



**THE ARRESTED LAWYERS INITIATIVE**

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**Stakeholder Submission by the Arrested Lawyers  
Initiative to the UN Human Rights Council's  
Universal Periodic Review – TURKEY**

**35th Session (Jan.-Feb. 2020)**

**Incarceration of Turkish Lawyers (2016-2019) |  
Unjust Arrests and Convictions**

The Arrested Lawyers Initiative is a human rights group, founded in 2016, consists of lawyers across Europe. The ALI is based in Brussels, makes advocacy for lawyers persecuted due to exercising their profession. The ALI has produced more than 10 reports and factsheets which have been cited by the UN High Commissioner and Special Rapporteurs, the European Parliament, the US State Department and various NGOs.

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## Stakeholder Submission by the Arrested Lawyers Initiative to the UN Human Rights Council's Universal Periodic Review – TURKEY

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### Incarceration of Turkish Lawyers (2016-2019) | Unjust Arrests and Convictions

#### I. FACTS

1. Republic of Turkey is a member of the United Nations and party to the ICCPR and the ICESCR. On 21 July, 2016, the Turkish Government declared a state of emergency. The state of emergency was effective until 18 July, 2018. Turkey notified a derogation from the ICCPR, Art. 2§3 (right to an effective remedy), Art. 9 (right to liberty and security), Art. 10 (right to humane treatment in detention), Art. 12 (freedom of movement), Art. 13 (procedural guarantees in expulsion proceedings), Art. 14 (right to a fair trial), Art. 17 (right to privacy), Art. 19 (right to freedom of expression), article 21 (right of peaceful assembly), Art. 22 (freedom of association), Art. 25 (political rights), Art. 26 (equality before the law) and Art. 27 (protection of minorities) ICCPR were mentioned as the rights, which would have been effected from the derogations.<sup>1</sup>
  
2. Since the 2016's coup attempt, there has been a relentless campaign of arrests which has targeted lawyers across Turkey. In 77 of Turkey's 81 provinces, lawyers have been detained and arrested on trumped-up charges as part of criminal investigations conducted by provincial public prosecutors. As of June 2019,
  - i. more than 1500 lawyers have been prosecuted,
  - ii. 599 lawyers have been arrested,
  - iii. 311 of those lawyers have been sentenced to some 1900 years in prison<sup>2</sup> by the first

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<sup>1</sup> International Commission of Jurists, 'Justice Suspended: Access to Justice and the State of Emergency in Turkey' (2018), 8-9 <<https://www.icj.org/wp-content/uploads/2018/12/Turkey-Access-to-justice-Publications-Reports-2018-ENG.pdf>> accessed 4 March 2019

<sup>2</sup> The Arrested Lawyers Initiative, **Incarceration of Turkish Lawyers (2016-2019) | Unjust Arrests and Convictions, June 2019, 1**  
<https://arrestedlawyers.files.wordpress.com/2019/06/report-june.pdf>

instance courts under article 314<sup>3</sup> of the Turkish Penal Code.<sup>4</sup>

PROVINCE	NUMBER OF CONVICTED LAWYERS	PROVINCE	NUMBER OF CONVICTED LAWYERS	PROVINCE	NUMBER OF CONVICTED LAWYERS
Adana	11	Erzurum	10	Malatya	2
Adıyaman	2	Eskişehir	14	Manisa	11
Afyon	9	Gaziantep	3	Mersin	11
Ankara	27	Gümüşhane	1	Muş	1
Antalya	13	Bayburt	1	Niğde	3
Aydın	5	Giresun	3	Ordu	1
Balıkesir	5	Isparta	1	Samsun	13
Batman	1	İstanbul	47	Siirt	1
Bilecik	1	İzmir	9	Sivas	10
Bolu	2	Kayseri	21	Şanlıurfa	1
Bursa	16	Kırıkkale	3	Şırnak	1
Denizli	8	Kırşehir	2	Tokat	4
Diyarbakır	1	Kocaeli	3	Trabzon	4
Düzce	3	Konya	21	Tunceli	1
Erzincan	2	Kütahya	2	<b>TOTAL</b>	<b>311</b>

**Table: Number of convicted Turkish lawyers (since 2016 July) by provinces**

3. 14 of the persecuted lawyers are presidents (or former presidents) of their respective provincial bar associations, namely;
  - i. President of Konya Bar Association Fevzi Kayacan,
  - ii. President of Trabzon Bar Association Orhan Ongoz,
  - iii. President of Siirt Bar Association Cemal Acar,
  - iv. President of Gumushane Bar Association Ismail Tastan, were arrested and unlawfully unseated.<sup>5</sup>

<sup>3</sup> Armed Organisation

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)

<sup>4</sup> <https://arrestedlawyers.org/category/situation-in-turkey/>

<sup>5</sup> The Arrested Lawyers Initiative, **Incarceration of Turkish Lawyers (2016-2019) | Unjust Arrests and Convictions, June 2019, 2-5**

4. President of Konya Bar Association, Fevzi Kayacan was arrested 23 July 2016, he was sentenced to 10,5 years on 2017 October. President of Siirt Bar Association, Cemal Acar was arrested (and unseated) 23 September 2016 and sentenced to 8 years on May 2018. Cemalettin Ozer, former president of Erzincan Bar Association was sentenced to 8 years and 9 months. Zeynel Balkiz, former president of Manisa Bar Association was sentenced to 2 years and 1 months on October 2018. Erzurum 2<sup>nd</sup> High Assize Court has sentenced Mehmet Guzel, former president of Erzurum Bar Association, to 13 years in prison. President of Trabzon Bar Association, Orhan Ongoz was arrested (and unseated) on 27 September 2016 and sentenced to 6 years and 3 months on April 2019. Furthermore, presidents of the Aksaray and Kahramanmaras Bar Associations, Levent Bozkurt and Vahit Bagci respectively, and former presidents of Yozgat Bar Association Haci Ibis and Fahri Acikgoz were detained for a certain period of time before they were released on bail.<sup>6</sup>
5. Turkish Government's crackdown against lawyers targeted not only their right to liberty and security but also their freedom of association. 34 (of the 1412) associations (NGOs) operating in 20 different provinces of Turkey founded by lawyers were permanently dissolved under Emergency Decrees, all assets of these NGOs were confiscated without any compensation. What is worse, almost all members of these lawyer associations' have been prosecuted under Anti-Terrorism Laws.<sup>7</sup>

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<sup>6</sup> The Arrested Lawyers Initiative, **Incarceration of Turkish Lawyers (2016-2019) | Unjust Arrests and Convictions, June 2019, 5**

<sup>7</sup> <https://arrestedlawyers.org/2017/10/11/the-right-to-free-association-vanished-in-turkey/>



*Info map by The Arrested Lawyers Initiative*

**6. INDEPENDENCE OF BAR ASSOCIATION HAVE BEEN DIMINISHED:** Bar Associations are Professional organizations having the characteristics of public institutions (Art. 135 of Constitution). They shall be independent. However, by the Presidential Decree No:5 of which name is Presidential Decree as to the State Inspection Institution (Devlet Denetleme Kurumu – DDK) Turkish Presidency acquired the authority of inspecting Bar Associations, and of suspending their chairperson and board members (article 6).<sup>8</sup>

<sup>8</sup> <https://arrestedlawyers.org/2018/09/24/erdogan-gets-infinite-authority-over-the-national-and-provincial-bar-associations/>

7. **UNLAWFUL RESTRICTIONS ON ADMISSION TO THE PROFESSION OF LAWYER<sup>9</sup>:** Pursuant to the Law No.1136 (the Code of Lawyers), everyone who successfully fulfils the internship of the lawyer or serves as a judge or prosecutor for at-least five years, is admitted the profession of lawyer. Since 2016 July, Turkish Justice Ministry have been preventing the dismissed public servants from being a lawyer. The Justice Ministry argues that the dismissed public servants can't be lawyer and can't be admitted for the internship of lawyer under the article of decree laws as follows “those dismissed from service under paragraph one shall not anymore be employed in public service, and they shall not, directly or indirectly, be assigned; all kinds of membership in a board of trustees, a board, a commission, a board of management, a supervisory board or a liquidation board under the responsibility of those dismissed from service and their other tasks shall be deemed to have ended.” Having misinterpreted this provision, The Justice Ministry refuses to issue lawyer license to school academics, judges and prosecutors who were dismissed under Emergency Regime.

## II. NATIONAL AND INTERNATIONAL LEGAL FRAMEWORK

8. The right to a fair trial is contained in Chapter Two, Section XIII of the Constitution which relates to the protection of rights. Article 36 states: ‘Everyone has the right of litigation either as plaintiff or defendant and the right to a fair trial before the courts through legitimate means and procedures.’ Art 14 ICCPR envisages the right to fair trial.
9. The conduct and practice of lawyers within the legal profession is regulated by Law No 1136, which is also known as the Code of Lawyers (Avukatlik Kanunu). Article 1 of the Code of Lawyers classifies the legal profession as an independent public service and liberal profession. As per the Code of Lawyers (arts. 58-60), a lawyer can be prosecuted under a special procedure which involves an authorization of prosecution given by the Justice Minister. According to this special procedure, a lawyer can be prosecuted only if the Minister of Justice gives authorization for prosecution. Art. 61 of the Code of Lawyers exempts the situation of flagrante delicto<sup>10</sup>, if a lawyer is caught in flagrante

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<sup>9</sup> Ibid.

<sup>10</sup> Article 2 of the Criminal Procedures Code defines the flagrante delicto:

“ ...

delicto, he / she can be prosecuted without seeking authorization for prosecution.<sup>11 12</sup>

10. UN Basic Principles on the Role of Lawyers stipulates ‘Guarantees for the functioning of lawyers.’ As per these principles

- Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics, (Para 16)
- Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions, (Para 18)
- Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional activities, (Para 20)
- It is the duty of the competent authorities to ensure lawyers effectively access to appropriate information, files and documents on the cases they perform their profession, (Para 21)
- Governments shall recognize and respect lawyers’ professional privileges, (Para 22)
- Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly, (Para 23)

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(j) the following shall be classified as cases of discovery in flagrante delicto (suçüstü):

1. an offence in the process of being committed;
2. an offence that has just been committed, and an offence committed by an individual who has been pursued immediately after carrying out the act and has been apprehended by the police, the victim or other individuals;
3. an offence committed by an individual who has been apprehended in possession of items or evidence indicating that the act was carried out very recently.

<sup>11</sup> In cases of discovery in flagrante delicto falling within the jurisdiction of the assize courts, the investigation shall be conducted in accordance with the rules of ordinary law.

<sup>12</sup> In the judgment of *Alparslan Altan v Turkey* (App no. [12778/17](#)), ECHR rendered that Turkish Judiciary’s interpretation of in flagrante delicto is not only problematic in terms of legal certainty, but also appear manifestly unreasonable. (para 115).

- The executive body of the professional associations of lawyers shall be elected by its members and shall exercise its functions without external interference, (Para 24)
- Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice. (Para 27)

### **III. ABUSE OF ANTI-TERROR LAWS**

11. Turkey's anti-terrorism legislation consists of two separate laws: the Turkish Penal Code (5237) ("TPC") and Anti-Terrorism Law (3713).

12. Sub-section 1 (Article 314/1) of Article 314<sup>13</sup> of the Turkish Penal Code criminalises the establishment and/or commanding an armed terrorist organisation, and the subsection 2 (Article 314/2) criminalises the membership to an armed organisation. Under the Turkish Penal Code, these two offences **carry the penalty of 7.5 to 22.5 years imprisonment.**

13. Since 2014, Turkey has been arbitrarily using the anti-terrorism legislation to oppress its dissents, particularly lawyers, journalists and politicians. Commissioner for Human Right of the Council of Europe said: "Laws with an overly broad definition of terrorism and membership of a criminal organisation and the judiciary's tendency to stretch them even further is not a new problem in Turkey, as attested in numerous judgments of the European Court of Human Rights. This problem has reached unprecedented levels in recent times. Prosecutors, and increasingly also the courts, consider lawful and peaceful acts and statements protected under the European Convention on Human Rights as proof of criminal activity ... what is used as evidence is sometimes so inconsistent and

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<sup>13</sup> Armed Organisation

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)

arbitrary ... that it has become virtually impossible to foresee in good-faith the legal consequences of actions ... this uncertainty discourages legitimate dissent and criticism.”<sup>14</sup>

14. According to the survey<sup>15</sup> by the Arrested Lawyers Initiative carried out on the Turkish Justice Ministry’s statistics,

- Turkey has indicted 221.366 people under Art. 314 Turkish Penal Code (membership to an armed terrorist organisation) between 2012 and 2017,
- moreover, public prosecutors have indicted more than 300.000 individuals under 309-316 of Turkish Penal Code which stipulate crimes against the Constitutional Order in 2017 and 2018,
- Statistics also indicate that, in 2017, Turkish prosecutors have opened investigations against 527.154 individuals under Articles 309-316, this number is 456.175 in 2018.

15. Art 314 of the Penal Code does not contain a definition of an armed organisation or an armed group. The lack of legal definitions and criteria of the armed terrorist organization and the crime of membership in the armed terrorist organization make them prone to arbitrary application.<sup>16</sup> Vague formulation of the criminal provisions on the security of the state and terrorism and their overly broad interpretation<sup>17</sup> by the Turkish judges and prosecutors make all lawyers and other human rights defenders a prospective victim of judicial harassment.

16. This blurred area under the Turkish Penal code is actively used by the Turkish government to investigate, prosecute and convict opponents. As it has become a common practice in after the 15<sup>th</sup> July Coup attempt, 540.000<sup>18</sup> individuals have been

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<sup>14</sup> <https://www.coe.int/en/web/commissioner/-/turkey-needs-to-put-an-end-to-arbitrariness-in-the-judiciary-and-to-protect-human-rights-defenders>

<sup>15</sup> <https://arrestedlawyers.org/2019/05/30/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>

<sup>16</sup> **CDL-AD(2016)002-e Opinion on articles 216, 299, 301 and 314 of Penal Code of Turkey** [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2016\)002-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2016)002-e)

<sup>17</sup> <https://rm.coe.int/third-party-intervention-10-cases-v-turkey-on-freedom-of-expression-an/168075f48f>

<sup>18</sup> <https://arrestedlawyers.org/2019/07/15/chief-of-turkish-national-police-admits-that-540000-detentions-have-been-made-without-legal-ground/>

detained for terrorism offences stipulated in article 314 of Turkish Penal Code.

17. All persecuted lawyers are being charged with terror-linked offenses; the main two accusations directed against them are membership to an armed terrorist organisation, and forming and leading an armed terrorist organisation. (Article 314 of the Penal Code).
18. With misinterpretation of in flagrante delicto and abuse of Art 314 of Penal Code, more than 1500 lawyers have been prosecuted without enjoying protection of Arts 58-61 of the Code of Lawyers. (They were detained with police raids and prosecuted without authorization of prosecution given by the Minister of Justice.)
19. Lawyers have particularly been targeted due to identity or affinity of their clients. United Nations High Commissioner for Human Rights reports that the OHCHR has observed a pattern concerning persecution of lawyers representing individuals accused of terrorism offences, where they are associated with their clients' political views (or alleged political views) in the discharge of their professional duties and are consequently prosecuted for the same or other related offences of which their clients are being accused.<sup>19</sup>

#### **IV. CONCLUSION**

20. Turkish Government's ongoing crackdown against lawyers breaches
  - a. Arts. 58-61 of the Code of Lawyers which aims to ensure their independence and to provide a protection and guarantee for lawyers against acts of judicial harassment,
  - b. the right to liberty and security and the freedom of association of lawyers,
  - c. Paras 16, 18, 20, 21, 22, 23, 24, 27 of the UN Basic Principles on the Role of Lawyers,
  - d. Art 36 of the Constitution and Art 14 ICCPR,

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<sup>19</sup> **Office of the UN 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. January – December 2017."**

[http://www.ohchr.org/Documents/Countries/TR/2018-03-19\\_Second\\_OHCHR\\_Turkey\\_Report.pdf](http://www.ohchr.org/Documents/Countries/TR/2018-03-19_Second_OHCHR_Turkey_Report.pdf)

- e. Art 135 of the Constitution and Para 24 of the UN Basic Principles on the Role of Lawyers.

21. Turkish Government's ongoing crackdown against lawyers

- a. abolishes safeguards against torture,
- b. constitutes illegal obstacle the right to access to justice and the right to legal counsel.

**V. RECOMMENDATIONS**

**22. We urge the Turkish Government to**

- i. Guarantee the independence of the judiciary and the prosecution services, in accordance with the UN Basic Principles on the Independence of the Judiciary and the UN Guidelines on the Role of Prosecutors.
- ii. Ensure that lawyers can effectively perform their professional functions in accordance with the guarantees provided for in Article 14 of the ICCPR, the UN Basic Principles on the Role of Lawyers, and Articles 5 and 6 of the ECHR
- iii. Amend the anti-terror legislation (including the new Anti-Terrorism Bill adopted on 25 July 2018), and provisions in the Criminal Code as recommended by the Council of Europe, the European Court of Human Rights, and the European Union,
- iv. Ensure that lawyers are not identified with their clients or clients' causes and can perform their duties without intimidation, hindrance, harassment or improper interference, in accordance with the UN Basic Principles on the Role of Lawyers;
- v. Immediately end the arbitrary and systematic arrest, prosecution and detention of lawyers, drop the charges against those arbitrarily accused, and release those who are detained, unless credible evidence is presented in proceedings that comply with international fair trial standards;
- vi. Ensure the independent and prompt investigation and prosecution of all cases of torture and ill-treatment of lawyers committed by law enforcement officers, in accordance with applicable international standards;
- vii. Immediately end the interference in and systematic persecution of bar associations and lawyers' associations and arbitrary arrest and prosecution of their members; and
- viii. Ensure that lawyers are entitled to form and join independent and self-governing

professional associations as protected by Principle 24 of the UN Basic Principles on the Role of Lawyers,

- ix. End the administrative praxis that prevents the dismissed law school academics, judges and prosecutors from being lawyer.