent to legitimise terrorist activity, and fell within the Bar's institutional mandate to defend the rule of law and human rights—hence protected by freedom of expression (ECHR, Art. 10). As for Article 217/A, counsel argues the assertions were not knowingly false, and that the provision's vagueness and purpose requirements cannot be met on the record. The transfer

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<sup>1</sup> [Türkiye - Urgent joint opinion on the draft amendments to the Penal Code regarding the provision on “false or misleading information” - Venice Commission of the Council of Europe](#)

<sup>2</sup> <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-3195088-3556010&filename=003-3195088-3556010.pdf>

to Silivri (prison complex) is challenged for fair-trial concerns and chilling effect on defence rights.

#### Procedural History & Hearing Summary (9–10 September 2025, Silivri)

- Access & security: Observers were initially denied access to the Bar's room; proceedings began late amid heavy security.
- Constitutionality challenge: The Bar President challenged CCP art. 19/3 and sought referral to the Constitutional Court; the court rejected the claim, referred the venue objection to the 27th Assize Court, and denied immediate acquittal.
- Adjournment: The case was adjourned to 5–9 January 2026 in Silivri for the Prosecutor's closing arguments, with a decision anticipated thereafter.
- Institutional support: National and provincial bar leaders affirmed the statement contained no criminal element and warned of a precedent threatening bar independence.

#### **Legal Precedents (ECtHR) – Key Principles & How They Apply**

1. Gözel & Özer v. Turkey (2010) – Found a violation where virtually automatic convictions of media professionals occurred for publishing texts of banned organisations; courts must examine context and absence of incitement. Application: Prosecutorial theory here risks the same automatic repression the ECtHR condemned<sup>3</sup>.
2. Şık v. Turkey (No. 2) (2020) – Journalist's detention for articles/posts critical of policy violated Articles 5 and 10 ECHR; writings were part of public debate and did not advocate violence; the interference was not prescribed by law. Application: Reinforces that speech criticising state conduct, absent incitement, is protected<sup>4</sup>.
3. Selahattin Demirtaş v. Turkey (No. 2) (GC, 2020) – Found violations of Articles 10, 5, 18 and Protocol 1, Article 3; detention for political speech lacked foreseeability and pursued ulterior purposes; ordered immediate release. Application: Highlights

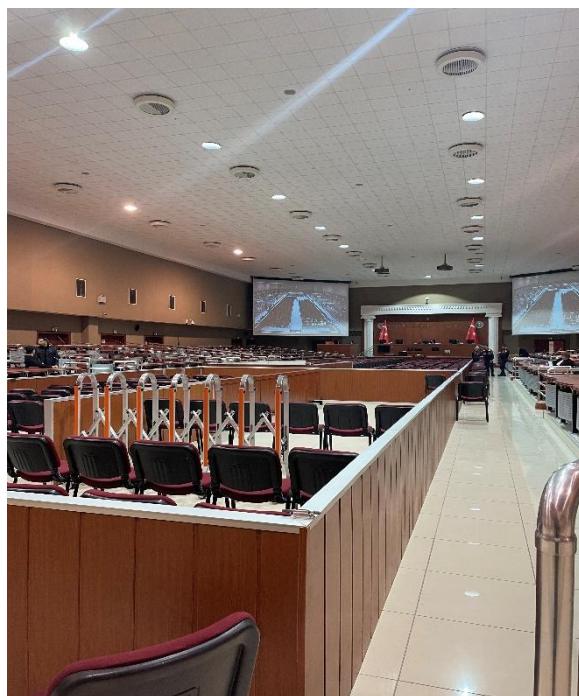
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<sup>3</sup> <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=002-888&filename=002-888.pdf>

<sup>4</sup> [https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-206411%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-206411%22]})

heightened protection for political/institutional speech and dangers of instrumentalising criminal law<sup>5</sup>.

4. *Handyside v. UK (1976)* – Classic statement that Article 10 protects not only inoffensive ideas but also those that “offend, shock or disturb.” Restrictions require proportionality and a pressing social need. Application: Penalising the Bar’s statement for its critique risks breaching *Handyside*’s standard<sup>6</sup>.



## Assessment

Applying ECtHR criteria, the Bar’s institutional statement—absent incitement or advocacy of violence—falls within protected expression. The Prosecutor’s theory relies on inference that criticism of state action serves a terrorist group’s goals, a logic ECHR jurisprudence treats with suspicion unless the speech directly or indirectly incites violence or constitutes hate speech. The automatic character of the disinformation charge under Article 217/A is particularly problematic given persistent concerns about vagueness, purpose requirements, and

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<sup>5</sup> [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22002-13070%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22002-13070%22]})

<sup>6</sup> [https://hudoc.echr.coe.int/eng#%22itemid%22:\[%22001-57499%22\]}](https://hudoc.echr.coe.int/eng#%22itemid%22:[%22001-57499%22]})

proportionality. Procedural choices—Silivri venue, initial access restrictions, and heightened security—compound fair-trial concerns.

### **Developing of the sessions in Silivri – January 5<sup>th</sup> to 9<sup>th</sup> 2026**

Monday, January 5<sup>th</sup>



On the first day of the decision week regarding the lawsuit initiated against the Istanbul Bar Association, the proceedings concluded with objections on grounds of unconstitutionality and statements presented by members of the Board of Directors.

During the hearing, prior attempts to undermine the right to defence were recalled, and it was unequivocally emphasized that the defence itself is now being subjected to trial.

It was reiterated that the Bar Association cannot be prosecuted for carrying out its statutory duties and responsibilities, which include the protection of human rights, the preservation of the rule of law, and the safeguarding of the right to defence.

The following principles are hereby affirmed:

- 1. Defending human rights does not constitute a crime.**

## 2. The defence cannot be subjected to trial.

Accordingly, any attempt to criminalize or prosecute the fulfilment of these legal obligations is contrary to constitutional principles and the fundamental tenets of justice.

In this very first session, international observers were about 60, among them Bars and organizations working with the legal profession. The President of the Istanbul Bar, Ibrahim Kaboglu, explicitly mention the OIAD thanking us for the unconditional support.

Tuesday, January 6<sup>th</sup>



On the second day of the hearings, the session commenced with statements by the members of the Board of Directors and the Bar President, Av. Prof. Dr. İbrahim Kaboğlu, in response to the opinion submitted.

After the board of the Istanbul Bar finished their assessments, several Bar Presidents, including those of Adiyaman, İzmir, Bursa, Tekirdağ, Çanakkale, Mardin, Gaziantep, and Kocaeli, as well as the President of the Union of Turkish Bar Associations (TBB), addressed the court. These statements clarified the constitutional and legal duties of Bar Associations, emphasized the indispensable role of the defence in society, and firmly asserted that the

defence cannot be subjected to trial in Silivri. The case was strongly criticized on these grounds.

Following these interventions, attorneys presented their defences on the merits. Through historic statements and comprehensive arguments, the indictment and the opinion—both lacking legal and constitutional foundation—were refuted. It was clearly demonstrated that the underlying purpose of this case is to render Bar Associations ineffective and weaken the institution of defence.

In a hearing where those seeking to judge are themselves being judged, emphasis was placed on the fact that the Istanbul Bar Association and other Bar Associations have emerged stronger and remain resolute in their mission. They will continue to fulfil their duties, defend human rights, ensure their practical implementation, and uphold the rule of law.

Wednesday, January 7<sup>th</sup>



The hearing continues in two sessions more, during the whole day, with further statements from lawyers defending the President and each or several members of the Board of Istanbul Bar.

Before closing the session until last day, the Court denied the possibility of the last session and the announcement of the verdict to be held in the Courts of central Istanbul.

As the Istanbul Bar members, the presidents of other Turkish bars and the defendants themselves, the decision to be given in the Istanbul Bar Association case will not only have consequences regarding the Bar, but also in terms of the rule of law and the future of society in Turkey.

Thursday January 8<sup>th</sup>

As there were no Court sessions this day, we have agreed to visit lawyer Naim Eminoğlu at the Silivri prison. This prison was arranged a week prior to our trip to Turkey, as they must give power of attorney to visit this colleague.

He is facing pretrial detention following a police raid on his law office, according to statements by his colleagues and international legal organisations. Eminoğlu was taken into custody during a police operation conducted in the early hours of 10 December 2025. He was brought before a criminal peace judgeship and formally arrested on 11 December 2025 on accusations of membership in the FETÖ/PDY armed terrorist organisation, charges that he and his legal representatives strongly deny.

According to him relating this last detention, the investigation against was initiated following an anonymous email sent to law enforcement on 14 October 2025. The message alleged that Eminoğlu had studied at Melikşah University in Kayseri—an institution later closed by the government after the 2016 coup attempt—and claimed that he had stayed in student residences allegedly linked to the Gülen movement.

He maintains that the file contains no concrete evidence of criminal activity. The grounds cited for detention reportedly include Eminoğlu's university education, his residence in a shared student apartment during his studies, and historical phone records of the last 20 years showing contact with individuals who were later subjected to investigations over the Gülen Movement links.

In 2017, Eminoglu was previously detained and tried on charges related to his political views, remaining in prison until December 2019, when he was released. Although he completed his legal internship, his law licence was later revoked. The Constitutional Court of Turkey subsequently ruled that the revocation violated his rights, enabling him to resume his profession.

Eminoglu has worked on cases involving labour rights, mining disasters, prison hunger strikes, and legal accountability following the 6 February 2023 earthquakes, representing families seeking justice after large-scale building collapses in southern Turkey. He participated in a podcast on reforming the procedural law in Turkey that went viral, two days before the detention.

He expects to appear before a judge in Spring, and then, as there are no grounds of him for this accusation, to be released. He shares the cell with ten inmates, who all are clients of him.

Friday, January 9<sup>th</sup>



This stage of the lawsuit filed against the president and board of directors of the Istanbul Bar Association has ended with the most favourable decision possible. The court unanimously

ruled that the statement did not constitute the crime of terrorist organization propaganda or the crime of disinformation. The reasoning behind the decision will be written within approximately one month. After that, the Chief Public Prosecutor's Office has the option to appeal the decision to the court of appeals if it wishes.



At the moment of finishing this report, we have been just informed that the Prosecutor has filed an appeal. President Kaboglu stated that they will consider next steps once the written sentence has been released. So far, there are no worries as the vote of the Criminal Court was unanimous.

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Berta Álvarez Ciordia