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Human Rights Committee
Submission for the Second Periodic Report on Türkiye
Submission to the 142nd Session of the Human Rights Committee
(14 Oct 2024 - 08 Nov 2024)

Executive Summary:

This joint submission from the International Bar Association's Human Rights Institute (IBAHRI) and The Arrested Lawyers Initiative (TALI) to the Human Rights Committee on its enquiries into the situation in Türkiye, highlights the deteriorating state of human rights in Türkiye, particularly in the aftermath of the 2016 coup attempt and the subsequent state of emergency. The report underscores significant concerns about the erosion of the rule of law, judicial independence, and the misuse of counter-terrorism legislation to suppress dissent. Despite judicial reforms, structural deficiencies remain unaddressed, leading to continued political influence over the judiciary and the frequent use of broad and vague anti-terrorism laws to target political opponents, human rights defenders, and journalists.

A significant focus of the report is the systematic targeting of lawyers and the legal profession in Türkiye. Since the 2016 coup attempt, more than 1,700 lawyers have been prosecuted, and over 700 have been detained on charges of terrorism, often based on vague and broad legal provisions. These charges frequently stem from their professional activities, with lawyers being misidentified with their clients or targeted for their involvement in politically sensitive cases. The submission details how the Turkish government has weaponized anti-terrorism laws, such as Article 314 of the Turkish Penal Code, to criminalise the legitimate work of lawyers, leading to mass arrests, unfair trials, and lengthy prison sentences. This has severely undermined the independence of the legal profession and has had a chilling effect on the ability of lawyers to defend their clients without fear of reprisal.

The submission calls for urgent reforms to restore the independence of the judiciary, protect the rights of lawyers, human rights defenders and minorities; and ensure that Türkiye's legal framework aligns with its international human rights obligations.

The International Bar Association ("IBA"), established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of 80,000 individual lawyers and more than 190 Bar Associations and Law

Societies, spanning all continents. The IBA's Human Rights Institute (IBAHRI), an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

The Arrested Lawyers Initiative (TALI) is a Brussels-based rights group consists of lawyers making advocacy to ensure lawyers and human rights defenders perform their duty without fear of intimidation, reprisal and judicial harassment. TALI is a member of the International Observatory for Lawyers.

I. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the Committee’s previous concluding observations, including steps taken to implement Human Rights.

1. Measures that have been purported in [CCPR/C/TUR/2](#) by Türkiye have not resulted in any real improvement with regard to the rule of law, democracy, human rights and freedoms.

2. A European Commission 2023 report finds that “Serious backsliding continued and, despite several judicial reform packages in recent years, the structural deficiencies in the judicial system remained unaddressed. The continued refusal to implement certain rulings of the European Court of Human Rights (ECtHR) remains a matter of concern. There was no progress in eliminating undue influence and pressure by the executive on judges and prosecutors, which negatively affects the independence, impartiality, and quality of the judiciary. Implementation of the 2021 Human Rights Action Plan (HRAP) and the 2019 Judicial Reform Strategy (JRS) continued, but the activities foreseen in these documents fell short of addressing the structural problems and issues identified in the previous reports of the European Commission. The lack of objective, merit-based, uniform, and pre-established criteria for recruiting and promoting judges and prosecutors remains a source of concern. Although the principle of separation of powers and judicial independence is enshrined in the Constitution and other legislative provisions, there are strong concerns regarding political influence on the judiciary.”¹

3. In 2024, Amnesty International said that “*Amnesty International is concerned that the new legislative package, which is commonly known as the “8th Judicial Package,” falls short of human rights standards. The new package - as was the case with preceding reform proposals - continues to fail to address the most significant and structural/systematic issues at the root of the persistent erosion of human rights in Türkiye, including the breakdown of the rule of law and the independence of the judiciary. As the text stands, it also does not fully implement legal changes arising from key pertinent Constitutional Court rulings, in particular with regards to the amendments to the Article 220/6 of the Turkish Penal Code.*”²

4. In 2024, the Committee Against Torture found that “*The Committee is concerned by allegations that the article that prohibits use of evidence obtained through the use of torture and ill-treatment is not always applied in practice and by the lack of information provided by the State party on instances where such evidence was deemed to be inadmissible.*”³

5. Despite repeated calls from the Committee of Ministers of the Council of Europe, Türkiye has not reformed the structure of the Council of Judges and Prosecutors to ensure the independence and impartiality of the judiciary.⁴

¹ European Commission, Türkiye Report 2023, https://neighbourhood-enlargement.ec.europa.eu/turkiye-report-2023_en

² <https://www.amnesty.org/en/wp-content/uploads/2024/03/EUR4477652024ENGLISH.pdf>

³ Concluding observations on the fifth periodic report on Türkiye, 25 July 2024, CAT/C/TUR/CO/5, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2FCO%2FTUR%2FCO%2F5&Lang=en

⁴ <https://search.coe.int/cm/?i=0900001680aa75d1>
[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1475/H46-39E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1475/H46-39E)
[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1459/H46-26E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1459/H46-26E)

II. Please also indicate the procedures for the implementation of the Committee's Views under the Optional Protocol and provide information on measures to ensure full compliance with each of the Views in respect of the State party, including in *Özçelik et al. v. Turkey*. (CCPR/C/125/D/2980/2017.)

6. Türkiye has failed to comply with the opinions of the UN Human Rights Committee (Mukadder Alakus 3736/2020 and İsmet Özçelik 2980/2017) and also those of the WGAD; and also with judgments of the ECtHR.

7. Despite the findings of ECtHR (Demirtaş II, Yüksel Yalçınkaya) and the UN Human Rights Committee (Mukadder Alakus) that Article 314 of the Penal Code breaches the principle of no punishment without law, Türkiye has continued to arrest and convict, in total, more than 300,000 people under this provision. Türkiye has since continued to commit similar human rights violations, which are condemned in the judgments/opinions of ECtHR; HRC and WGAD.

8. In 2021, in the case of Vedat Şorli v. Turkey (Application no. 42048/19), the European Court of Human Rights found that the provision of the Penal Code stipulating insulting the President of the Republic was not in conformity with the Convention and should be amended. Despite this ruling, no reform has been made, and recent statistics from the Ministry of Justice, in 2023, indicate a significant increase in legal proceedings under this contentious provision. The year 2023 witnessed the filing of 25,520 new cases under Articles 299 and 301 of the Turkish Penal Code, which criminalise the insulting of the President and defaming Turkishness, respectively.⁵

III. Please provide information on any steps taken during the reporting period to establish a national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

9. The HREI was accredited with a B status by the Global Alliance for National Human Rights Institutions in October 2022.

10. Yet, the UN Committee Against Torture recently found: “The Committee takes note of the recent B status granted to the Human Rights and Equality Institution of Türkiye by the Sub-Committee on the Accreditation of the Global Alliance of National Human Rights Institutions. In this connection, the Committee further expresses its concern that the institution lacks diversity, including adequate gender representation, among its Board members, and is not independent from the Executive, noting that all of its Board members, including its chairperson, are appointed by the President. The Committee is also concerned that, in its work as a national preventive mechanism, the Human Rights and Equality Institution of Türkiye has been allegedly reticent in reporting on instances of torture and ill-treatment”⁶

11. The European Commission's 2023 Türkiye report found the following⁷:

⁵ <https://kisadalga.net/haber/spor/ulkeler-olimpiyat-madalyasi-kazanan-sporculara-ne-kadar-odul-veriyor-107122>
<https://velev.news/gundem/erdogana-hakaret-davalarinda-rekor-25-bin-520-dosya-acildi/>

⁶ Concluding observations on the fifth periodic report of Türkiye, 25 July 2024, CAT/C/TUR/CO/5.

⁷ [European Commission, Türkiye Report 2023.](#)

- i) The HREI lacks ex officio powers to initiate investigations and to intervene in cases with legal remedies. The effectiveness of both institutions remained limited.
- ii) The HREI makes prison visits in its role as the National Preventive Mechanism (NPM), but it does not have set and independent criteria for announced visits. In some visits, it only interacted with the administration and did not speak to the detainees. It has not visited all the prisons with the highest number of allegations of human rights violations or has done so with a significant delay. The recommendations mainly deal with minor issues and do not make concrete statements on serious human rights abuses.
- iii) The HREI needs to improve its reputation regarding the effective tackling of human rights issues and engaging in constructive dialogue with civil society.
- iv) Although tasked with the role of the National Preventive Mechanism (NPM), the HREI does not meet the key requirements under the Optional Protocol to the UN Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment (OPCAT) and did not effectively process cases referred to it.
- v) The HREI, as the national preventive mechanism, is also tasked with monitoring the prison administration and observation boards, but this work has remained ineffective. The work of the boards is not transparent and not supervised by independent bodies.
- vi) The HREI and the Ombudsman did not accept applications on the grounds of sexual orientation and identity. In addition, the Ombudsman did not address politically sensitive issues concerning human rights and fundamental freedoms.

IV. Non-discrimination (Arts. 2, 3, 6, 25 and 26): Discrimination based on gender, sexual orientation, disability, race, ethnicity, religion, and/or nationality; Hate speech by individuals, media outlets and political figures against groups, such as ethnic Kurds and/or persons on the grounds of their sexual orientation or gender identity.

12. The Kurdish minority still face different types of discrimination and racial violence from ordinary people and security forces. The Kurdish language, Kurdish music and concerts are still subject to different types of restrictions and even to bans.⁸

13. The National Curriculum still does not include Kurdish in order to ensure that the Kurdish minority can learn their mother tongue along with the official language, Turkish.

14. Syrian and Afghan refugees have also sustained discrimination and racially provoked violence, and even pogroms. The Mayor of Bolu Province adopted an explicit discrimination policy which included providing basic services (fees for marriage, transportation fares and water) to foreigners that were ‘astronomically’ more expensive than they were to Turkish citizens. Most recently (July 2024), widespread attacks have taken place against the residences and workplaces of refugees in Türkiye, in the provinces of Kayseri, Konya, Gaziantep, Hatay, Adana and Istanbul. Workplaces were burned down, individuals were attacked and even, in some cases, tortured and killed.⁹

⁸ <https://bianet.org/haber/dozens-of-kurdish-concerts-plays-banned-in-turkey-in-three-years-262018>
<https://www.mlsaturkey.com/en/kurdish-music-group-faces-arbitrary-provincial-ban>
<https://www.turkishminute.com/2023/10/23/23-people-brief-detained-over-kurdish-songs-played-at-wedding-central-turkey/>
<https://www.duvarenglish.com/turkish-police-raid-kurdish-language-only-cafe-detain-owner-in-diyarbakir-news-64422>

⁹ <https://www.duvarenglish.com/xenophobia-in-bolu-foreigners-will-now-pay-for-water-in-dollars-100k-for-weddings-news-59621>
<https://www.turkishminute.com/2024/04/16/controversial-mayor-vow-astronomical-increase-bus-fares-for-foreign-students-in-bolu/>

15. The Committee on the Rights of the Child is “deeply concerned that discrimination persists against children in situations of particular vulnerability, including children with disabilities, asylum-seeking, refugee and migrant children, children of ethnic and religious minorities, lesbian, gay, bisexual, transgender and intersex children and children whose parents are accused of links to terrorist organisations, noting, in particular, their restricted ability to benefit from basic services, including education, health and protection from violence, and to enjoy an adequate standard of living. It also remains deeply concerned that no urgent and systematic efforts have been carried out to combat and change the persistence of adverse and traditional attitudes and norms that drive the discriminatory attitudes and practices”¹⁰

16. The Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families found that although there are efforts to provide education for vulnerable groups, significant barriers remain, particularly for migrant and refugee children, who face discrimination and language barriers.¹¹

17. Syrian refugees in Türkiye are at particular risk of exploitation. Workers are exposed to underpayment, discrimination, excessive hours, and the threat of termination for non-compliance.¹²

18. The Special Rapporteur on violence against women and girls, its causes and consequences, Reem Alsalem, noted that while the Directorate on the Status of Women has the mandate to lead and coordinate the design and implementation of gender equality policies. The percentage of the official budget allocated for the implementation of gender equality policies is insufficient.¹³ According to the mandate’s country visiting report, and to the UN report, while there have been initiatives like the introduction of national action plans and certain legal measures to address unemployment and discrimination against women, the enforcement of these measures remains inconsistent. Issues such as domestic violence are still pervasive, and services for victims are inadequate.

<https://www.duvarenglish.com/bolu-municipal-council-approves-mayors-racist-proposal-against-refugees-news-58380>
<https://www.duvarenglish.com/turkish-mayor-plans-to-charge-foreigners-thousands-of-liras-for-weddings-in-yet-another-racist-policy-news-59515>
<https://www.duvarenglish.com/bolu-mayor-signals-more-racist-policies-against-refugees-as-chp-isolates-his-views-from-party-news-58311>
<https://www.duvarenglish.com/xenophobia-in-bolu-foreigners-will-now-pay-for-water-in-dollars-100k-for-weddings-news-59621>
<https://www.turkishminute.com/2024/04/16/controversial-mayor-vow-astronomical-increase-bus-fares-for-foreign-students-in-bolu/>
<https://www.duvarenglish.com/bolu-municipal-council-approves-mayors-racist-proposal-against-refugees-news-58380>
<https://www.duvarenglish.com/turkish-mayor-plans-to-charge-foreigners-thousands-of-liras-for-weddings-in-yet-another-racist-policy-news-59515>
<https://www.duvarenglish.com/bolu-mayor-signals-more-racist-policies-against-refugees-as-chp-isolates-his-views-from-party-news-58311>
https://www.lemonde.fr/en/international/article/2024/07/20/syrian-refugees-attacked-in-turkey-the-crisis-makes-us-perfect-scapegoats_6691629_4.html
<https://www.nytimes.com/2024/07/02/world/middleeast/syrian-refugees-turkey-attacks.html>
<https://www.internationaliststandpoint.org/turkey-pogroms-against-syrian-refugees-bred-through-racist-policies/>

¹⁰ CRC/C/TUR/CO/4-5, para. 18.

¹¹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the second periodic report on Türkiye, June 2024.

¹² (2023 Global Slavery Index), <https://www.walkfree.org/global-slavery-index/country-studies/turkiye/>

¹³ <https://www.ohchr.org/en/documents/country-reports/ahrc5336add1-visit-turkiye-report-special-rapporteur-violence-against>

V. Human rights defenders (Arts. 6, 17, 19, 20, 21, 22 and 26)

19. In its Concluding Observations, dated 25 July 2024, on the fifth periodic report on Türkiye, the Committee Against Torture stated¹⁴ that:

a) The Committee is concerned that human rights defenders and journalists in the State party allegedly face threats, physical harassment, arrest, prosecution, torture and ill-treatment as a result of their legitimate exercise of their rights to freedom of opinion and expression, freedom of peaceful assembly, freedom of association and their right to promote and protect human rights.

b) In particular, the Committee is concerned with regard to the judicial harassment of national media outlets and human rights defenders working on issues that are directly related to the Convention (Arts. 2, 11-13 and 16).

c) The Committee is also concerned by allegations of excessive use of force by law enforcement in policing and dispersing protests and the use of impermissible means of restraint in the context of public assemblies, such as reverse handcuffing, and by the apparent arbitrary application of Law No. 2911 on Public Meetings and Demonstrations to justify arrests which violate the right to the freedom of peaceful assembly (Arts. 2, 4, 11-13 and 16).

20. The environment for human rights defenders in Türkiye is hostile, with judicial harassment, arbitrary detentions and police brutality. The government's actions contradict the aim of creating a safe and enabling environment for these defenders. Türkiye has not complied with the UPR recommendations that it accepted in the 3rd UPR cycle in 2020 regarding the right to peaceful assembly and freedom of association. The measures and laws implemented, particularly under the guise of counterterrorism, have severely restricted these freedoms, targeted human rights defenders, and stifled civil society. The broad, and often arbitrary, application of these laws and the ongoing repression indicate a significant departure from the commitments made to uphold human rights obligations.¹⁵

Arrest and Conviction of Sebnem Korur Fincanci

21. A court in Ankara has ruled for the dismissal of all members of the Central Council of the Turkish Medical Association (TTB/TMA). The legal proceedings stemmed from the TTB Chair Şebnem Korur-Fincancı's claim last year that the Turkish military used chemical weapons in operations against PKK militants in Iraq's Kurdistan region. Korur-Fincancı served two and a half months on remand after her claims led to an investigation against her for "terrorist propaganda."¹⁶

22. Amnesty International and HRW reported that human rights defenders face judicial and administrative harassment, threats and reprisals. There are extensive bans on, and interventions in, assemblies and protests, with severe police brutality against demonstrators. The HRFT reported interventions in 291 demonstrations in 2021, with numerous cases of ill-treatment and torture by the police. The judicial harassment of the Saturday Mothers' vigil demonstrates

¹⁴ Concluding Observations on the fifth periodic report on Türkiye, 25 July 2024, CAT/C/TUR/CO/5.

¹⁵ <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>
https://www.omct.org/site-resources/files/Law-7262-further-threat-to-the-freedom-of-association_Eng.pdf
https://www.omct.org/site-resources/files/Turkey_BriefingFreedomAssembly_March2022.pdf
<https://www.omct.org/site-resources/files/TurquieOBS2023-ENG.pdf>
<https://ihd.org.tr/en/omct-briefing-note-on-police-brutality-in-turkey/>

¹⁶ <https://bianet.org/haber/court-rules-for-removal-of-turkish-medical-association-leadership-in-chemical-warfare-case-288720>

targeted repression against specific groups and individuals. Mistreatment of Peaceful Protesters continued in 2024.¹⁷

Mass Imprisonment of Lawyers

23. The International Bar Association's Human Rights Institute (IBAHRI) and The Arrested Lawyers' Initiative (TALI) have released a detailed report highlighting the declining independence of the legal profession and bar associations in Türkiye. The report, *A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey*, underscores the targeting of law professionals through unfair trials, arbitrary detainment, imprisonment and harassment, as well as the alarming misuse of counter-terrorism legislation to prosecute lawyers in the course of their legitimate work.¹⁸

24. According to the report, lawyers have been detained, prosecuted and convicted following the 2016 coup attempt, particularly on the basis of vague and broad anti-terror offences. Charges have included membership of an armed terrorist organisation and/or of spreading terrorist propaganda – under Article 314 of the Turkish Penal Code and Anti-Terrorism Law No 3713. These charges are often combined with the misidentification of lawyers with their clients. 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.¹⁹

Mass Trial of Members of Law and Life Association²⁰

25. On 27 December 2023, The Ankara Regional Appeal Court ruled on the appeal of scores of lawyers who had previously been sentenced to between 6 and 9 years and who had served parts of their sentences. The Appeal Court dismissed their appeals and re-sentenced them to a total of more than 125 years, with individual sentences ranging from 6 to 8 years. The case is now set to be considered by the Court of Cassation. This judgment was completely contrary to the ECtHR's Yüksel Yalcinkaya judgment and as well as the opinions of the Human Rights Committee in İsmet Özçelik (2980/2017) and Mukadder Alakus (3736/2020).

26. Evidence against the lawyers includes their being members of the Lawyers' Association, which was lawfully incorporated at the relevant time, the identities of their clients, their use of the ByLock app, being customers of Bank Asya, the choice of private hospitals and hotels for treatment and accommodation, making donations to a specific relief organisation which was honoured by Parliament, and possession of certain books, amongst others. In fact, the alleged 'criminal activities' that have led to the conviction and imprisonment of many lawyers are such that, in any other jurisdiction, they would not constitute a crime and would likely be commended instead.

27. The indictment, prepared by the Ankara Chief Public Prosecutor's Office, accused these lawyers of being executive or ordinary members of Hukuk & Hayat (Law & Life), a

¹⁷ <https://www.hrw.org/news/2023/07/27/turkey-istanbul-police-mistreatment-peaceful-protesters>
<https://www.amnesty.org/en/latest/news/2024/05/turkiye-discriminatory-restrictions-and-violence-against-pride-protesters-must-not-be-repeated/>

¹⁸ *A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey*, <https://arrestedlawyers.org/wp-content/uploads/2024/02/REPORT-TALI-IBAHRI.pdf>

¹⁹ Ibid.

²⁰ Ankara Appeal Court Defies ECtHR, Sentences 19 Lawyers to 125+ Years, <https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/>

lawyers' association in Ankara that was shut down by Decree-Law during the State of Emergency that was declared after the failed coup. The Association, which provided professional training and social events, and offered assistance to trainees and junior lawyers, was charged with "membership of an armed terrorist organisation", based on its members' list, which was obtained from the Governorship's office. Notably, a police report concluded that the association had committed no offence.²¹

28. According to the indictment, the only evidence that Hukuk & Hayat was directly linked to the Gülen Movement was that it was shut down by a Decree Law. The court did not think it was necessary to look beyond that. The public prosecutor did not offer evidence as to how exactly such a professional organisation was being run by the Gülen Movement.²²

29. **Lawyers have been identified with their clients-** According to Article 18 of the UN Basic Principles on the Role of Lawyers, lawyers may not be identified with their clients or their clients' causes as a result of discharging their functions. Despite the clear prohibition from doing so, the prosecutor and the Ankara Appeal Court have relied on such lawyers' client lists. Having represented the individuals who are prosecuted under anti-terror laws, or entities such as schools, associations or companies, which were closed down or confiscated by Decree-Laws was held to be incriminating evidence.²³

30. Being an alleged Bylock user, an encrypted messaging app, like WhatsApp and Signal, is also another decisive piece of evidence against some of the lawyers. During the entire prosecution the lawyers challenged this evidence and asked for a digital copy of the evidence against them, as well as an expert panel examination through which to address the inconsistencies in the Bylock material. However, all of these requests were denied, and the Court relied exclusively on police report stating that they are Bylock users. The other evidence included that the defendants, their spouses and fathers had bank accounts in Bank Asya, a bank which operated lawfully under the supervision of Türkiye's banking authority until it was confiscated by the State for its alleged links to the Gülen Movement, was cited as evidence; the schools which the defendants' children attended were cited as evidence, as well as the hospitals they chose for treatment, the hotels in which they were accommodated.²⁴

31. **Death of Lawyer Fethi Un in Prison-** Fethi Un, a respected lawyer with over 35 years of experience, who was a former representative of Fethullah Gülen, experienced grave injustices that were similar to those of Kabakçioğlu. Arrested after the coup attempt in 2016, Un was subjected to dire prison conditions. He shared a small cell, meant for one person, with six others, leading to severe health complications exacerbated by inadequate medical care and insanitary living conditions. Despite these hardships, he was sentenced to 12 years in prison for alleged membership of an armed terrorist organisation, largely due to his professional association with Gülen. His death in prison from a brain hemorrhage, after years of maltreatment, underscores the severity of his ordeal.²⁵

32. **Death of Lawyer Murat Korkmaz:** Similarly, Murat Korkmaz, a lawyer from Aksaray with a pre-existing heart condition, suffered from the lack of proper medical care while imprisoned on charges that were related to the Gülen Movement. After undergoing heart

²¹ Ankara Appeal Court Defies ECtHR, Sentences 19 Lawyers to 125+ Years,

<https://arrestedlawyers.org/2024/01/31/ankara-appeal-court-defies-echr-sentences-19-lawyers-to-125-years/>

²² Ibid.

²³ Ibid.

²⁴ Ibid.

²⁵ <https://arrestedlawyers.org/2022/08/03/death-in-prison-the-case-of-3-turkish-lawyers/>

surgery, he was returned to prison, rather than being allowed to recuperate properly, which led to the rapid deterioration of his health and, ultimately, to his death.²⁶

33. **Death of Lawyer Metin Yucel:** Metin Yucel, another lawyer, died from Covid-19 in Düzce prison amid the pandemic. His death highlighted the neglect and discrimination faced by political prisoners during the health crisis, as lawyers and other human rights defenders were excluded from an early parole bill that aimed to reduce prison populations so as to mitigate the spread of the virus.²⁷

34. These cases collectively illustrate a troubling disregard for the health and welfare of detainees, particularly those associated with the Gülen Movement, within the Turkish penal system. The recurring themes are the denial of adequate medical care, overcrowded and insanitary conditions, and a judicial system that seems more influenced by political considerations than by evidence or the rule of law. Each of these individuals suffered not only because of their alleged political affiliations or professional activities, but also due to the systemic failures that continue to pose severe risks to prisoners' health and human rights in Türkiye.

VI. Right to a fair trial, and independence of lawyers and the judiciary (Arts. 2, 7, 9, 10 and 14)

Right to a fair trial

35. In Türkiye, the most persistent problem in relation to the right to a fair trial is the lack of having a trial within a reasonable time.

36. The Turkish Constitutional Court (TCC) ruled, in 56,443 cases, that the applicants' rights to a fair trial within a reasonable time had been violated.²⁸ In the Keser Altıntaş case of July 2023, the TCC ruled that it would no longer decide on complaints (around 80,000 pending applications) regarding the right to a fair trial within a reasonable time. The TCC said that since it had previously accepted more than 55,000 violations raising similar fair trial issues, in which it had identified a structural problem and had referred the matter to the Turkish Parliament for a lasting political solution, it would no longer consider these cases until Parliament found a solution.²⁹

37. Violation of the right to a fair trial is the most common violation found by the TCC, with 56,443 violations of a fair trial within a reasonable time and 5,235 violations of other aspects of the right to a fair trial.³⁰

38. In the case of Yüksel Yalçınkaya v. Turkey, the Grand Chamber found a violation of the right to a fair trial due to a disregard for the principle of equality of arms, entitlement to the disclosure of evidence against the defendant, and the denial of being allowed an independent expert's report. Notably, ECtHR highlighted that this practice may have affected 100,000 criminal cases in Türkiye and ordered those general measures be taken by Türkiye.³¹

²⁶ <https://arrestedlawyers.org/2022/08/03/death-in-prison-the-case-of-3-turkish-lawyers/>

²⁷ Ibid.

²⁸ https://www.anayasa.gov.tr/media/9362/bb_2024_2.pdf

²⁹ Keser Altıntaş, TCC, Individual Application No: 2023/18536, 25/7/2023

³⁰ https://www.anayasa.gov.tr/media/9362/bb_2024_2.pdf

³¹ ECtHR, Yüksel Yalçınkaya v Turkey, App No. 15669/20

The abuse of the secret witness procedure

39. The Turkish Code of Criminal Procedures permits the use of secret/anonymous witnesses only in certain specified circumstances. The ECtHR, on the other hand, does not prohibit it, provided that the right to a fair trial is not unjustifiably impaired and that necessary safeguards are in place to counterbalance the suspect's disadvantageous position.

40. In Türkiye, however, the use of secret/anonymous witnesses has become common practice in the last decade, particularly in political trials, and especially since the Constitutional Court decreed that courts can convict individuals solely based on anonymous witness statements.³²

41. The case of 11 human rights defenders who were affiliated with Amnesty International Türkiye³³, the Progressive Lawyers' Association lawyers' case (CHD case), and the Party closure case against the pro-Kurdish People's Democratic Party³⁴, provide leading examples of cases where secret/anonymous witnesses were deployed against defendants. To make this clearer, it was revealed that the secret/anonymous witness used in the CHD case was also used in the same role in more than 100 different cases.³⁵ It was also revealed that some anonymous witnesses actually do not even exist. For example, the Diyarbakır Police Department admitted that an anonymous witness, codenamed "Venüs", whose testimony led to the detention and imprisonment of scores of people, including Selahattin Demirtaş, did not exist and was invented by the police.³⁶

42. The use of secret witnesses in the Gülen Movement (GM) cases has produced similarly controversial results. As reported in the Turkish media, a secret witness who testified against 145 suspects, whom he had accused of GM links, later admitted before the court that he did not know any of them.³⁷

43. Evidence allegedly given by one particular secret witness, called Garson, has been used against 13.000 people to prosecute them for terrorism. This is in spite of the fact that Garson admitted digital evidence he gave was corrupted by the police.^{38 39}

³² <https://kararlarbilgibankasi.anayasa.gov.tr/BB/2020/14339>

³³ Amnesty International, 'Briefing Prosecution of 11 Human Rights Defenders', 20 October 2017 <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR4473292017ENGLISH.pdf>

³⁴ 'MP questions secret witness statement in HDP closure case', Bianet, 30.1.2023, <https://m.bianet.org/english/law/273517-mp-questions-secret-witness-statement-in-hdp-closure-case>

³⁵ 'Permanent witness' to Court of Cassation: I hallucinate, don't take my testimony into account', BIANET, 30 June 2020, <https://bianet.org/5/147/226617-permanent-witness-to-court-of-cassation-i-have-hallucinations-don-t-take-my-testimony-into-account>

³⁶ Stockholm Center for Freedom, 'Turkish police admit nonexistence of 'secret witness' whose statements led to many imprisonments', 19 February 2019, <https://stockholmcf.org/turkish-police-admits-nonexistence-of-secret-witness-whose-statements-led-to-many-imprisonments/>

³⁷ Stockholm Center for Freedom 'Turkish secret witness did not recognise any of 145 defendants whom he accused of having Gülen links', 31 October 2017, <https://stockholmcf.org/turkish-secret-witness-not-recognise-any-of-145-defendants-whom-he-accused-of-having-gulen-links/>

³⁸ Mesut Can Tarım, 'Gizli Tanık Garson-SD Kart-Adli Bilişim Kapsamında Analiz-Sonuç Değerlendirme' (Anonymous Witness Garson-Secret Witness Garson (SD Card-Analysis in the Scope of Forensic Informatics), <https://hukukibilgiplatformu.com/wp-content/uploads/2019/12/2-Adli-Bili%C5%9Fim-Siber-Raporu-%C4%B0ncelemesi.pdf>

Mesut Can Tarım, 'Gizli Tanık Garson-İfadelerdeki Çelişkiler-Analiz-Sonuç Değerlendirme' (Anonymous Witness Garson (Controversies in Statements), <https://hukukibilgiplatformu.com/wp-content/uploads/2019/12/1-Garson-K-Gizli-Tan%C4%B1k-%C4%B0fade-Analizi.pdf>

³⁹ Ibid.

The Independence and impartiality of the judiciary, the current status of CJP (HSYK/HSK)

44. By a Constitutional Amendment, dated 16 April 2017, Türkiye's top judicial body was reshaped by the AKP Government. The new structure of the CJP has caused serious concern, in relation to the terms of its independence and the impartiality of the judiciary as a whole.

45. The Council of Europe's Human Rights' Commissioner, Nils Muiznieks said, on 07.06.2017, *"Following the recently adopted constitutional amendments, which changed the system for its formation, Turkey's new Council of Judges and Prosecutors (HSYK) is sworn in today. With four members appointed directly by the President of Turkey, and seven members elected by Parliament without a procedure guaranteeing the involvement of all political parties and interests, I am concerned that the new composition of the HSYK does not offer adequate safeguards for the independence of the judiciary, and it considerably increases the risk of it being subjected to political influence."*⁴⁰

46. The Council of Europe's Human Rights Commissioner, Dunja Mijatovic, after a five-day official visit to Turkey said, on 21 December 2019, the following: *"... (T)he independence of the Turkish judiciary has been seriously eroded during this period, including through constitutional changes regarding the Council of Judges and Prosecutors which are in clear contradiction to the Council of Europe standards, and the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors..."*⁴¹

47. Despite repeated calls from the Committee of Ministers of the Council of Europe, Türkiye has not reformed the structure of the Council of Judges and Prosecutors to ensure the independence and impartiality of the judiciary.⁴²

48. In 2021, Türkiye announced the Human Rights Action Plan. The plan, however, failed to incorporate any concrete action or any as general measures to ensure compliance with the international human rights framework and to address major rights violations that have been frequently highlighted by the Council of Europe's bodies, including the composition of the Council of Judges and Prosecutors (HSK), which in large part facilitates the control and political influence of the Executive over the judiciary, thus leading to the authorities bringing about politically motivated charges, grossly unfair trials, convictions, and sentences.⁴³

49. More importantly, the Plan did not elaborate on any structural changes that had been brought to the composition and the procedure for appointing members of the Council of Judges and Prosecutors (HSK) by the 2017 Constitutional amendments, which conflict with the principle of the independence and impartiality of the judiciary as they enable the Executive power to exert political influence over the Council and to interfere with criminal proceedings. The Human Rights Action Plan, which did not substantially address the major shortcomings in human rights protection in Türkiye, is a missed opportunity. The Plan failed to provide a comprehensive framework to reverse the deep erosion of human rights in Türkiye.⁴⁴

⁴⁰ <https://www.facebook.com/CommissionerHR/posts/806253422883903>

⁴¹ Turkey needs to put an end to arbitrariness in the judiciary and to protect human rights defenders, <https://www.coe.int/en/web/commissioner/-/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders>

⁴² <https://search.coe.int/cm?i=0900001680aa75d1>
[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1475/H46-39E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1475/H46-39E)
[https://hudoc.exec.coe.int/?i=CM/Del/Dec\(2023\)1459/H46-26E](https://hudoc.exec.coe.int/?i=CM/Del/Dec(2023)1459/H46-26E)

⁴³ <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

⁴⁴ <https://www.amnesty.org/en/documents/eur44/3883/2021/en/>

50. Within the scope of the plan, Türkiye passed eight omnibus laws that neither addressed the above-mentioned fundamental shortcomings nor did they result in improvements in human rights conditions in Türkiye.

The independence and impartiality of the TCC

51. The 1961 Turkish Constitution created the TCC and endowed it with the power to review the constitutionality of laws and decrees with the force of law. This system of constitutional review was preserved in the 1982 Constitution, with minor changes.⁴⁵ The ruling party, the Justice and Development Party (AKP), has changed the TCC's structure twice, in 2010 and in 2017. Currently, the TCC consists of 15 judges. Three of these judges are elected by the Parliament (TGNA). A further 12 judges are selected by the President of the Republic.⁴⁶

52. While only three judges are elected by the Parliament, rather than by the President, that Parliament is likely to be under the control of the same political party as that to which the President belongs. Consequently, a single political party could dominate the country's highest court. So, indeed, ten of the incumbent judges were appointed by the incumbent President, Erdoğan, while two were appointed by the former President, Gul, both of whom are founders of the ruling party, the AKP. The remaining 3 were elected by the parliament, which is under the control of Erdoğan's AKP.

Provide additional information about the status of amendments to the Law on Lawyers that allow for multiple bar associations in provinces, including explaining the rationale for such changes.

53. In the joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law of The Council of Europe, in regard to The July 2020 Amendments to The Attorneyship Law Of 1969, the followings statements were made:⁴⁷

- (i) The 2020 amendments to the Attorneyship Law of 1969 introduced two major changes to the system of governance of the legal profession in Türkiye. First, they made it possible to create multiple bar associations in large provincial centres (instead of a single one, as before). Second, they changed the relative voting power of bar associations within the Union of the Turkish Bar Associations (the UTBA), thus reducing the influence of those that are large, and increasing that of small bar associations.
- (ii) International human rights treaties do not specify how the legal profession should be governed. However, they should be construed as requiring a robust degree of independence and professionalism in relation to lawyers. International soft law instruments develop these principles further. They promote the idea that the independence and professionalism of lawyers are best ensured through the creation of independent bar associations. They also proclaim the principle of the "self-governance" of the legal profession, which implies that the bodies of bar association should be representative of their members, i.e., individual attorneys.

⁴⁵ <https://blog-iacl-aidc.org/2019-posts/2019/11/19/does-the-turkish-constitutional-court-provide-effective-remedies-for-human-rights-violations>

⁴⁶ <https://blog-iacl-aidc.org/2019-posts/2019/11/19/does-the-turkish-constitutional-court-provide-effective-remedies-for-human-rights-violations>

⁴⁷ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)029-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)029-e)

- (iii) The Turkish authorities have identified certain flaws in the previously existing system. However, it is not clear to the Venice Commission how the new system will improve the quality of the services that are provided by the UTBA or the BAs⁴⁸ to the attorneys and, eventually, by the attorneys to the general public.
- (iv) The Turkish authorities also asserted that the currently existing bar associations in large cities are not really representative of their members, and that large bar associations unjustly dominate the General Assembly of the UTBA. The Venice Commission admits that it may be necessary to address this issue, but the solutions proposed by the 2020 amendments appear to have many drawbacks.
- (v) Most importantly, there is a real risk that the creation of multiple bar associations in the same city, based on voluntary membership, will lead to further politicisation of the legal profession. This is incompatible with the neutral role which attorneys should normally play. It will also endanger the independence of attorneys, which is implicitly required by the international human rights treaties and by the soft law standards, which is one of the requirements of the rule of law.
- (vi) Furthermore, the creation of alternative bar associations may lead to incoherent practice in disciplinary matters and create administrative instability. It is unclear how it will improve the quality of the training or other services provided by bar associations to its members. Finally, the possibility to join alternative bar associations will be open only to attorneys from large cities, and not to all Turkish attorneys.
- (vii) The Venice Commission considers that the problems identified by the Turkish authorities may be addressed by other means. For example, the Turkish authorities may explore the idea of creating smaller BAs while respecting the geographical principle. This solution is free from the drawbacks identified above, and, at the same time, will make the system more “democratic”.
- (viii) A similar recommendation is made in respect of the second prong of the reform. The new model (where all BAs send almost an equal number of delegates to the UTBA GA) distorts the representative character of this body. However, it should be possible to review the system of the election of delegates by provincial BAs in order to make it proportional and so ensure that these delegates represent different currents within the legal profession and are not as homogenous as they previously were.
- (ix) The Venice Commission invites the Turkish authorities to consider those alternative solutions. It also encourages the authorities to ensure the meaningful involvement of the community of Turkish attorneys in the discussions about any further reforms of the legal profession. The Commission remains at the disposal of the Turkish authorities and the Parliamentary Assembly for further assistance in this matter.

The failure of prosecutors and courts to meet credible evidentiary thresholds; and the denial of defendants’ right to access information about charges and evidence against them.

54. A report published by the Italian Federation for Human Rights, entitled "Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey"⁴⁹, examined 118 indictments. These were once that charged individuals of membership

⁴⁸ Provincial/Local Bar Associations

⁴⁹ Dr. Emre Turkut, Ali Yıldız, Kevin Dent KC, Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey, <https://fidu.it/wp-content/uploads/FIDU-Report-Turkut-Dent-Yildiz.pdf>

of an armed terrorist organisation under Article 314 of the Turkish Penal Code, selecting at least one from each of the 81 provinces of Türkiye.

55. The report analysed these indictments under both Turkish domestic law and international legal standards, including the Turkish Code of Criminal Procedures (TCCP), the UN Guidelines on the Role of Prosecutors, and the Recommendation of the Council of Europe's Committee of Ministers on the Role of Public Prosecution in the Criminal Justice System.⁵⁰

56. The report found significant deviations in the practices of Turkish prosecutors from the established legal norms and standards, particularly in politically sensitive cases involving anti-terror provisions. The key findings indicate that indictments often lack a coherent presentation of evidence and logical reasoning that connect suspects to alleged offences.⁵¹

57. In almost all of the 118 indictments studied, prosecutors failed to clearly explain the alleged crimes and the evidence supporting these allegations. Ordinary activities, such as attending high school, travelling abroad for studies, or working at a legitimate institution were cited as evidence of "acting knowingly and willingly within the hierarchical structure of a terrorist organisation."⁵² This lack of coherence made it impossible for courts to fairly assess the charges.

58. A prevalent issue in the indictments is their overt political and ideological tone. Prosecutors frequently used complex language and jargon, ostensibly to disguise their ideological motives. The report notes that many indictments are marred by political bias, which undermines the objectivity required in legal proceedings.⁵³

59. Turkish prosecutors often constructed unsound and illogical plots and conspiracy theories. These narratives, which were commonly repeated across different indictments, relied excessively on police inquiry reports and lacked actual evidence of crime. This approach impaired logical association and reasoning, further distancing prosecutorial practices from legal standards.⁵⁴

60. The report emphasises that the indictments did not meet the 'reasonable suspicion' standard that is required for legal proceedings. Many individuals were arrested and detained on the basis of mere suspicion, with little to no evidence to corroborate their involvement in terrorist activities. This issue has been consistently condemned by international human rights bodies, including the European Court of Human Rights (ECTHR) and the United Nations' Human Rights Committee (UN HRC).⁵⁵

61. A significant problem that has been identified is the reversal of the presumption of innocence. The indictments tended to criminalise everyday activities without presenting solid evidence linking these activities to any crime, let alone to serious terrorism offences. This

⁵⁰ Dr. Emre Turkut, Ali Yıldız, Kevin Dent KC, Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey, <https://fidu.it/wp-content/uploads/FIDU-Report-Turkut-Dent-Yildiz.pdf>

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

practice has serious implications for the rights of the accused, thus contributing to the erosion of due process in the Turkish judicial system.⁵⁶

62. Several reports published within the scope of PEN Norway's Turkey Indictment Project made the similar findings.⁵⁷

VII. Counter-terrorism measures (Arts. 2, 4, 6, 7, 9, 14 and 17)

Introduction

63. Türkiye's arbitrary employment of its legal arsenal of anti-terrorism and security tools has reached unprecedented levels in recent years, especially in the aftermath of the 15 July 2016 coup attempt. Türkiye's far-reaching Anti-Terrorism Legislation No. 3713 (ATL) offers only a vague definition of terrorism and one that lacks the level of legal certainty that is required by international human rights standards.⁵⁸ As aptly concluded by an Amnesty International report, "when correctly viewed, everyone's a terrorist" in post-coup Türkiye.⁵⁹

64. Exacerbated by the State of Emergency Decrees that have been adopted over the post-2016 attempted coup period, this anti-terrorism framework has been (mis)used to designate and criminalize many instances of peaceful and otherwise lawful activity of political opponents, human rights defenders and journalists as constituting terrorist activity (in particular, for the alleged "membership of a terrorist organisation").⁶⁰

65. Amnesty International Report⁶¹ states: As UN Special Rapporteurs noted in a 26th August 2020⁶² communication to the government, Turkish law defines "terrorism" in terms of an organisation's political aims, rather than by the specific conduct of an offender, i.e., encompassing specific intent to cause death or serious bodily harm. Similarly, there is no requirement that a person must have committed a serious crime against the State, one that has caused specific, clearly enumerated harms, for an individual to be deemed a "terrorist offender" under Article 2 of the Anti-Terrorism Law (Law No. 3713). Articles 3 and 4 of Law No. 3713 list vague terrorist offences that are punishable under the relevant articles of the Turkish Penal Code, Article 7/2, which criminalizes "making propaganda for a terrorist organization", ... The provisions of the Turkish Penal Code criminalising terrorism-related offences, such as Article 314 (membership of a terrorist organisation), 220/6 (committing a crime in the name of a terrorist organisation without being one of its members), and 220/7 (assisting a terrorist organisation without being one of its members) are routinely used by the Turkish authorities to convict individuals without clear and convincing evidence that the alleged criminal acts have

⁵⁶ Dr. Emre Turkut, Ali Yıldız, Kevin Dent KC, Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey, <https://fidu.it/wp-content/uploads/FIDU-Report-Turkut-Dent-Yildiz.pdf>

⁵⁷ <https://norskpen.no/pen-norways-turkey-indictment-project/>

⁵⁸ Dr. Emre Turkut, Ali Yıldız, Kevin Dent KC, Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey, <https://fidu.it/wp-content/uploads/FIDU-Report-Turkut-Dent-Yildiz.pdf>

⁵⁹ Amnesty International, 'Punishment Without Trial: Pre-Trial Detention in Turkey' 5 May 2017, [amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/](https://www.amnestyusa.org/punishment-without-trial-pre-trial-detention-in-turkey/).

⁶⁰ Ibid.

⁶¹ Amnesty International, Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>

⁶² Letter of the mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Arbitrary Detention; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the situation of human rights defenders; and the Special Rapporteur on the independence of judges and lawyers to Turkish Government, OL TUR 13/2020, 26 August 2020.

been committed. Prosecutors typically fail to apply clear criteria indicating which specific acts of the alleged “assistance” to an armed group constitute criminal offences, including clearly indicating when such assistance is, in and of itself, a recognisable criminal offence, or when it must be directly linked to the planning or commission of a recognisable criminal offence. In most cases, prosecutors do not provide evidence demonstrating any link to a terrorist organisation, nor do they attempt to prove that the accused has committed a criminal offence constituting “assistance to a terrorist organisation”. In the last five years, and as the examples below reflect very well, it has become a routine judicial practice to prosecute and convict people for broad and undefined terrorism-related offences, without credible and sufficient evidence and on the sole basis of their real or perceived political opinions.⁶³

Article 314 of the Turkish Penal Code (TPC)

66. Article 314 TPC is Türkiye’s primary and most frequently invoked anti-terrorism provision. Article 314/1-2 TPC criminalises the establishment, command or membership of an armed organisation and carries a penalty of up to 22.5 years of imprisonment.

67. The provision reads as follows: “(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.”

Relevant Statistics

68. In January 2023, the Turkish Government submitted its Action Plan⁶⁴ to the Committee of Ministers of the Council of Europe, in this it also provided statistical data regarding the application of Article 314 of the TPC. The two tables below, which are reproduced from the Action Plan, show that Turkish public prosecutors have filed some 340,000 public cases under Article 314 of the TPC during the period 2017-2021.⁶⁵

Year	No need for prosecution	Filing a public case	No jurisdiction Rationae Loci	Lack of jurisdiction	Joinder
2021	79 873	29 924	53 105	1 262	27 791
2020	82 642	33 354	63 768	1 299	27 706
2019	116 948	56 302	95 964	2 231	39 323
2018	145 419	85 888	149 552	3 705	59 579
2017	65 308	133 505	175 944	5 480	77 000

⁶³ Amnesty International, Weaponizing Counterterrorism: Turkey Exploits Terrorism Financing Assessment to Target Civil Society, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>

⁶⁴ See: Communication from Türkiye concerning the cases of Selahattin Demirtaş v. Turkey (no. 2) and Encü and others v. Turkey, Updated Action Plan, DH-DD(2023)45, 10 January 2023.

⁶⁵ Dr. Emre Turkut, Ali Yıldız, Kevin Dent KC, Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey, <https://fidu.it/wp-content/uploads/FIDU-Report-Turkut-Dent-Yildiz.pdf>

Source for table above⁶⁶

69. In the same period (between 2017 and 2021), more than 310,000 individuals (all of the categories in the table included except for acquittal) have been sentenced for membership in an armed terrorist organisation.⁶⁷

Year	Sentence of Imprisonment	Fine	Suspension of Imprisonment	Security measures	Other convictions	Acquittal	Suspension of pronouncement of the judgment
2021	18 816	12	135	12 986	12 093	17 970	4 738
2020	18 860	11	195	12 933	12 145	16 516	4 699
2019	30 589	8	357	21 130	18 764	26 175	7 550
2018	43 553	3	297	33 448	31 111	23 970	4 455
2017	14 971	8	171	11 437	10 340	6 096	692

Source for table above⁶⁸

70. According to the Turkish Justice Minister Yılmaz Tunç's statement, dated July 2024, more than 702,000 people have been arrested/investigated by the police on terrorism charges (Article 314 of the Turkish Penal Code) since the 2016 coup attempt due to their affiliation with the Gülen Movement.⁶⁹

71. The International Bar Association's Human Rights Institute and The Arrested Lawyers Initiative have released a detailed report highlighting the declining independence of the legal profession and the bar associations in Türkiye. The report, *A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey*, underscores: the targeting of law professionals through unfair trials, arbitrary detainment, imprisonment and harassment, as well as the alarming misuse of counter-terrorism legislation to prosecute lawyers in the course of their legitimate work.⁷⁰

72. According to the report, lawyers have been detained, prosecuted and convicted following the 2016 coup attempt, particularly on the basis of vague and broad anti-terror offences under Article 314 of the Penal Code. These charges are often combined with the misidentification of lawyers with their clients. 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.⁷¹

⁶⁶ Dr. Emre Turkut, Ali Yıldız, *ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in Yüksel Yalçınkaya v. Türkiye*, <https://www.statewatch.org/media/4200/sw-echr-ycinkaya-bylock-report.pdf>

⁶⁷ *Perils of Unconstrained Prosecutorial Discretion: Prosecuting Terrorism Offences in Post-Coup Turkey*.

⁶⁸ *ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in Yüksel Yalçınkaya v. Türkiye*.

⁶⁹ Turkey has investigated more than 700K people in regard to Gülen links since the failed coup: minister <https://turkishminute.com/2024/07/12/turkey-investigate-more-than-700k-people-over-gulen-link-failed-coup-minister/>

⁷⁰ *A Profession on Trial: The Systematic Crackdown Against Lawyers in Turkey*, <https://arrestedlawyers.org/wp-content/uploads/2024/02/REPORT-TALI-IBAHRI.pdf>

⁷¹ *Ibid.*

Findings of the Human Rights Committee

*Ismet Özçelik et. al v. Turkey*⁷²

73. In this case in which, the complainant was accused of membership of an armed terrorist organisation for allegedly having a deposit account in Bank Asya and for allegedly downloading Bylock, the UN Human Rights Committee found that the complainant's detention amounted to a violation of their rights under Article 9 (1-2) ICCPR.

*Mukadder Alakuş v. Turkey*⁷³

74. In the complaint filed by an individual who was convicted of membership of an armed terrorist organisation, as per Article 314 of TPC, for the alleged use of the Bylock application and for holding a deposit account at Bank Asya, the UN Human Rights Committee found that Türkiye had violated Article 15(1) ICCPR.⁷⁴

Findings of the ECtHR

*Selahattin Demirtaş v. Turkey (2)*⁷⁵

75. In the case of *Demirtaş v. Turkey (2)*, the Grand Chamber of the ECtHR observed that “the range of acts that may have justified the applicant's pre-trial detention in connection with serious offences that are punishable under Article 314 of the Criminal Code, is so broad that the content of that Article, coupled with its interpretation by the domestic courts, does not afford adequate protection against arbitrary interference by the national authorities.” (para. 280).

*The Yalçınkaya case*⁷⁶

76. The *Yalçınkaya* case concerns an application by a teacher who was dismissed from public service through a coercive State of Emergency Decree that was issued during the post-2016 coup period in Turkey. In his application to the ECtHR, the applicant challenged his trial and conviction under Article 314(2) of the TPC, for alleged membership of a terrorist organisation, the GM, which the Turkish authorities designated as being the FETÖ/PDY due to their alleged involvement in organising the 2016 attempted coup.⁷⁷ The Grand Chamber found that the applicant's conviction, which was based on the use of ByLock, violated several important articles under the ECHR, including Articles 7, 6(1), 11, respectively no punishment without law, right to a fair trial, freedom of assembly & association.

⁷² The UN Human Rights Committee, *Ismet Özçelik et. al.*, CCPR/C/125/D/2980/2017, 23 September 2019.

⁷³ The UN Human Rights Committee, *Mukadder Alakuş v Turkey*, CCPR/C/135/D/3736/2020, 26 July 2022

⁷⁴ *Ibid.*

⁷⁵ ECtHR, *Selahattin Demirtaş v Turkey (No. 2)* App No. 14305/17.

Similar: *İmret v. Turkey (No. 2)* App. No. 57316/10, 10 July 2018 and *Işıkkırık v. Turkey* App. No. 41226/09, 14 November 2017.

⁷⁶ ECtHR, *Yüksel Yalçınkaya v Turkey*, App No. 15669/20.

⁷⁷ Dr. Emre Turkut, Ali Yıldız, *ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in Yüksel Yalçınkaya v. Türkiye.*

Findings under Articles 7 and 11

77. The Turkish domestic courts, including the Turkish Court of Cassation and the TCC, have consistently regarded the downloading or use of ByLock as sufficient grounds for convicting someone of membership of an armed terrorist organisation, even in the absence of other evidence. To the Grand Chamber, these arbitrary judicial decisions that are based on the alleged use of ByLock ran counter to the core objectives of Article 7 ECHR (no punishment without law) by creating a near-automatic presumption of guilt for the victims, rendering it nearly impossible for them to challenge the ByLock evidence and prove their innocence. Importantly, the Yalçinkaya case sheds light on the rare invocation of Article 7, a fundamental safeguard against arbitrary or unfair criminal prosecution and punishment.⁷⁸ The Yalçinkaya judgment represents only the 60th violation of Article 7 in the ECtHR's history out of over 25,000 violations between 1959 and 2022.

78. The Grand Chamber also found a violation of Article 11 (freedom of assembly and association), as the domestic courts had interpreted Article 314(2) TPC in a broad, extensive and unforeseeable manner so as to include the applicant's membership of a trade union and an association as indications of criminal conduct, such as incitement to violence or rejection of a democratic society's foundations. However, both entities had been operating lawfully before the 2016 attempted coup. More importantly, the Grand Chamber underscored that the problems leading to these violations were of a "systemic nature". Currently, there are approximately 8,500 pending applications before the court that involve similar complaints under Articles 6 and/or 7 of the Convention. Given that the authorities had identified around 100,000 ByLock users, it is likely that many more such applications could be submitted. The systemic nature of the issues has therefore become evident. In accordance with Article 46 ECHR, the court ruled that Türkiye must take appropriate general measures to address these systemic problems, particularly those regarding the Turkish judiciary's handling of ByLock evidence.⁷⁹

Türkiye's Disregard of the opinions of the UN Human Rights Committee, WGAD and rulings of ECtHR

79. Türkiye has failed to comply with the judgments/opinions of the ECtHR (Yüksel Yalçinkaya) and, the UN Human Rights Committee (Mukadder Alakus 3736/2020 and İsmet Özçelik 2980/2017). It also failed to follow the findings of the WGAD, which found the conviction and imprisonment of members of the Gülen movement for using the Bylock app, or for belonging to the organisations that were closed down by Emergency Decree, to be unlawful and thus a Category V violation.

80. In the İsmet Özçelik (2980/2017) and Mukadder Alakus (3736/2020) cases, the UN Human Rights Committee underlined that "The State party is also under an obligation to take all necessary steps to prevent the occurrence of similar violations in the future" (§11 and §12, respectively). In the Yüksel Yalçinkaya Case, the ECtHR ordered Türkiye to take general measures to prevent similar findings and noted that there were potentially 100,000 complaints to be lodged with the Court. Türkiye, however, has since been continuing to commit similar human rights violations, which are condemned in the opinions of HRC and WGAD and also in the rulings of ECtHR.

⁷⁸ Dr. Emre Turkut, Ali Yıldız, ByLock Prosecutions and the Right to Fair Trial in Turkey: The ECtHR Grand Chamber's Ruling in Yüksel Yalçinkaya v. Türkiye.

⁷⁹ Ibid.

81. Türkiye has not yet reformed Article 314 of the Turkish Penal Code, despite the fact that its vagueness is the main root of all these rights violations.

Amendment of Article 220 of the Turkish Penal Code

82. Although Türkiye has amended Article 220 of the Turkish Penal Code, which has been invoked as a subsidiary anti-terror provision, to convict journalists, human rights defenders, and peaceful protesters, the amendment is not in line with the relevant ECtHR and TCC judgments.

83. The amendment fails to address the lack of clear criteria defining the specific actions that constitute committing a crime on behalf of an organisation, thereby maintaining the existing concerns about arbitrariness and lack of predictability. Indeed, the amendment to Article 220/6 does not adequately resolve the existing issues of clarity and predictability and fails to ensure stronger protection of human rights and offering no substantial safeguards against arbitrary enforcement.⁸⁰

Abuse Anti-Terror Financing Measures (Law No. 7262 of 2020)

84. The government of Türkiye has exploited a 2019 Financial Action Task Force (FATF) assessment report to supplement its arsenal of counter-terrorism laws, many of which are routinely used to target civil society organisations.

85. Law No. 7262 of 2020, on the Prevention of the Financing of the Proliferation of Weapons of Mass Destruction (hereafter, Law No. 7262) in the final days of 2020 and without any consultation with civil society, came into force on 31 December.

Amnesty International Report

86. Amnesty International stated “The law goes far beyond what is required by the FATF, undermines the principle of legality with its overly broad and vague provisions, and threatens to further undermine the freedoms of association and expression, and a range of other human rights that are routinely violated by the state under existing laws in Türkiye. Law No. 7262 contains several provisions that can and are likely to be used in the government’s ongoing attacks on independent civil society actors and organisations, including Amnesty International. The many ambiguities in Law No. 7262 leave it open to misapplication against non-profit organisations (NPOs) engaged in legitimate activities that are lawful under international human rights law and under the Turkish Constitution.”⁸¹

87. The Amnesty International report⁸² also finds:

a) The adoption of Law No. 7262, justified under the guise of countering terrorism, is yet another attack on human rights and those who defend them.

⁸⁰ <https://www.amnesty.org.tr/icerik/turkiye-yeni-yargi-paketi-insanlari-hak-ihlalleriyle-karsilasma-riski-altinda-birakiyor>

⁸¹ Turkey: Weaponizing Counterterrorism Turkey Exploits Terrorism Financing Assessment to Target Civil Society, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>

⁸² Ibid.

- b) The Law No. 7262 was promulgated and adopted without consultation with civil society and the NPO sector, and in an expedited manner allowing little to no meaningful discussion.
- c) It adds yet another tool to the Turkish government's toolbox of already numerous laws, policies and practices deliberately and routinely used to target civil society actors and NPOs that oppose and attempt to expose the government's abusive human rights practices.
- d) Türkiye has lumped all civil society organisations together and subjected the entire NPO sector to an overly broad and vague law that violates the principle of legality -- and threatens to violate the rights to freedom of association and expression.
- e) Organisations at low or no risk of involvement in terrorism financing are thus subject to the same processes: burdensome audits, disproportionate fines, and threats of prosecution, that those NPOs deemed by FATF to be truly at risk would endure; the law thus fails to meet the narrowly defined objective of halting terrorism financing through identifying risk and then applying appropriate, proportionate and human rights respecting risk mitigation measures to effectively address that risk.

International Journalists' Association Report

88. After the adoption of Law No. 7262, the Government adopted two Asset-freezing Decrees, in April and November 2021.⁸³

89. In November, 2021, the FATF once again placed Türkiye on its Grey List, and the FATF President said "Turkey needs to show it is effectively tackling complex money laundering cases, and show it is pursuing terrorist financing prosecutions...and prioritising cases of U.N. designated terrorist organisations, such as ISIL and al Qaeda", and added that FATF was aware of human rights organisations' concern over Türkiye's treatment of its civil society.⁸⁴

90. In a report published by IJA it was documented that these decrees targeted 34 journalists (who fled Türkiye) who are its members. According to the IJA's report⁸⁵, of those 34 journalists, 22 are still practising their profession in exile. Targeted journalists currently live in the USA, Germany, The Netherlands, The United Kingdom, Sweden, and Canada.

No effective remedy

The Amnesty International report also finds that potential victims of the Turkish government's abuse of anti-terror financing framework have no effective remedy. The report said: "... the Turkish authorities have "normalised" the use of exceptional measures, granting to themselves a vastly expanded array of powers that are routinely used to target civil society actors and others, including judges and workers whom they consider opponents. In 2017, amendments to the Turkish Constitution included changes to the composition of, and procedure for, appointing members of the Council of Judges and Prosecutors. These changes further eroded the independence and impartiality of the judiciary by enhancing the powers of the Executive to exert political influence over the Council. The lack of an independent judiciary leaves little

⁸³ <https://stockholmcf.org/turkey-freezes-assets-of-377-people-organisations-on-terror-charges/>
<https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21/>
<https://www.reuters.com/markets/europe/turkey-freezes-assets-770-individuals-us-based-foundation-2021-12-24/>
<https://www.resmigazete.gov.tr/eskiler/2021/12/20211224-16.pdf>

⁸⁴ <https://www.reuters.com/business/finance-watchdog-grey-lists-turkey-threat-investment-2021-10-21/>

⁸⁵ International Journalists Association e.V, Weaponization of Anti-Terror Financing Measures the Turkish government's new transnational repression tool to silence its critics. (Authors; Michael Polak, Ali Yıldız)
<https://aliyildizlegal.com/wp-content/uploads/2022/09/ija-report-weaponization-of-anti-terror-financing-measures.pdf>

recourse for NPOs that would want to challenge and seek an effective remedy for human rights violations arising from government action under Law No. 7262.”⁸⁶

91. Indeed, Amnesty International’s conclusions on Türkiye are correct. The IJA report found the following: “The Ankara 4th Heavy Penal Court that was vested with the power to review administrative asset freezing decrees, rubber-stamped the decrees of April and December, 2021, that are the subjects of this study, on 9th April, 2021 and 29th December, 2021. In the parts of the decision that provide justification for the Court’s conclusion, bearing in mind that this is a decision in which the rights of more than 1,100 individuals were being considered, only ran to about one and a half pages, in which the Court was mainly citing the legal provisions. The individual’s objections against the approval decision were summarily dismissed by Ankara 5th Heavy Penal Court with a half page decision, and without any justification. The individuals’ request to obtain a copy of the case files, in order to effectively use their right to appeal, was also dismissed by the Ankara 4th Heavy Penal Court.”⁸⁷

⁸⁶ Turkey: Weaponizing Counterterrorism Turkey Exploits Terrorism Financing Assessment to Target Civil Society, <https://www.amnesty.org/en/wp-content/uploads/2021/07/EUR4442692021ENGLISH.pdf>

⁸⁷ International Journalists Association e.V, Weaponization of Anti-Terror Financing Measures 5he Turkish government ’s new transnational repression tool to silence its critics. (Authors: Michael Polak, Ali Yıldız)

The submitting organisations recommend to the Human Rights Committee to urge Türkiye to:

- Take concrete and effective steps to address the structural deficiencies in its judiciary system. These steps should focus on ensuring judicial independence by reforming the Council of Judges and Prosecutors, as recommended by the Committee of Ministers of the Council of Europe, to eliminate Executive influence. Additionally, Türkiye should implement reforms that align with ECtHR rulings and the Constitutional Court to restore the rule of law and strengthen human rights protections.
- Amend or repeal Articles 299, 301, and 314 of the Turkish Penal Code to align with international human rights standards, particularly the right to freedom of expression and the principle of legality (no punishment without law).
- Reform the HREI to ensure its independence from executive control, improve its diversity, and enhance its investigative powers. Its effectiveness in tackling human rights violations, particularly in its role as the National Preventive Mechanism, should be strengthened, ensuring that it complies with the Paris Principles and Optional Protocol to the UN Convention Against Torture (OPCAT).
- Take urgent steps to eliminate systemic discrimination against ethnic minorities, particularly Kurds, as well as refugees and migrants, such as Syrians and Afghans. These measures should include strengthening the right to association for Kurds, protection from racially motivated violence, and the removal of discriminatory policies, such as those implemented in Bolu Province.
- Create a safe and enabling environment for human rights defenders, journalists, and lawyers by ending judicial harassment, arbitrary detention, and police brutality. The broad and arbitrary application of counterterrorism laws that target these individuals should be reformed to ensure that they can freely exercise their rights to peaceful assembly, expression, and association.
- Address the persistent discrimination faced by children in vulnerable situations, including migrant children, children with disabilities, and from ethnic minorities. Türkiye should ensure that these children have equal access to basic services, such as education, healthcare, and protection from violence, in compliance with the Convention on the Rights of the Child.
- Implement urgent reforms to protect the independence of the legal profession in Türkiye, and cease the prosecution of lawyers based on their professional duties, affiliations with lawful organizations, or actions that would not constitute crimes in other jurisdictions. Lawyers should not be prosecuted or detained based on their legitimate work, particularly under vague anti-terror laws like Article 314.
- Address the dire prison conditions that have led to the deaths of several lawyers, including Fethi Ünlü and Murat Korkmaz. Overcrowding, inadequate medical care, and discriminatory treatment of political prisoners violate their rights to health and humane treatment. Urgent reforms in prison conditions and healthcare access must be implemented, with independent oversight to prevent further loss of life.