



Erosion of Judicial Independence and Attacks on Lawyers in Turkey

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Summary

The situation for lawyers in Turkey has worsened since the failed coup in 2016. There is a widespread and systematic persecution of members of the legal profession in Turkey. Approximately 599 lawyers have been arrested and detained, 1546 lawyers prosecuted, and 311 lawyers convicted and sentenced to a total of 1,967 years in prison. Lawyers have been prosecuted in mass trials of, for example, 322 and 110 lawyers per trial. Approximately 4,260 judges and prosecutors have been dismissed; many have been arrested and detained; and 634 judges and prosecutors have been convicted on terrorism charges. Approximately 500 administrative personnel of the Supreme Court, Council of State, Court of Accounts, and Council of Judges and Prosecutors have also been dismissed. There is a lack of due process and no effective remedy to appeal decisions of dismissals made by the State of Emergency Inquiry Commission. At least 14 presidents and former presidents of 12 provincial Bar Associations have been arrested or detained. Emergency decree laws have closed down 34 lawyers' associations in 20 different provinces. Many Bar Associations have experienced interference with their independence and admissions procedures, as well as had assets seized without compensation or adequate justification.

Numerous legislative and constitutional amendments, as well as the Parliamentary enactment of 32 emergency decree laws issued under the state of emergency, have given the Turkish government unprecedented control over the judiciary and prosecutorial authorities, thereby undermining the rule of law. For example, the number of Constitutional Court judges was reduced from 17 to 15, 12 of whom can now be appointed by the President. The Council for Judges and Prosecutors (HSK) was reduced from 22 to 13 members, 7 of whom are elected by Parliament and 6 by the President. The HSK decides on the appointment of – and disciplinary proceedings against – most judges and prosecutors. These amendments erode judicial and prosecutorial independence and lead to violations of the right to a fair trial. They also do not correspond with the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.

Criminal law and anti-terrorism legislation is used to criminalise lawyers' legitimate professional activities. Prosecutions of lawyers are often politically motivated, lack evidence, and make use of vaguely defined offences. Lawyers are identified with their clients and clients' causes, contrary to the UN Basic Principles on the Role of Lawyers. Trials are held before courts that lack independence and impartiality. Lawyers' professional

activities are also interfered with through: (i) lack of access to case files, including indictments; (ii) restrictions on access to clients, and (iii) breaches of professional confidentiality between lawyers and their clients. For example, emergency decree law 676 – codified by Law No 7070 – authorises restrictions on lawyers' access to clients who have been accused of terrorism. The inability to access a lawyer from the moment of arrest increases the risk of torture and ill-treatment. There have been several reports of torture of lawyers and their clients after arrest. Emergency decree law 667 – codified by Law No 6749 – authorises restrictions on the duration of consultations between lawyers and clients, as well as on the right to be represented by a lawyer of one's own choosing. This Law also allows communications between lawyers and clients to be recorded for security reasons and documents to be seized by authorities. There have also been reports of lawyers being made to testify against their clients, making it impossible for them to continue to act as their legal representatives. State practices that criminalise lawyers' legitimate professional activities violate fundamental human rights, including the right to a fair trial, and severely restrict access to justice for all citizens of Turkey.

Recommendations

- Immediately end the arbitrary and systematic arrest, detention, and prosecution of lawyers, judges, and prosecutors; drop the charges against those accused and release those who have been detained, unless credible evidence is presented in proceedings that comply with international fair trial standards;
- Repeal all constitutional, legislative and other provisions – and cease all practices – that hinder lawyers in carrying out their professional duties and place impermissible limitations on fair trial rights, such as timely access to a lawyer of one's own choosing, confidentiality of communications between lawyers and clients, and the right to prepare for an adequate defence; and
- Repeal all constitutional, legislative and other provisions – and cease all practices – that restrict judicial and prosecutorial independence, including those allowing the executive to appoint a large number of members of the HSK and the Constitutional Court.

UPR joint stakeholder report submitted with the following organisations:

