



Türkiye

United Nations Human Rights Council's Universal Periodic Review

Joint stakeholder report submitted on 11 October 2024

Information on the submitting organisations:

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

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

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

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

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I. Introduction

1. Lawyers for Lawyers (L4L), the Law Society of England and Wales (LSEW), the International Bar Association's Human Rights Institute (IBAHRI), and the International Commission of Jurists (ICJ) welcome the opportunity to submit written information to the UN Human Rights Council for the 4th cycle Universal Periodic Review of Türkiye. This report is based on information collected through ongoing research, including interviews with legal professionals in Türkiye, and engagement with and reports from lawyers from Türkiye and other local and international stakeholders.
2. This submission will focus on the following issues:
 - a. Institutional independence of the legal profession
 - b. Restrictions on the right to a fair trial, including an effective defence
 - c. Systematic persecution and interference with lawyers' activities
3. Relevant fourth cycle UPR recommendations not yet implemented include the following:
 - a. Recommendations supported by Türkiye:
 - *45.98 Bring the Anti-Terrorism Law in line with international human rights standards and prevent the prosecution of journalists and human rights defenders for peacefully exercising their human rights (Denmark)*
 - *45.121 Ensure respect for the rule of law and an independent judiciary and implement the decisions of the European Court of Human Rights (Czechia)¹*
 - *45.139 Cease the excessive use of pretrial detention, ensure human rights defenders and critics alleged to have committed an offence are guaranteed due process and fair trial rights, and strengthen the capacity of the judiciary to operate independently (Australia)*
 - *45.140 Intensify monitoring of places of detention and ensure that impartial investigations are carried out into all allegations of torture and ill-treatment, in accordance with its policy of zero tolerance of torture (Switzerland)²*
 - *45.147 Guarantee the freedom of thought and religion, and the rights to freedom of information and freedom of expression, and ensure that human rights defenders and journalists can carry out their legitimate and peaceful activities without fear of attack or reprisal (Iceland)*
 - *45.177 Ensure that human rights defenders, lawyers, and journalists are not subjected to intimidation or arbitrary arrest in undertaking their work (New Zealand)*
 - b. Relevant recommendations regrettably only noted by Türkiye include those on counter-terrorism legislation and the judiciary. Türkiye noted the majority of recommendations to repeal or amend existing counter-terrorism legislation, stating that it had no intention to revise these laws as it considered that they already comply with international standards.³ Türkiye also noted most of the recommendations proposing to reform legislation governing the judiciary, particularly regarding the appointment processes of judges and prosecutors, claiming that procedures are already in line with international standards.⁴

II. Interference with the independence of the legal profession in Türkiye

Lack of independence of the judiciary

4. Since the 2016 coup attempt in Türkiye, judicial independence has undergone serious degradation following the mass dismissal of judges and prosecutors and the structural “reforms” and consequent deficiencies in the judicial system as a result of executive overreach in contravention of the separation of powers.
5. Türkiye’s judicial crisis is evident in the executive’s non-compliance with critical Constitutional Court rulings. In November 2023, judges from the Court of Cassation (Yargıtay) filed a criminal complaint against judges of the Constitutional Court (AYM) following a dispute over the case concerning the politician, lawyer and human rights defender Can Atalay. On 25 October 2023, the AYM ruled that Atalay’s imprisonment violated his parliamentary impunity and constitutionally protected rights, but the Court of Cassation refused to comply, accusing the Constitutional Court of overstepping its authority. On 21 December 2023, the AYM ruled for a second time that Atalay’s rights had been violated, but the Court of Cassation has continued to fail to comply.⁵ This undermines the rule of law when decisions of the Constitutional Court, which has the final authority to interpret the Constitution, are not implemented for apparently political reasons.
6. The 2017 constitutional reforms in Türkiye significantly altered the structure and functioning of the judiciary. Law No.6771⁶ introduced various constitutional amendments, including the transformation of the Supreme Board of Judges and Prosecutors (renamed the Council of Judges and Prosecutors; ‘CJP’)⁷ and the composition and appointment of members to the CJP (Article 14). Amendments to Article 159 of the Constitution decreased the number of Council members from 22 to 13 and changed the appointment process. The President now directly appoints four members, in addition to the Minister of Justice, who presides over the Council, and the Undersecretary, an ex-officio member.⁸ Three members are selected by the President from civil and criminal judges and prosecutors, one from administrative judges and prosecutors. Seven members are elected by the Grand National Assembly, but none are appointed by judges or public prosecutors.⁹ The Council of Europe’s European Commission for Democracy through Law (Venice Commission) warned that these amendments would shift Türkiye toward a presidential regime lacking the necessary checks and balances, allowing for executive control over the judiciary and prosecution service.¹⁰ The amendments are non-compliant with Türkiye’s obligation to respect and ensure fair trial rights protected under international law and impair the capacity of the justice sector agents to administer justice fairly and equally.¹¹
7. Following the 2016 attempted coup, one-third of judges and prosecutors were dismissed without any individual investigation, hearing or an opportunity for defence.¹² To justify the dismissal of a judge during this period, Law No.667 required a mere “affiliation” with a “structure, formation or group” that the National Security Council has “determined to operate against the national security of the state”.¹³ In effect between 2018-2022, Law No.7145 further entrenched executive control over the judiciary by extending the government’s emergency powers, allowing for the dismissal of judges and prosecutors without judicial oversight by the CJP (Article 26). The law overrode constitutional protections, including judicial independence¹⁴ and the right to a fair trial,¹⁵ and had grave implications for the fairness and reliability of legal proceedings. Mass dismissals of judges have caused grave and extensive damage to the Turkish judiciary.

8. In 2019, the CJP dismissed 17 judges and prosecutors based on alleged membership of the “Fethullah Terrorist Organisation” (“FETÖ”).¹⁶ In October 2020, the CPJ dismissed nine judges and two prosecutors for alleged membership with the Gülenist movement, and provided no reasoning nor a fair hearing before an independent authority.¹⁷ Recently, the Council of State reinstated 387 judges and prosecutors, a small fraction of the 5,112 judges and prosecutors who challenged their dismissal in court.¹⁸ The Council’s actions were quickly undermined as, following public backlash from President Erdoğan,¹⁹ the CPJ launched new investigations against the 387 reinstated judges and prosecutors.²⁰
9. Since the 2016 attempted coup and following a range of legislative reform adversely affecting the role of the judiciary, the appointment and promotion of judges and prosecutors has been subject to undue political influence. By December 2023, there were 23,759 judges and prosecutors in Türkiye, of which at least 12,000 were recruited after the mass dismissal of judges and prosecutors from 2016 onwards.²¹ Newly recruited judges and prosecutors are generally perceived as politically loyal to the ruling AKP government²² and are promoted to serve in higher courts and for the government.
10. The selection and recruitment of judges and prosecutors is conducted in a non-transparent manner, with the Ministry of Justice supervising the selection boards in absence of the CJP. The annual appraisal is completed by the CJP, in a procedure departing from objective, merit-based, standardised and pre-established criteria in Law No.2802 for recruiting and promoting judges and prosecutors. The rapid recruitment has resulted in appointments of judges that lacked necessary professional competencies and qualifications to serve,²³ bringing into question the independence of the Justice Academy and the pre-service training it offers remain.²⁴

Undermining of Bar Associations

11. Attorneyship Law No.1136 governs the legal profession and classifies it as liberal and an independent public service. The law defines the powers and structure of bar associations and the Union of Turkish Bar Associations (UTBA).²⁵ Law No.1136 was amended on 11 July 2020, to allow for the creation of multiple bar associations in cities with more than 5,000 lawyers.²⁶ The Venice Commission warned about the risk of this amendment, stating that it “will lead to further politicisation of the legal profession”,²⁷ compromise the independence of lawyers, and lead to incoherent practice in disciplinary matters and administrative instability.²⁸ Many legal professionals argue that the law was designed to weaken existing bar associations that have traditionally been critical of the government, by encouraging the formation of pro-government associations.²⁹ For example, the second bar association in Ankara has taken a position in favour of the government on critical issues relating to the rule of law.³⁰
12. The amendments adversely affected proportional representation of bar associations in the UTBA General Assembly. Bar associations were reduced from three delegates plus one for every 300 members, to four delegates plus one for every 5,000 members. Consequently, smaller bars have gained much greater power and together they exercise greater influence over the activities of the Union.³¹ For example, as of the end of 2023, the İzmir Bar Association had only 6 delegates for 13,226 members (prior to the reform it had 35 delegates for 10,000 members), while Ardahan Bar Association has 4 delegates for only 49 members.

Interferences with admission to the legal profession and disciplinary proceedings

13. Since 2016, there have been increasing reports of attorney licenses being refused, suspended, or annulled, mostly affecting prospective or practicing lawyers associated with the defence of human rights or lawyers who publicly speak out in politically sensitive cases.³² These obstacles constitute unacceptable interferences with the capacity of individuals to practice their chosen profession and undermine clients' right to choose legal counsel.³³ As the UN Special Rapporteur on the independence of judges and lawyers has affirmed, "States should ensure that there is no interference on any grounds, especially political or other opinion-related grounds, in such processes".³⁴
14. As of present, the Ministry of Justice has filed 2349 cases against admission decisions granted by the UTBA since 2020.³⁵ Between 2008 and 2020, the Ministry filed 1252 cases against admission decisions, out of which 376 licences were annulled and 175 of the Ministry's requests were denied.³⁶ The Ministry has reportedly denied access to the legal profession to 891 intern lawyers since 2015.³⁷
15. Under Law No.1136, lawyers convicted for offences against the "security of the State or the Constitutional order" are automatically disbarred.³⁸ These offences are listed as terrorist crimes under Anti-Terror Law, which is concerning given the recent trend of prosecutions against lawyers under this legislation.³⁹ The disciplinary board of bar associations holds the discretionary power to ban a lawyer from practicing, by means of a precautionary measure, if the lawyer is being prosecuted for terror offences.⁴⁰ Lawyer Sezin Uçar, for example, has faced prosecution for "membership of a terrorist organisation" since 2017,⁴¹ leading to a one-year ban from practice in terror-related investigations and prosecutions. Disciplinary proceedings were instigated against her in December 2023 by the Istanbul Bar Association following a complaint by the Bursa Chief Public Prosecutor's Office.⁴²

III. Lack of fair trial guarantees

16. Prior to the state of emergency, lawyers in Türkiye already faced significant hindrance in performing their professional duties. This has subsequently increased, including through restrictions on access to clients, breaches of lawyer-client confidentiality, and the lack of access to case materials.⁴³ During the state of emergency, new restrictions were introduced by decrees, which were later enacted into law, becoming permanent. These restrictions severely impede lawyers' ability to defend people's rights effectively and undermine the right to a fair trial and due process guarantees, in violation of Article 14 of the ICCPR and the UN Basic Principles on the Role of Lawyers (particularly Principles 8, 21, 22; 'Basic Principles').

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

17. Several provisions enacted through Emergency Decrees significantly erode lawyers' ability to access and communicate with their clients in confidence. Article 154/2 of the CCP authorises investigating judges to restrict access to a lawyer for 24 hours for individuals accused of terrorism offences.⁴⁴ However, in practice, police often extend restrictions on lawyers' visits to clients.⁴⁵ The inability to access a lawyer from the moment of arrest increases the risk of torture and ill-treatment.⁴⁶
18. Under Article 6 of Decree 676, authorities may record, observe, and interrupt meetings between lawyers and clients if there is a threat to public security, and the client has been convicted of a terrorist offence.⁴⁷ It has been reported that such restrictions have been

widely implemented and have become the rule rather than the exception for detainees accused of certain terrorism offences.⁴⁸

19. Lawyers from Asrın Hukuk Bürosu (Asrın law firm) report severe difficulties in accessing and communicating with their clients detained at İmralı F-Type High Security Prison. Until 2005, lawyers could meet their clients freely, but legal changes restricted visits to one hour per week contingent upon the public prosecutor's permission, with guards present and subject to recording. Since July 2011, no lawyer visits had been granted. Even after lifting the state of emergency in July 2018, all prisoners in İmralı Island Prison continued to be denied visits and correspondence with their lawyers (and family).⁴⁹ Ahead of the European Committee for the Prevention of Torture's visit between 6 and 17 May 2019 to İmralı Island Prison,⁵⁰ the judicial ban on lawyers' visits was briefly lifted, allowing Asrın Law Firm lawyers to visit their client Abdullah Öcalan for the first time since July 2011.⁵¹ Requests were again systematically refused from 7 August 2019 onwards. Since March 2021, clients have been kept in complete isolation. The UN Committee against Torture recently expressed profound concern over the incommunicado detention and prolonged lack of access to legal counsel.⁵²

Violations of lawyer-client confidentiality

20. Investigative authorities and the judiciary at times disregard lawyer-client confidentiality, despite its protection under Article 36 of the Attorneyship Law⁵³ and international law.⁵⁴ This disregard may surface during lawyers' attempts to access and speak with clients in detention, but also extends to the confiscation of materials and devices containing privileged information during arbitrary searches of lawyers' offices and residences, and pressure on lawyers to disclose privileged information to courts or investigative authorities.
21. During raids on 25 April 2023 in Diyarbakir,⁵⁵ for example, media lawyer Resul Temur's office was searched and all computers, telephones, and digital materials, in addition to 18 bags of documents, journals, and books, including clients' case files, were confiscated.⁵⁶ In violation of the Attorneyship Law, the bags containing the confiscated files were not sealed and there was no judicial intervention by the Criminal Judgeship of Peace.⁵⁷ Additionally, judges have reportedly challenged lawyer-client confidentiality in court, requesting lawyers on trial to disclose privileged information about their clients.⁵⁸
22. On 6 July 2024, the ruling AKP submitted a new bill to Parliament requiring lawyers to provide 'financial intelligence' on their clients to law enforcement, sparking concern over possible breaches of lawyer-client confidentiality.⁵⁹ Amending the Law on Anti-Money Laundering, Article 2 of Law No.5549,⁶⁰ obligates lawyers to report suspicious financial transactions in relation to cases they work on to the Financial Crimes Investigation Board.⁶¹ Similar legislation was annulled by the Constitutional Court on 3 April 2024 due to concerns over its impact on the independence of the legal profession.⁶²

Lack of access to case files and evidence

23. Measures undermining equality of arms and adversarial aspects of trial proceedings are often implemented in violation of article 14(1) and 14(3) of the ICCPR, and Principle 21 of the UN Basic Principles. This severely hampers lawyers' ability to provide effective legal assistance. The former Special Rapporteur on the right to freedom of opinion and expression, following a visit to Silivri prison in Türkiye, notably reported that in most instances, neither lawyers nor their clients are informed of the specific charges against them, severely hampering the preparation of their defence.⁶³

24. Other measures introduced during the state of emergency, but later codified into existing laws, include granting courts the power to carry out hearings and issue verdicts without lawyers present;⁶⁴ rejecting lawyers requests to hear witnesses if the court rules the aim is to prolong the trial,⁶⁵ and hearing some protected witnesses remotely, altering their voices or screening their faces, rather than bringing them to court hearings where they could be cross-examined in person.⁶⁶
25. In March 2019, independent monitoring of the proceedings against 18 lawyers from the Halkın Hukuk Bürosu (HHB) and ÇHD demonstrated systematic violations of the rights of the defence. These included arguments made by the prosecution based on digital records which were not in the case file and not made available to the defence, the judge not allowing the defence to speak or to engage in any effective manner to challenge evidence, and the judge's rejection of a request to facilitate the collection of further evidence and investigation. The judges also interrupted a request by the defence for the recusal of the presiding judge, they did not allow them to finish their submission and then had all the defendants and their lawyers removed from the court. Lengthy prison sentences were issued the following day, 20 March 2019, without the defendants and their lawyers being allowed to return to court to submit their final defence statements and participate further in the proceedings.⁶⁷

IV. Interference with lawyers' activities

26. Since 2016, members of the legal profession in Türkiye have faced widespread harassment from authorities, with reports of physical attacks and deaths, torture and ill-treatment, and prolonged arbitrary detention, imprisonment, and unfair trials, often charged with overbroad and vague counter-terrorism offences, in violation of the ICCPR, as well as the UN Basic Principles.

Physical attacks and death

27. Lawyers in Türkiye operate under precarious conditions, with repeated reports of intimidation, threats and violence against lawyers. On 27 June 2024, lawyers Şehnaz Altunkaya and Bahtiyar Kandeğer visited the Istanbul Directorate of Organized Crime to inquire about the whereabouts and welfare of their clients, where they were informed of their detention but denied access to them. When attempting to re-enter the station later, Şehnaz Altunkaya was attacked by seven or eight male officers, pushed downstairs, repeatedly kicked, spat upon, and handcuffed with excessive force. Bahtiyar Kandeğer was reportedly also restrained and beaten by several officers, resulting in significant physical injuries to his head and a torn ear.⁶⁸
28. In October 2015, lawyer Tahir Elçi was targeted by pro-government news outlets and faced harassment and death threats after he publicly questioned the renewed use of armed violence by the State for solving the 'Kurdish issue'. Mr. Elçi was killed while holding a press conference on 28 November 2015, when an armed clash took place between police officers and two fleeing PKK militia members. Authorities did not carry out an investigation until 110 days after the incident, resulting in the loss of crucial evidence, and the criminal procedure started over four years after the killing, only prompted by an independent report by Forensic Architecture that incriminated police officers. In June 2024, the Diyarbakır 10th High Criminal Court acquitted the three police officer defendants of all charges, following a criminal process that lacked due process.⁶⁹

Torture and ill-treatment

29. Several lawyers have reported being subjected to torture and ill-treatment while in detention, and during transfers between prisons.⁷⁰ This constitutes a breach of Article 7 of the ICCPR, the UN Convention against Torture (UNCAT) and the UN Nelson Mandela Rules.⁷¹ There have also been reports of a failure to carry out a prompt, impartial, thorough and effective investigation into these allegations, and to provide access to effective remedies, in breach of Articles 2(3) and 7 of the ICCPR and the UNCAT. In 2017, Özgür Yılmaz was reportedly subjected to torture while in police detention in Istanbul. In 2016, Barkin Timtik reported being beaten while being transferred from prison. Oya Aslan reported during her trial that she had been tortured following her arrest in 2019, but no action was taken by the Court or other authorities. Engin Gökoğlu's arm was broken by prison officers during a transfer between two facilities. He submitted a complaint about his injury, leading to another criminal charge of resisting a public officer and facing a further trial. In 2018, Aytaç Ünsal reported being beaten while transferred to prison.⁷²

Arbitrary criminal prosecution

30. Recent years have been characterised by an unprecedented level of prosecution of lawyers, which typically appears linked to their professional duties, frequently in relation to human rights or cases involving political opposition or dissent. Such harassment through judicial means has led to an overall chilling effect of human rights protection through judicial recourse, further undermined by eroding procedural guarantees and lack of adequate legal representation.⁷³ Lawyers have been arbitrarily detained, prosecuted, and convicted for alleged terror-related offences on a widespread basis in 77 of Türkiye's 81 provinces.⁷⁴ As of 2024, over 1,700 lawyers have been prosecuted, with at least 553 lawyers sentenced for terror-related charges to a total of 3,380 years in prison.⁷⁵

31. A pattern has emerged of early morning raids on lawyers' premises, followed by their arrest and detention, which often do not follow requirements set out in the CCP or Article 9 of the ICCPR. On 13 October 2023, the homes of ÇHD lawyers Ceren Yılmaz, Fatih Gökçe, Bilgi Topçu, and Ilgin Gökçe, were raided and the lawyers were arrested, without an investigation number or prior decision by the Criminal Judgeship of Peace, as required by the CCP.⁷⁶ More recently, on 2 July 2024, armed police officers raided the residences of ÇHD lawyers Naim Eminoğlu and Doğa İncesu and took them into custody. The prosecutor and bar association were not present at the raids, the lawyers were not informed of the charges against them, and they were denied access to their lawyers for more than 24 hours while in custody, contrary to the Anti-Terror Law and the ICCPR. Additionally, Eminoğlu's laptop and both lawyers' phones, which contained privileged information, were seized, violating lawyer-client confidentiality.⁷⁷ Both cases reveal multiple violations of Article 9 of the ICCPR.

32. The two most relevant laws constituting Türkiye's anti-terrorism legislation are the Turkish Penal Code No.5237 (TPC) and the Anti-Terror Law No.3713. Article 314 of the TPC criminalises the establishment and/or commanding, and membership, of an armed terrorist organisation,⁷⁸ offences which carry a penalty of 7.5 to 22.5 years imprisonment. Additionally, the TPC establishes the offences of committing a crime on behalf of, and knowingly and intentionally aiding and abetting, a terrorist organisation without being a member of said organisation. Article 314 lacks a definition of an armed organisation or group, making it prone to arbitrary application. This puts lawyers and human rights defenders at risk of judicial harassment while carrying out their professional duties. In 2020,

the ECtHR concluded that judicial authorities systematically interpret Article 314 too broadly, equating conduct of protected freedom of expression with belonging to or leading an armed organisation.⁷⁹

33. The anti-terrorism laws' ambiguous and overbroad definition of terrorism and membership of a terrorist organisation enables the arbitrary classification of lawyers as "terrorist offenders". In 2022, ÇHD lawyer Günay Dağ was added to the "list of wanted terrorists" published by the Ministry of Interior, despite never being convicted for a terrorism offence by a court.⁸⁰ While a Ministry of the Interior decree regulates remuneration for informants, there is no legal provision that regulates the list, its management, and how people can be added or removed from it. Decisions determining inclusion on the list lack due process and there is no procedure for review by a judicial authority, contravening the principles of legality, presumption of innocence, right to a fair trial and right to private and family life.⁸¹
34. There is also a reported trend of lawyers being held in pre-trial detention for extended periods. In November 2022, 19 ÇHD-lawyers were sentenced to up to 20 years and six months in prison for actions taken when carrying out their professional activities.⁸² They were convicted for membership of "terrorist" organisations,⁸³ "terrorist" propaganda,⁸⁴ and resisting and preventing public officials from executing their duty.⁸⁵ In this case, the court systematically refused requests to hear witnesses and to investigate issues, and no evidence of criminal acts was presented by the prosecutor,⁸⁶ with some lawyers having spent long periods in pre-trial detention. Barkın Timtik, Oya Aslan and Selçuk Kozağaçlı had respectively spent five years and three months, six years and two months, and two years and nine months in pre-trial detention at the time of the verdict.⁸⁷
35. Lawyers are often associated with their clients' causes, and charged with similar (typically terrorism) offences, in violation of Principles 16 and 18 of the UN Basic Principles. Lawyers charged with terrorism-related offences face a reversed burden of proof, in violation of Article 14(2) of the ICCPR. Procedural changes undermining fair trials include convictions being based solely on witness testimonies or vague evidence used collectively in multiple cases. The following cases are illustrative of these trends.
 - i. Since 2017, and again in 2023, three lawyers from Ezilenlerin Hukuk Bürosu (EHB, law firm of the oppressed) have been prosecuted for alleged membership of a terrorist organisation⁸⁸ and terrorist propaganda,⁸⁹ seemingly due to representing families of people who died fighting ISIS in Syria. Evidence is partly based on anonymous and, according to the defence, largely recycled witness statements. The defence maintains there is no substantial evidence for the accusations.⁹⁰ One witness claims the lawyers sought no compensation for their legal services, implying that they were not acting as lawyers. The fact that the lawyers reminded their clients of their right to remain silent was used against them, in contravention of the right to a fair trial.⁹¹ The case is ongoing, and hearings keep being adjourned.⁹²
 - ii. Together with 24 of his colleagues at the ÖHD (Association of Lawyers for Freedom), lawyer Süleyman Şahin faces charges of membership of a terrorist organisation, similar to his predominantly Kurdish clients.⁹³ The prosecution relies on a single witness statement by a 'confessor witness' who reportedly aided the police in identifying over 600 individuals allegedly involved in terrorism and is himself being prosecuted for multiple (terrorism) offences. During a hearing, the defence highlighted that several charges against the witness had been dropped, indicating potential collusion, and argued that the case was a direct attack on Süleyman for his human rights work.⁹⁴

- iii. Twelve ÖHD lawyers⁹⁵ have also been prosecuted on suspicion of membership of a “terrorist” organisation. During interrogation, some of these lawyers were questioned about their activities, including complaints they had filed with the ECtHR about human rights violations in Türkiye, visits to their clients in prison, interviews, social media posts, and their relationship with the international human rights community.⁹⁶ This trial started in 2016 and is still ongoing. At a hearing on 8 February 2024, the Court heard an anonymous witness who testified with a distorted voice, who is suspected to be collaborating with the police to avoid prosecution himself.
- iv. The Turkish Court of Cassation has ruled that the mere use of a certain bank account or secure messaging app constitutes evidence of membership of, and aiding and abetting, a terrorist organisation. In 2023, the ECtHR ruled that this systematic practice by courts and its adjudication over the use of the ByLock app, violated the obligation to provide effective safeguards against arbitrary prosecution (Article 7 ECHR).⁹⁷ According to the ECtHR, this judgment affects more than 8,000 pending cases and 100,000 potential cases linked to convictions under Article 314 of the TPC.⁹⁸ In total disregard of the ECtHR rulings, the Ankara Regional Appeal Court on 23 December 2023 sentenced 19 lawyers to more than 125 years, cumulatively, for conducting their legitimate professional activities.⁹⁹ This is illustrative of Türkiye’s refusal to implement ECtHR judgments, in breach of its obligations under Article 46 of the ECHR.¹⁰⁰

Restrictions on the rights to freedom of expression, association, and assembly

36. Lawyers in Türkiye are often subjected to harassment and improper interference because of their expressed views or peaceful assembly and association. This includes scrutinising the conduct of law enforcement; general expressions on the rule of law and human rights on social media; and expression of solidarity with other lawyers. There has also been a trend of disproportionately imposing disciplinary measures on imprisoned lawyers, to deny their conditional release, for actions that constitute the legitimate exercise of their right to freedom of expression, such as chanting slogans.¹⁰¹ These restrictions on the exercise of freedom of expression and peaceful assembly are taken without complying with the conditions for limitations specified in Articles 19 and 21 of the ICCPR, contravening also Principle 23 of the UN Basic Principles.
37. In 2020, ex-members of the Board of Izmir Bar Association, the Ankara Bar Association, and the Diyarbakır Bar Association condemned rhetoric of the head of the Presidency of Religious Affairs linking COVID-19 with homosexuality, unmarried people, and people living with HIV.¹⁰² They were investigated and prosecuted for “insulting a public official” and “publicly denigrating religious values”.¹⁰³ Additionally, the Ministry of Justice authorised the investigation of the Diyarbakır Bar Association over its statements for Armenian Genocide Remembrance Day.¹⁰⁴ According to a 2021 report, 78 investigations and lawsuits were filed against 69 lawyers and members of the Diyarbakır Bar Association, including its President and board members who served between 2016 and 2020.¹⁰⁵
38. Lawyers have also been accused of terrorism offences based on their speech. Lawyer and former Chair of Diyarbakır Bar Association Mehmet Emin Aktar is being prosecuted for “knowingly targeting persons involved in counter-terrorism” after sharing a photo of a search report on social media while commenting on irregularities during a search of his colleague Resul Temur’s office on 25 April 2023, which included the name of a well-known public prosecutor.¹⁰⁶ Lawyer Aryen Turan was arbitrarily detained on 3 November 2022 for

her speech at the Izmir Bar Association on issues concerning the judiciary, the legal profession, and human rights violations, including the alleged use of chemical weapons by the Turkish Armed Forces. On 7 November 2022, she was charged with “aiding and abetting the [PKK] knowingly and willingly”.¹⁰⁷ Lawyer Berrak Çağlar was tried for “being a member of an armed terrorist organisation” after expressing solidarity with imprisoned lawyers in Türkiye in 2021. She was acquitted on 23 November 2023, but the public prosecutor’s appeal is pending.¹⁰⁸

39. Furthermore, Law No.7418, consisting of 40 articles amending the Anti-Terror Law, as well as the TPC,¹⁰⁹ allows the State to prosecute those who criticise the government on social media for ‘disinformation’, and forces tech companies to comply with any content blocking, removal request or demand to hand over user data. Lawyer Eyüp Akinci was charged under this Law for “publicly disseminating misleading information” following his tweet highlighting bribery allegations against the Küçükçekmece Courthouse.¹¹⁰ The Venice Commission issued an opinion determining such restrictions on freedom of expression to be neither necessary nor proportional to any legitimate purpose.¹¹¹
40. Following the 2016 state of emergency, 34 lawyers’ associations were arbitrarily shut down by decree laws¹¹² on the grounds of alleged affiliation to a “terrorist organisation”.¹¹³ State authorities confiscated the assets of the associations without any compensation, and initiated prosecutions against their members.¹¹⁴ In 2022, lawyer Can Atalay was sentenced to 18 years in prison for “attempting to overthrow the Government of the Republic of Turkey or to prevent it from performing its duties”, after participating in and allegedly organising an environmental protest at Gezi Park in 2013.¹¹⁵ In reaching this conclusion, the Court of Cassation ignored two ECtHR rulings on Osman Kavala.¹¹⁶ On 2 April 2024, 13 lawyers were arrested for reading a press statement at the Cağlayan courthouse in Istanbul, protesting the revocation of the mayor-elect’s rights in Eastern Türkiye.¹¹⁷

V. Recommendations

41. The submitting organisations call on UN member states to make the following recommendations to Türkiye during its fourth cycle Universal Periodic Review:
 - a. Repeal the legislative, executive, and constitutional provisions that impede on the independence and impartiality of the judiciary or amend them to bring them in line with international standards on judicial independence.
 - b. Refrain from interfering with the admission to the legal profession and ensure that disciplinary proceedings are free from executive interference, in accordance with international law and standards.
 - c. Repeal or amend the overbroad and vague provisions of the anti-terrorism legislation, including the TPC and Anti-Terror Law, as recommended by the Council of Europe bodies, the ECtHR, and the European Union, to align these with international law and standards and define offences sufficiently precisely so that arbitrary application is prevented.
 - d. Refrain from any actions that may constitute harassment, persecution, or undue interference in the work of lawyers, including their arrest or criminal prosecution on improper grounds such as the expression of critical views or the nature of the case that the lawyer is involved in.

- e. Ensure the immediate and unconditional release of lawyers and human rights defenders who are arbitrarily detained and prosecuted for carrying out their legitimate professional duties.
- f. Take measures to guarantee lawyers' rights to freedom of expression, assembly, and association as set out in ICCPR Articles 19,21 and 22 and Principle 23 of the UN Basic Principles on the Role of Lawyers, in particular their right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights, without suffering professional restrictions by reason of their lawful action.
- g. Take immediate measures to ensure that lawyers have full access to their clients and to restore and ensure full confidentiality of communication between lawyers and their clients, including when clients are held in pre-trial detention and when lawyers' offices and residences are subject to searches by investigative authorities.
- h. Take immediate action to guarantee due process and fair trial rights, including by providing lawyers with full access to case files without undue delay or restrictions, both in law and practice.
- i. Conduct independent and impartial investigations into all allegations of torture and ill-treatment, bring any suspected perpetrators to justice in fair trials, to ensure accountability for officials responsible for these violations in compliance with international law.

¹ See also 45.141 Ensure the execution of the judgments of the European Court of Human Rights (France).

² See also 45.106 Strengthen efforts to ensure the effective investigation and prosecution of, and punishment for, all acts of torture and ill-treatment, and provide access to justice and rehabilitation to victims of torture (Fiji); 45.107 Continue efforts to eliminate acts of torture and ill-treatment and hold the perpetrators accountable (Ghana); and 45.109 Pursue its zero-tolerance policy against torture and continue with measures to prevent, investigate, prosecute and punish all acts of torture and ill-treatment (Nicaragua).

³ Report of the Working Group on the Universal Periodic Review of Turkey (Addendum) A/HRC/44/14/Add.1. It concerns the following recommendations: 45.90 (Sweden), 45.91 (Switzerland), 45.92 (Austria), 45.93 (United States), 45.94 (Uruguay), 45.95 (Belgium), 45.96 (Botswana), 45.98 (Denmark), 45.99 (France), 45.100 (Germany), 45.102 (Maldives), 45.104 (Netherlands). With regard to the small number of recommendations of this nature that Türkiye did accept, it found these to already be implemented: 45.97 (Canada), 45.101 (Ireland), 45.103 (Mexico).

⁴ Report of the Working Group on the Universal Periodic Review of Turkey (Addendum) A/HRC/44/14/Add.1, response to recommendation 45.112. It concerns the following recommendations: 45.112 (United Kingdom), 45.114 (United States), 45.115 (Belgium), 45.118 (Canada), 45.125 (France), 45.126 (Germany), 45.127 (Iceland), 45.132 (Netherlands). Those recommendations supported but considered to be already implemented include: 45.113 (Austria), 45.120 (Costa Rica), 45.133 (Norway).

⁵ Media and Law Studies Association (MLSA), "Court of Cassation says 'no legal value' and rejects Constitutional Court's second Atalay ruling" (3 January 2024) <<https://www.mlsaturkey.com/en/court-of-cassation-says-no-legal-value-and-rejects-constitutional-courts-second-atalay-ruling>>. In this ruling, the AYM stressed the absolute binding nature of its rulings on fundamental rights and freedoms stating that "[n]o authority can review or supervise decisions by the Constitutional Court on violations of these rights," cited in MEDYnews, "Turkish Constitutional Court condemns failure to implement ruling in Can Atalay's case" (8 January 2024) <https://medyanews.net/turkish-constitutional-court-condemns-failure-to-implement-ruling-in-can-atalays-case/>.

⁶ European Commission for Democracy Through Law (Venice Commission), 'Turkey: Law No.6771 Amending the Constitution', CDL-REF(2017)018 (23 February 2017).

⁷ The CJP oversees the organisation and functioning of the judiciary and is responsible for appointments, transfers, promotion, and disciplinary actions.

⁸ Venice Commission, Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017, CDL-AD(2017)005 (13 March 2017) para 94.

⁹ ICJ, 'Turkey Judgeship Advocacy Analysis Brief' (2018) <www.ici.org/wp-content/uploads/2019/02/Turkey-Judgeship-Advocacy-Analysis-brief-2018-ENG.pdf>.

¹⁰ Venice Commission, Opinion on the Amendments to the Constitution Adopted by the Grand National Assembly on 21 January 2017, CDL-AD(2017)005 (13 March 2017) para 119.

¹¹ Notably, the ICCPR (article 14) and ECHR (article 6), and fail to comply with the UN Basic Principles on the Independence of the Judiciary (Principles 1, 2, 4, 8, 18, and 20) and the UN Guidelines on the Role of Prosecutors (Principles 2(a), 4, 8, 21, and 22).

¹² 4236 members of the judiciary in total, <<http://bianet.org/bianet/siyaset/182400-ohal-de-yargi-kurumlarindan-ihraclar>>.

¹³ Article 3 of State of Emergency Decree n.667 relating to Precautions against members of the judiciary: "In case of their membership, affiliation or a connection to a structure, formation or group that is determined by the National Security Council to operate against the national security of the state or terrorist organizations, it is decided that it is not appropriate for members of the Constitutional Court, Chamber Presidents and members of the Court of Cassation, Chamber Presidents and members of the Council of State, members of the Turkish Court of Accounts, judges and prosecutors to remain in the profession and that they should be removed from the profession. Deciding authority for members of the Constitutional Court is the General Assembly of the Constitutional Court, for Chamber Presidents and members of the Court of Cassation, deciding authority is the First Presidency Council of the Court of Cassation, for Chamber Presidents and members of the Council of State, deciding authority is the Presidency Council of the Council of State, for members of the Court of Accounts deciding authority is the commission consisting of the vice-presidents and the head of a department and a member to be determined by the president of the Court of Accounts under the chairmanship of the president of the Court of Accounts."

¹⁴ Article 138 of the Constitution.

¹⁵ Article 36 of the Constitution.

¹⁶ ICJ, 'Dismissal of Judges and Prosecutors tainted by Unfairness' (4 February 2019) <www.icj.org/turkey-dismissal-of-judges-and-prosecutors-tainted-by-unfairness-says-icj/>.

¹⁷ ICJ, 'Turkey Dismissal of Judges and Prosecutors Fundamentally Unfair' (21 October 2020) <www.icj.org/turkey-dismissal-of-judges-and-prosecutors-fundamentally-unfair/>.

¹⁸ Dal, Aylin, 'Statement on the cases of judges and prosecutors dismissed from the Council of State' (AA, 14 February 2024) <<https://www.aa.com.tr/tr/gundem/danistaydan-ihrac-edilen-hakim-ve-savcilarin-davalarıyla-ilk-icli-aciklama/3136997>>

¹⁹ Bianet, 'Erdoğan criticizes Constitutional Court and Council of State' (15 February 2024) <<https://bianet.org/haber/erdogan-criticizes-constitutional-court-and-council-of-state-291938>>.

²⁰ NTV, 'Second examination by the HSK on the judges and prosecutors who were reinstated by the Council of State' (17 February 2024) <https://www.ntv.com.tr/turkiye/hskdan-danistayin-goreve-iade-karari-verdigi-hakim-ve-savcilar-hakkinda-ikinci-inceleme.RSJKRa6eEE-r_aHdRPfYw>

²¹ Council of Judges and Prosecutors, 'CPJ Annual Report for 2023' <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporu.pdf>> p 88.

²² See statements of former Istanbul Bar Association President Mehmet Durakoğlu available at <<https://www.gazeteduvar.com.tr/yargida-torpil-iddiasi-cok-uzun-yillardir-isliyor-haber-1508357>> ; and statements by former Court of Cassation prosecutor Ömer Faruk Eminapaoğlu available at <<https://www.gercekgundem.com/guncel/mulakatlarda-torpil-iddiasi-akp-nin-yargidaki-kadrolasmasinin-temeli-mulakatlar-402250>>.

²³ In 2018, an opposition MP presented a list of over 100 newly recruited judges and prosecutors who had held active roles within the ruling AKP party. See <<https://www.diken.com.tr/chpli-yarkadas-hakim-savci-atanan-akp-lileri-acikladi-113-kisilik-liste/>>

²³ Council of Judges and Prosecutors, 'CPJ Annual Report for 2023' <<https://www.hsk.gov.tr/Eklentiler/0403202413092023-yili-faaliyet-raporu.pdf>> p 88.

²⁴ European External Action Service, 'Türkiye 2023 Report' (8 November 2023) <www.eeas.europa.eu/sites/default/files/documents/2023/SWD_2023_696%20Tu%CC%88rkiye%20report.pdf>.

²⁵ Part Eight of Attorneyship Law No. 1136.

²⁶ Human Rights Watch, 'The Reform of Bar Associations in Turkey: Questions and Answers' (7 July 2020) <www.hrw.org/news/2020/07/07/reform-bar-associations-turkey-questions-and-answers>. This system was proposed and enacted under the "Law Amending the Law on Attorneys and Other Laws" (Law No. 7249). See, Venice Commission, Explanatory Note on Law no. 7249 of 11 July 2020 amending the Attorneyship Law (no. 1136 of 19 March 1969), CDL-REF(2020)033 (20 June 2020) p 6 <[www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)033-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)033-e)>.

²⁷ Venice Commission, Joint Opinion on the July 2020 Amendments to the Attorneyship Law of 1969, CDL-AD(2020)029 (9 October 2020), para 72.

²⁸ Ibid, paras 72-73.

²⁹ A majority of bar associations, including the major ones in Istanbul, Ankara and İzmir, and thousands of lawyers protested the reform, claiming that the legal amendment was part of the government's plan to take over the legal profession. See Barolar yürüyüşü Anıtkabir'de sonlandırdı: "Türkiye'de savunma tarihi tekrar yazıldı". Available at: <<https://www.bbc.com/turkce/haberler-turkiye-53158225>>

³⁰ For example, when the Court of Cassation announced that it would not implement the Constitutional Court's decision on lawyer and MP Can Atalay and filed a criminal complaint against the members of the Constitutional Court, the Union of Bar Associations and the vast majority of Bar Associations heavily criticized the Court of Cassation, while the second Ankara Bar Association declared that the Court of Cassation had made a very correct decision. Available at: <<https://www.yirimidort.tv/gundem/ankara-2-nolu-barosundan-yargitayin-can-atalay-kararina-iliskin-aciklama-145927>>

³¹ In a joint paper ICJ and Human Rights Watch claimed that disproportional representation of chambers in professional organizations breached principles of democracy and human rights - Human Rights Watch and ICJ, 'The Reform of Bar Associations in Turkey: Questions and Answers' (7 July 2020). <https://www.hrw.org/sites/default/files/media_2020/07/Q%20and%20A%20bar%20associations.pdf>

³² Lawyers for Lawyers, 'Joint statement on the concerns about access to the legal profession and increasing disbarments of lawyers in Turkey' (19 July 2021) <<https://lawyersforlawyers.org/en/concerns-about-access-to-the-legal-profession-and-increasing-disbarments-of-lawyers-in-turkey/>>; See, also, UN Human Rights Council, 'Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán' (22 April 2022) A/HRC/50/36, para 87;

³³ UN Human Rights Committee, 'General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial', (23 August 2007) CCPR/C/GC/32, para 34; Principle 12 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

³⁴ UN Human Rights Council, 'Report of the Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán' (22 August 2016) A/71/348, para 77.

³⁵ These statistics were obtained from the UTBA.

³⁶ Tahir Elçi Human Rights Foundation, "Lawyers without Licenses: Pressures against the Profession of Lawyer after the State of Emergency and Individuals Not Admitted to the Profession" (December 2020) pp 23-24.

³⁷ IBAHRI and TALI, 'A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey' (14 February 2024) p 11 <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.

³⁸ Articles 5 and 136 of the Attorneyship Law, available at: <[https://venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2020\)064-e](https://venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2020)064-e)>

³⁹ See *Infra*, Section III. Interference with lawyers' activities, Criminal prosecution

⁴⁰ See Article 153 of the Attorneyship Law.

⁴¹ Lawyers for Lawyers, 'Trial monitoring mission for the hearing in the trial against lawyers from Ezilenlerin Hukuk Bürosu' (17 July 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-for-the-hearing-in-the-trial-against-lawyers-from-ezilenlerin-hukuk-burosul/>>.

⁴² MLSA, 'Istanbul Bar Association initiates disciplinary probe into lawyer Uçar over legal practice-related activities' (02 March 2024) <<http://www.mlsaturkey.com/en/istanbul-bar-association-initiates-disciplinary-probe-into-lawyer-sezin-ucar-over-lawyering-related-activities>>; Similarly, in December 2018, the Istanbul Bar Association initiated disciplinary proceedings against Ramazan Demir, citing the 2016 criminal proceedings for alleged membership of the PKK mentioned in Section IV, subparagraph 33 (iii). The disciplinary proceedings are still pending. Human Rights Watch, 'Lawyers on Trial, Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey' (10 April 2019), <<https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>> accessed 22 August 2024.

⁴³ See, for reference, Human Rights Committee, AL TUR 18/2020.

⁴⁴ Emergency Decree Law No. 676, amending Article 154/2 of the Code of Criminal Procedure. See, also OHCHR Report on the impact of the state of emergency on human rights in Turkey (2018) paras 40(j) and 83(a), available at: http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf. See, also, European Commission for Democracy and Law (Venice Commission) in its opinion No. 865 / 2016 on Decree Laws no. 667-76, 12 December 2016, para. 154, available at: <[www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)037-e)>.

⁴⁵ See, for example, *Supra* Section III, para 31, the case of Naim Eminoğlu and Doğa İncesu.

⁴⁶ See UN Special Rapporteur on Torture report, A/HRC/37/50/Add.1 (2017) paras 26-34, 63; and UN Human Rights Committee, General Comment no 35 Article 9 (Liberty and security of person, CCPR/C/GC/35 para 58.

⁴⁷ Emergency Decree Law No. 676, codified by Law No 6749, article 6(d). Available at: Başbakanlık Mevzuatı Geliştirme ve Yayın Genel Müdürlüğü (resmigazete.gov.tr) see also OHCHR, 'Working Group on protecting human rights while countering terrorism, Guidelines for the right to a fair trial and due process in the context of countering terrorism' (October 2014) p. 19.

⁴⁸ Human Rights Watch, 'Lawyers on Trial: Abusive Prosecutions and Erosion of Fair Trial Rights in Turkey' (2019) p 16.

⁴⁹ Lawyers for Lawyers, 'Lawyers of Asrın Hukuk Bürosu severely hindered in assisting their clients' (5 April 2022) <<https://lawyersforlawyers.org/en/lawyers-of-asrin-hukuk-burosul-severely-hindered-in-assisting-their-clients/>>. Decisions to refuse access to lawyers were repeatedly taken by the competent enforcement judge, each time for a period of six months, on the basis of section 59 of the Law on the Execution of Sentences and Security Measures.

⁵⁰ Report to the Turkish Government on the visit to Turkey carried out by the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment (CPT) From 6 May to 17 May, CPT/Inf (2020) 24.

⁵¹ The European Court of Human Rights found violations of Articles 3, 5(4) and 6 of the European Convention on Human Rights, inter alia, due to the restrictions on access to lawyers for Mr Öcalan, see *Öcalan v Turkey (no. 1)*, Application no. 46221/99 (2005), available at: <<https://hudoc.echr.coe.int/eng?i=001-69022>>; *Öcalan v Turkey (no. 2)*, Applications nos. 24069/03, 197/04, 6201/06 and 10464/07 (2014), paras. 131-135, 146, available at: <<https://hudoc.echr.coe.int/eng?i=001-142087>>

⁵² CAT, Concluding Observations on the fifth periodic report of Türkiye, CAT/C/TUR/CO/5 (adopted on 25 July 2024) para 16.

⁵³ Article 36 of Attorneyship Law No 1136 states that 'attorneys are prohibited from disclosing information that has been entrusted to them or that they come upon in the course of performing their duties both as an attorney and as members of the Union of Turkish Bar Associations and various bodies of bar associations.'

⁵⁴ Article 14.3(b) of the ICCPR, as elaborated on by the UN Human Rights Committee in its General Comment No. 13 (13 April 1984) para 9, in which it states that 'subparagraph 3(b) [...] requires counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communications'. In addition, Principle 22 of the UN Basic Principles states: "Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential."

⁵⁵ See, for example, Reuters 'Turkey arrests 110 over alleged Kurdish militant ties ahead of election' (26 April 2023) <www.reuters.com/world/middle-east/turkey-arrests-110-people-over-alleged-kurdish-militant-ties-sources-2023-04-25/>. During these raids, lawyer Süleyman Sahin was also arrested, see *Infra* Section IV, para 33(ii).

⁵⁶ Among the documents were the indictment and preparatory defence materials in a case against 16 journalists who are currently being prosecuted for membership of a terrorist organisation.

⁵⁷ Articles 58-61 of the Law on Attorneyship No. 1136; in conjunction with CCP No 5271, article 130. The Criminal Judgship of Peace will need to decide on the privileged nature of the seized documents within 24 hours after confiscation.

⁵⁸ MLSA, 'Lawyer Burhan Arta forced to disclose client confidentiality in court' (30 April 2024) at <www.mlsaturkey.com/en/lawyer-burhan-arta-forced-to-disclose-client-confidentiality-in-court>.

⁵⁹ Stockholm Center for Freedom, 'Turkey's ruling party unveils new legislation to turn lawyers into informants' (10 July 2024) <<https://stockholmcf.org/turkeys-ruling-party-unveils-new-legislation-to-turn-lawyers-into-informants/>>.

⁶⁰ Articles 20-21 of the Law on Amendments to Certain Decree Laws, No. 7521 (amending the Law on the Prevention of Laundering Proceeds of Crime, Article 2 of Law No. 5549), published in the *Official Gazette* on 26 July 2024. Available here: cdn.tbmm.gov.tr/KKBSPublicFile/D28/Y2/KanunMetni/78110eed-c1dc-4976-b002-041ad1d2a7e5.htm.

⁶¹ Kronos, 'K`Yeni torba teklifte avukatlara muhbirlik görevi geliyor (New omnibus bill assigns whistleblowers role to lawyers)' (7 July 2024) <<https://kronos37.news/yeni-torba-teklifte-avukatlara-muhbirlik-gorevi-geliyor/>>.

⁶² Decision of the Turkish Constitutional Court, Official Gazette No. 32509 (3 April 2024) available at: <https://www.resmigazete.gov.tr/eskiler/2024/04/20240403-4.pdf>.

⁶³ Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on his mission to Turkey, A/HRC/35/22/Add.3 (7 June 2017) paras 37, 72-74.

⁶⁴ CCP articles 188/1 and 216/3.

⁶⁵ CCP article 178.

⁶⁶ CCP article 139/3.

⁶⁷ Lawyers for Lawyers, 'Joint letter on 18 sentenced and imprisoned HHB and ÇHD lawyers' (20 May 2019) <<https://lawyersforlawyers.org/joint-letter-on-18-sentenced-and-imprisoned-hhb-and-chd-lawyers/>>.

⁶⁸ The Arrested Lawyers Initiative, "Severe Police Brutality Against Two Lawyers at Istanbul Police Station" (1 July 2024) <<https://arrestedlawyers.org/2024/07/01/severe-police-brutality-against-two-lawyers-at-istanbul-police-station/>>.

⁶⁹ Lawyers for Lawyers, "Impunity prevails in the case of the killing of lawyer Tahir Elçi: Diyarbakir High Criminal Court acquits defendants" (19 June 2024) <<https://lawyersforlawyers.org/impunity-prevails-in-the-case-of-the-killing-of-lawyer-tahir-elci-diyarbakir-high-criminal-court-acquits-defendants/>>.

⁷⁰ 'Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings' (6-10 November 2023), <https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf>.

⁷¹ Rule 82(1) of the Nelson Mandela Rules requires that prison staff shall not use force "except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director." Rule 43 also states that instruments of restraint must never be used as a sanction for disciplinary offences.

⁷² 'Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings' (6-10 November 2023), <https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf>, p 12.

⁷³ Report of the International Federation for Human Rights (FIDH), "Civic space increasingly threatened as government attacks rights," (28 August 2024), <<https://www.fidh.org/en/region/europe-central-asia/turkey/civic-space-increasingly-threatened-as-government-attacks-rights>>

⁷⁴ IBAHRI and TALI, 'A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey' (14 February 2024) <<https://arrestedlawyers.org/2024/02/14/tali-ibahri-joint-report-on-the-mass-imprisonment-of-lawyers-in-turkey/>>.

⁷⁵ Ibid.

⁷⁶ The lawyers were subsequently released on or around 15 October 2023, and Ceren Yılmaz was prohibited from leaving Türkiye. See intervention letter by the Law Society of England and Wales, under 'October 2023' <<https://www.lawsociety.org.uk/campaigns/international-rule-of-law/intervention-letters/intervention-letters>>.

⁷⁷ See intervention letter by the Law Society of England and Wales, under 'July 2024'

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

⁷⁸ Article 314 (1) Any person who establishes or commands an armed organisation with the purpose of committing the offences listed in parts four and five of this chapter, shall be sentenced to a penalty of imprisonment for a term of ten to fifteen years. (2) Any person who becomes a member of the organisation defined in paragraph one shall be sentenced to a penalty of imprisonment for a term of five to ten years. (3) Other provisions relating to the forming of an organisation in order to commit offences shall also be applicable to this offence. [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2016\)011-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2016)011-e)

⁷⁹ *Selahattin Demirtaş v. Turkey* (No. 2), no. 14305/17 (ECtHR, 22 December 2020), paras 278-280.

⁸⁰ European Association of Lawyers for Democracy & World Human Rights, "Turkey's terror list: An attack on lawyers and human rights", (11 February 2023) <<https://eldh.eu/en/2023/02/turkeys-terror-list-an-attack-on-lawyers-and-human-rights/>>

⁸¹ Articles 14, 15, and 17 ICCPR.

⁸² The mass trial began involving 22 lawyers. The cases against two lawyers, Günay Dağ and Zekir Rüzgar, were separated from this case and the case against Ebru Timtik was dropped. Ebru passed away on 27 August 2020 after a long hunger strike protesting the lack of a fair trial in Türkiye.

⁸³ Article 314(2) of the TPC.

⁸⁴ Article 7(2) of the Anti-Terror Law.

⁸⁵ Article 265(1) of the TPC.

⁸⁶ Lawyers for Lawyers, "Lawyers convicted to long prison sentences (again)" (15 November 2022) <<https://lawyersforlawyers.org/en/lawyers-convicted-to-long-prison-sentences-again/>>

⁸⁷ 18 of these lawyers had already been convicted to long prison sentences in 2019. Naciye Demir, Özgür Yılmaz and Şükriye Erden had already been convicted for membership of a terrorist organisation and sentenced to nine years, 13.5 years and 12 years respectively. Their new sentences for propaganda in the CHD-1 case are in addition to the previous sentences, which have become irreversible. Özgür Yılmaz was in prison serving his first sentence at the time of the verdict. See "Joint letter on 18 sentenced and imprisoned HHB and ÇHD lawyers" (20 May 2019) <<https://lawyersforlawyers.org/en/joint-letter-on-18-sentenced-and-imprisoned-hhb-and-chd-lawyers/>>

⁸⁸ Article 314(2) of the TPC.

⁸⁹ Article 7(2) of the Anti-Terror Law.

⁹⁰ Lawyers for Lawyers, "Trial monitoring mission for the hearing in the trial against lawyers from Ezilenlerin Hukuk Bürosu" (17 July 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-for-the-hearing-in-the-trial-against-lawyers-from-ezilenlerin-hukuk-buros/>>

⁹¹ Sezin Uçar and Özlem Gümüştas were already in pre-trial detention from 19 October 2017 to 5 October 2018. Gülhan Kaya was under judicial control up until 29 November 2018. She was arrested on 10 June 2023 and was in pre-trial detention until 9 November 2023. See Lawyers for Lawyers, "Trial monitoring mission in the trial against the lawyers from Ezilenlerin Hukuk Bürosu" (7 April 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-in-the-trial-against-the-lawyers-from-ezilenlerin-hukuk-buros/>>.

⁹² Lawyers for Lawyers, "Trial monitoring mission in the trial against the lawyers from Ezilenlerin Hukuk Bürosu" (7 April 2024) <<https://lawyersforlawyers.org/en/trial-monitoring-mission-in-the-trial-against-the-lawyers-from-ezilenlerin-hukuk-buros/>>

⁹³ He is a lawyer registered with the Diyarbakir Bar Association and member of the Association of Lawyers for Freedom (ÖHD). Since commencement of the prosecution, all other 24 lawyers have been acquitted by the 4th High Criminal Court in Diyarbakir.

⁹⁴ Lawyers for Lawyers, "Second hearing in the case of human rights lawyer Suleyman Sahin" (4 June 2024) <<https://lawyersforlawyers.org/second-hearing-in-the-case-of-human-rights-lawyer-suleyman-sahin/>>

⁹⁵ Ramazan Demir, Ayşe Acinikli, İrfan Arasan, Hüseyin Boğatekin, Şefik Çelik, Adem Çalışçı, Tamer Doğan, Mustafa Rüzgar, Ayşe Gösterişlioğlu, Sinan Zincir, Raziye Öztürk and Ruşen Mahmutoğlu.

- ⁹⁶ Lawyers for Lawyers, "Trial Observation Mission Report: hearing in the ongoing trial against ÖHD-lawyers" (16 February 2024) <<https://lawyersforlawyers.org/trial-observation-mission-report-hearing-in-the-ongoing-trial-against-ohd-lawyers/>>
- ⁹⁷ *Yüksel Yalçınkaya v. Türkiye*, no. 15669/20 (ECtHR, 26 September 2023).
- ⁹⁸ Yıldız, Ali 'Strasbourg Weighs In On Political Persecution In Turkey' (*Verfassungsblog*, 31 October 2023) <<https://verfassungsblog.de/strasburg-weighs-in-on-political-persecution-in-turkey/>>. The court also ordered a retrial of the applicant and the adoption of general measures to prevent similar violations.
- ⁹⁹ The Arrested Lawyers Initiative, 'Ankara Appeal Court Defies ECHR, Sentences 19 Lawyers to 125+ years' (31 January 2024) <<https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/>>; and Ankara Regional Appeal Court's 22nd Criminal Chamber, 27 December 2023.
- ¹⁰⁰ Failure by the State to take necessary corrective action, such as a refusal by national courts to apply the ECtHR ruling, constitutes a failure to execute the judgment in accordance with Article 46. A failure to execute a ruling of the Court to which the State is party is a failure to implement the provisions of the treaty.
- ¹⁰¹ 'Report of an Independent International Fact-finding Mission to Turkey, Examining the Treatment of Lawyers Deprived of their Liberty and Observing Trial Proceedings' (6-10 November 2023), < https://www.nycbar.org/wp-content/uploads/2024/02/Fact-Finding-Mission-Report_Turkey_Final.pdf> p 16.
- ¹⁰² Freedom House, 'The Systematic Decline of Freedom of Expression in Turkey' (July 2022) <https://freedomhouse.org/sites/default/files/2022-07/Freedom%20House%20Turkey%20Policy%20Brief%20No.4_The%20Systematic%20Decline%20of%20the%20Freedom%20of%20Expression%20in%20Turkey.pdf> p 3.
- ¹⁰³ Lawyers for Lawyers, 'Board of the Izmir Bar acquitted on all charges' (1 May 2023), <<https://lawyersforlawyers.org/board-of-the-izmir-bar-acquitted-on-all-charges/>>; BBC News Turkey, 'Ali Erbaş: Why was the President of Religious Affairs criticized, how did President Erdoğan defend Erbaş?' (27 April 2020) <<https://www.bbc.com/turkce/haberler-turkiye-52447722>>; and Sessiz Kalma, 'Diyarbakır Bar Association, which reacted to Diyanet's "hate speech", was also investigated' (28 April 2020) <<https://www.sessizkalma.org/tr/haberler/diyanetin-nefret-soylemine-tepki-gosteren-diyarbakir-barosuna-da-sorusturma-acildi>>
- ¹⁰⁴ <<https://www.agos.com.tr/tr/yazi/30084/diyarbakir-barosu-na-bir-soykirim-davasi-daha>>, 04 April 2024.
- ¹⁰⁵ <<https://artigercek.com/guncel/diyarbakir-barosuna-bagli-avukatlara-78-sorusturma-ve-dava-acildi-159316h>>, 05 April 2021.
- ¹⁰⁶ Lawyers for Lawyers, 'Trial observation: second hearing in the trial against lawyer and former president of the Diyarbakır Bar Association, Mehmet Emin Aktar' (13 June 2024) <<https://lawyersforlawyers.org/en/trial-observation-of-the-trial-against-the-former-president-of-the-diyarbakir-bar-association-mehmet-emin-aktar/>>.
- ¹⁰⁷ PEN Norway, Lawyers for Lawyers, 'Legal Report on Indictment: Aryen Turan' (5 October 2023) pp 3-4 <https://norskpen.no/eng/wp-content/uploads/2023/10/PEN-Norway_Legal-Report-on-Indictment-A-Turan-Eng.pdf>.
- ¹⁰⁸ Lawyers for Lawyers, 'Lawyers for Lawyers Monitored Final Hearing in the Trial of Berrak Çağlar – the Court Granted Full Acquittal' (6 December 2023) <<https://lawyersforlawyers.org/lawyers-for-lawyers-monitored-final-hearing-in-the-trial-of-berrak-caglar-the-court-granted-full-acquittal/>>. The Chief Public Prosecutor's Office also initiated criminal investigations against lawyers Sezin Uçar and Seher Eriş for similar statements during the general assembly of the Istanbul Bar Association. See, Lawyers for Lawyers, 'Concerns about the possible initiation of a criminal investigation of three lawyers in Turkey' (11 April 2022) <<https://lawyersforlawyers.org/en/concerns-about-the-possible-initiation-of-a-criminal-investigation-of-three-lawyers-in-turkey/>>.
- ¹⁰⁹ Human Rights Watch, 'Turkey: Dangerous, Dystopian New Legal Amendments, New Censorship Threat with Elections Looming' (14 October 2022) <www.hrw.org/news/2022/10/14/turkey-dangerous-dystopian-new-legal-amendments>.
- ¹¹⁰ The Arrested Lawyers Initiative, 'Istanbul lawyer Akinci faces prosecution over his tweet' (1 December 2023) <<https://arrestedlawyers.org/2023/12/01/istanbul-lawyer-akinci-faces-prosecution-over-his-tweet/>>. Akinci was acquitted in July 2024, after spending nine months under house-arrest. See Free Freedom of Expression, 'Attorney Eyüp Akinci acquitted' (12 July 2024) <<https://www.dusun-think.net/en/news/attorney-eyup-akinci-acquitted/>>. His was acquitted in July 2024, after spending nine months under house-arrest. See, Free Freedom of Expression, 'Attorney Eyüp Akinci acquitted' (12 July 2024) <<https://www.dusun-think.net/en/news/attorney-eyup-akinci-acquitted/>>.
- ¹¹¹ Urgent Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the Penal Code regarding the provision on "false or misleading information" - Issued pursuant to Article 14a of the Venice Commission's Rules of Procedure, CDL-PI(2022)032-e, Opinion no. 1102 / 2022, 7 October 2022.
- ¹¹² UN General Assembly, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers' (5 September 2018) A/73/365 (hereafter 'Report of the SRIJL') para 36.
- ¹¹³ UN Office of the High Commissioner for Human Rights, 'Report on the impact of the state of emergency on human rights in Turkey, including an update on the South-East' (March 2018), para 9 <https://www.ohchr.org/sites/default/files/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf>.
- ¹¹⁴ UN General Assembly, 'Report of the SRIJL' (5 September 2018), A/73/365, para 36.
- ¹¹⁵ Columbia University Global Freedom of Expression, 'The Case of Şerafettin Can Atalay' (n.d.) <<https://globalfreedomofexpression.columbia.edu/cases/the-case-of-serafettin-can-atalay/>>.
- ¹¹⁶ Kavala v. Turkey, no. 28749/18, 10.12.2019; Proceedings Under Article 46 § 4, in the Case of Kavala v. Türkiye [GC], 11.07.2022. See also the Court of Cassation's subsequent refusal to comply with two judgments of the Constitutional Court concerning Can Atalay's detention, supra Section II para 5.
- ¹¹⁷ Lawyers for Lawyers, 'Statement on Lawyers' Day in Turkey' (5 April 2024), <<https://lawyersforlawyers.org/statement-on-lawyers-day-in-turkey/>>.